

June 5, 2015

Ms. Ingrid Ferrell
Executive Secretary
Public Service Commission
of West Virginia
201 Brooks Street
Charleston, West Virginia 25301

12:59 PM JUN 05 2015 PSC EXEC SEC DIV

RE: CASE NO. 870669-E-C (REOPENED)
AMERICAN BITUMINOUS POWER PARTNERS, L.P.
and MONONGAHELA POWER COMPANY

Dear Ms. Ferrell:

Enclosed herein please find the original and twelve (12) copies of the Joint Petition of American Bituminous Power Partners, L.P. and Monongahela Power Company seeking the reopening of the above-referenced proceeding and requesting Commission approval of an amendment to the existing Electric Energy Purchase Agreement between the parties and associated ratemaking treatment.

Should you have any questions regarding this filing, please do not hesitate to contact me or John McGhee as counsel to American Bituminous Power Partners, L.P.

Sincerely,



Robert R. Rodecker
WV State Bar No. 3145

RRR/bg
Enclosures

cc: Gary A. Jack, Esquire
Christopher L. Callas, Esquire
John Philip Melick, Esquire

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 87-669-E-C (REOPENED)

AMERICAN BITUMINOUS POWER PARTNERS, L.P.
and MONONGAHELA POWER COMPANY

Joint Petition to re-open and request for approval of an amendment to the Electric Energy Purchase Agreement of Monongahela Power Company and American Bituminous Power Partners, L.P., and associated ratemaking treatment

**JOINT PETITION TO RE-OPEN AND REQUEST FOR APPROVAL
OF AMENDMENT TO ELECTRIC ENERGY PURCHASE AGREEMENT
AND ASSOCIATED RATEMAKING TREATMENT**

American Bituminous Power Partners, L.P. ("AmBit"), and Monongahela Power Company ("Mon Power" and collectively "Joint Petitioners") respectfully present this Joint Petition ("Joint Petition") to request that the Commission re-open this proceeding to grant approval of an amendment agreement ("Amendment Agreement") to the Electric Energy Purchase Agreement ("EEPA") between AmBit and Mon Power and to permit any incremental purchased power costs associated with the EEPA as amended to be recovered as purchased power expenses in Mon Power's annual Expanded Net Energy Cost ("ENEC") filings. Joint Petitioners also request that the Commission retain this case and accord it expedited consideration.

The Project and Commission Approval of the EEPA and Amendments

1. Pursuant to the provisions of the Public Utilities Regulatory Policy Act of 1978, 16 U.S.C. Section 2601 *et seq.* ("PURPA"), a public utility is obligated to purchase power produced by a qualifying facility, to interconnect the qualifying facility to the utility system, and to furnish necessary backup power to the qualifying facility.

2. In the late 1980s, AmBit proposed to construct and operate an 80 MW (net) waste-coal fired electric generating facility in Marion County, West Virginia, ("Project") and to sell the electricity to Mon Power in accordance with PURPA.

3. On October 13, 1987, AmBit filed a formal complaint with the Commission against Mon Power because of the inability of AmBit and Mon Power to reach an agreement for the sale and purchase of power from the Project.

4. On November 13, 1987, the Commission issued an order that resolved the issues upon which the parties were unable to agree, namely, the energy and capacity rates, dispatch, contract life, subordination, and advance payment. The Commission directed that the terms of the order be included in a contract to be executed by Mon Power and AmBit.

5. On October 21, 1988, AmBit and Mon Power filed a joint motion to withdraw the formal complaint and requested approval of the proposed EEPA and approval of the recovery of the cost of power to be purchased by Mon Power from AmBit.

6. By order dated November 10, 1988, the Commission approved the EEPA and provided for cost recovery by Mon Power of purchased power expenses associated with the EEPA through future fuel review or similar proceedings.

7. By order dated October 31, 1989, the Commission approved certain amendments to the EEPA dealing with certain financing issues and provisions relating to dispatch of the Project.

8. In 1990, the County Commission of Marion County ("County Commission") issued \$150 million of its tax-exempt Solid Waste Disposal Facility Revenue Bonds ("Revenue Bonds") in support of the Project, which mature in September 2017. AmBit is obligated to make certain payments to the County Commission in respect of the Revenue Bonds. Also in 1990, construction of the Project began.

9. On May 28, 1993, the Project commenced commercial operations.

10. By order dated March 29, 1996, the Commission denied an emergency petition by AmBit to re-open this case and a related petition for interim relief. The Commission held that under the factual circumstances presented by the petitions, the Commission was preempted by federal law from modifying the terms of the EEPA after a final, non-appealable Commission order approving the EEPA had been issued.

11. By order dated August 7, 2000, the Commission approved amendments to the EEPA pursuant to the terms of a Settlement Agreement and Release between AmBit and Mon Power arising from arbitration of a dispute under

the EEPA. The Commission held that these amendments to the EEPA differed substantially from the amendments AmBit had earlier requested unilaterally because the Commission was not being asked to modify the terms of an agreement or contract when the parties disagreed, but instead to merely approve amendments based upon the parties' mutual agreement and release. As such, the Commission found no jurisdictional issue, and approved the parties' proposed amendments.

12. By order dated April 13, 2006, the Commission again approved amendments to the EEPA ("2006 Amendments") and associated rate making treatment pursuant to a Joint Petition filed by AmBit, Mon Power, and The Potomac Edison Company ("PE"). The Commission held that it was appropriate to grant the Joint Petition to preserve AmBit's ability to operate and continue to provide electric energy to Mon Power and that the proposed amendments to the EEPA had been mutually agreed to by the parties.

AmBit's Current Financial Condition

13. AmBit represents that it is in financial difficulty as a direct result of increased operating costs. It has defaulted on the principal payments that support the Revenue Bonds and it has been unable to pay lease rent on the property it occupies in Marion County. Unless the EEPA can be amended to increase AmBit's annual revenues, AmBit will be forced to discontinue operations or seek a judicial reorganization. AmBit has presented information to Mon Power and the Commission

Staff that supports its representations concerning its financial circumstances and its inability to continue operations without additional annual net revenues.

14. AmBit and Mon Power have conducted a series of negotiations to identify EEPA amendments that would stabilize AmBit's financial condition, preserve the employment and tax benefits its operations provide, safeguard the Project's contribution to Mon Power's capacity portfolio, and accomplish these goals with a manageable rate impact on utility customers. With the assistance of the Utilities Division, AmBit developed and proposed a set of EEPA amendments that AmBit and Mon Power believe will meet these objectives. After weighing the customer rate impacts to arise from the amendments against the potential loss of the Project and the negative economic, tax base, and environmental impacts associated with that loss, Mon Power has agreed to join in this Joint Petition to submit the EEPA amendments for the Commission's consideration.

15. In previous decisions in this docket, the Commission has held that it has jurisdiction over amendments to a PURPA EEPA where the qualifying facility and the utility have agreed to them and they are otherwise reasonable. In its August 7, 2000 order (p. 2), the Commission differentiated that situation from its March 29, 1996 decision not to exercise jurisdiction over AmBit's unilateral request for contract amendment, and consequently exercised jurisdiction and approved a set of agreed amendments to the EEPA (cf. paragraphs 10 and 11 above). Likewise, in its April 13, 2006 order (pp. 3, 5, 8), applying the same analysis and upon the Staff's recommendation, the Commission exercised jurisdiction and approved another set of

amendments to the EEPA (see paragraph 12 above). The circumstances presented here are materially identical to those presented in 2006, and thus the Commission has jurisdiction to consider the Amendment Agreement agreed to by the Joint Petitioners.

The Amendment Agreement

16. The proposed form of the Amendment Agreement is attached as Exhibit A. The salient provisions of the Amendment Agreement are set forth below.

17. Purchase Price.

a. Currently, the EEPA requires Mon Power to purchase power from AmBit at the Avoided Energy Cost Rate ("Energy Cost Rate") plus an agreed Capacity Cost Rate for up to 80 MW. The current Capacity Cost Rate under the EEPA is 3.425 cents per kilowatt-hour (\$34.25/MWh). Under the 2006 Amendment, the Capacity Cost Rate of \$34.25/MWh is scheduled to decrease to \$27.00/MWh upon repayment of the Revenue Bonds in October 2017, and to remain at that level until the end of the term of the EEPA in 2036.

b. The Amendment Agreement calls for Mon Power to purchase power up to 80 MW from AmBit at a rate per kilowatt-hour equal to 85% of all aggregated net revenues for energy, capacity, ancillary services, and any other PJM revenues for the Project as reported by PJM and paid by or through PJM to Mon Power, with the proviso that the rate will be no less than the sum of the Energy Cost Rate plus 3.425 cents per kilowatt-hour, and no more than the sum of the Energy Cost Rate plus

4.000 cents per kilowatt-hour, until the end of the EEPA term in 2036. See Exhibit A at 2, ¶ 2, amending EEPA § 1.2(b)(i).

c. This pricing mechanism will allow AmBit's net revenues to move with the market price of energy, capacity, and ancillary services in PJM over time, subject to the capacity cost floor and ceiling provisions. The pricing mechanism will be analyzed on a monthly basis to determine whether market prices are high enough for the market approach to be triggered. Based on current market prices, the market price mechanism is not expected to be triggered in the near term except perhaps during a peak month when prices escalate. When triggered, the 85% of market discount will provide lower costs to the customers than otherwise would be achieved through spot market purchases if the Project were no longer operating.

d. This amendment to the pricing mechanism is not likely to give rise to any increased cost to Mon Power and PE customers before October 2017. At that time, Mon Power's annual purchased power expense from AmBit will increase by approximately \$4.6 million per year as compared with the scheduled capacity cost reduction that would otherwise go into effect in October 2017 under the current EEPA. This amounts to less than one-half of one percent (0.5%) of the current combined West Virginia rate revenues of Mon Power and PE.

18. Tracking Account. The EEPA provides for an energy tracking account ("Tracking Account") to track and account for certain excess payments by Mon Power to AmBit under the EEPA. The EEPA currently requires that AmBit amortize the balance of the Tracking Account over time by reducing the Energy Cost Rate to

\$19.00/MWh until fully amortized, beginning in January 2020. Under the Amendment Agreement, the Tracking Account and AmBit's corresponding amortization obligation will be eliminated, resulting in a reduction of \$8,870,000 in accrued expenses to AmBit in 2020,¹ and increasing its available cash flow during that period.² See Exhibit A at 3, ¶ 3, amending EEPA § 1.3 and Part II of Exhibit B thereof. The elimination of the Tracking Account will result in increased costs to Mon Power and PE customers in the year 2020 of less than one percent (1.0%) of the current combined West Virginia rate revenues of Mon Power and PE.

19. Cap of Maintenance Reserve. Under the EEPA, AmBit is required to maintain a Maintenance Reserve Fund. While AmBit understands the necessity of such a fund, its current financial condition has not permitted it to maintain its funding or increase the reserve level each year, as the EEPA currently requires. AmBit believes that an \$8,000,000 Maintenance Reserve Fund is adequate to properly maintain the Project based on past operating experience and expected future needs, including major maintenance of the turbine/generator and boilers. An \$8,000,000 reserve is sufficient to cover the cost of materials and services as well as lost revenues during prolonged outages, and can be replenished over time. In addition, insurance coverages have been improved over previous policies to help limit

¹ The return of this \$8 million to customers, to the extent completed under the current EEPA, was expected to be accomplished entirely in 2020.

² The Tracking Account is an accounting mechanism, not a funded account, and AmBit has no cash in reserve to fund amortization of the Tracking Account beginning in January 2020. If AmBit were to discontinue operations, Mon Power may be unable to recover any funds for customers associated with AmBit's existing Tracking Account obligations.

exposure to catastrophic events. Under the Amendment Agreement, the Maintenance Reserve will be capped at \$8,000,000 for the remainder of the term of the EEPA, and upon AmBit's funding of it at the \$8,000,000 level, will no longer require AmBit to increase the maintenance reserve level each year during the remaining term. See Exhibit A at 3, ¶ 7, amending EEPA § 9.1.

20. Purchase Price for Additional Project Energy. Under the current EEPA, Mon Power pays AmBit the Energy Cost Rate based on the "APS Proxy Units" for AmBit energy provided in any hour in excess of 80 MW up to the limit of the existing facilities, additional output that generally ranges from 1 MW to 4 MW. Under the Amendment Agreement, the rate paid for this "Additional Project Energy" would be calculated at 95% of the real-time locational marginal price ("LMP") as reported by PJM and paid by or through PJM to Mon Power. See Exhibit A at 1-2, ¶ 1, amending EEPA § 1.1(c). This change will benefit both parties: AmBit has the potential to generate additional revenue above the Energy Cost Rate when LMPs exceed that amount, and Mon Power will not be required to pay the Energy Cost Rate when LMPs are below the Energy Cost Rate. In either case, Mon Power will pay less than the LMP.

21. Increased Curtailment Opportunities to Mon Power. The Amendment Agreement will increase the number of hours per year that Mon Power may reduce the amount of Project Energy it must accept, to 100 hours from 80 hours in the current EEPA. Project Energy purchased during these "curtailment hours" will be paid at the rate specified in Paragraph 17 above. See Exhibit A at 3, ¶ 4, amending

EEPA § 1.4(c). This curtailment provision is utilized by Mon Power during low-demand days when market prices are very low to avoid paying AmBit, to a limited extent, for much more expensive power than Mon Power could obtain in the PJM market.

22. Cost Recovery. Mon Power's current expenses under the EEPA are recovered as purchased power expenses through the annual ENEC process. Mon Power's agreement to execute the Amendment Agreement is predicated on the Commission's approval of the inclusion of any incremental purchased power expenses associated with the Amendment Agreement being granted deferred accounting treatment, with full and timely recovery through the ENEC as well.

23. Effectiveness Conditioned on Commission Approval. The Amendment Agreement obligates Mon Power and AmBit to use commercially reasonable efforts to obtain Commission approval of the Amendment Agreement and the related ratemaking treatment described above. The effectiveness of the operative provisions of the Amendment Agreement (including specifically those described above) is conditioned upon the receipt of a final order of the Commission granting the relief requested in this Joint Petition without modifications unacceptable to either or both parties. See Exhibit A at 3, ¶ 8.

Benefits of the Amendment Agreement

24. The Amendment Agreement is expected to result in increased revenues to AmBit over time as compared with the current EEPA terms. Mon Power estimates that as compared with the current EEPA, the purchase price changes described in

paragraph 17 above will increase its purchased power expense by approximately \$4.6 million annually as of October 2017, and the elimination of the Tracking Account described in paragraph 18 above will increase its purchased power expense by an additional one-time \$8.8 million for 2020. Until October 2017, however, the parties expect no financial impact (increased revenues to AmBit or increased costs to Mon Power) unless market prices during a particular month escalate enough to support the market trigger mechanism and exceed the floor capacity price of 3.425 cents/kwh.

25. AmBit represents that if the Amendment Agreement is approved, the economic benefits of the Project to West Virginia in general and Marion County in particular will be preserved. The Project employs 54 people in full time positions and has created 58 additional jobs throughout the economy of the state. These 112 full time jobs generate \$9.44 million annually in terms of employment compensation. The total impact of AmBit's expenditures on the Gross State Product of West Virginia is estimated to be at least \$34.4 million annually in 2014 dollars. AmBit pays taxes of nearly \$2 million per year. It generates approximately 640,000 Renewable Energy Credits annually for Mon Power.³ In addition, 565,000 tons of waste coal is consumed annually, and the ash generated is a Beneficial Use By-Product used by AmBit, mine operators and others to reclaim waste coal and

³ Although H.B. 2001 (2015) repealed most of the West Virginia Alternative and Renewable Energy Portfolio Act and its provision for alternative and renewable energy resource credits, the Project still generates RECs, which can be sold in other states such as Pennsylvania. Mon Power's sale of these RECs can offset fuel and purchased power costs in ENEC cases.

fracking sites, control acid mine-water, and remediate other wastes. Over 200 acres of abandoned waste sites have been reclaimed and restored to-date. Assuming operations continue through 2036, approximately 24 million tons of waste coal will be used and over 500 acres of land reclaimed. AmBit's on-going cleanup of local waste coal and generation of beneficial ash will also continue, resulting in increased environmental quality in West Virginia.

26. AmBit asserts that Commission approval of the Amendment Agreement will serve to advance the public policy goals set forth in *West Virginia Code* §24-2-1d(c) of encouraging electric utilities to acquire capacity from electric generation located in West Virginia that burns coal produced in West Virginia to produce reliable capacity and energy at low cost. In addition, *West Virginia Code* §24-2-1g specifically authorizes rate-making allowances to encourage the use of state-of-the-art clean air and clean coal technologies by electric generating plants in this State. Thus, the relief requested in this Joint Petition will advance important public policy goals as expressed by the West Virginia Legislature.

Request for Expedited Consideration

27. AmBit represents that its financial situation is dire, and that without the approval and implementation of the Amendment Agreement, it will be required to discontinue its operations or seek judicial reorganization. While the Purchase Price provisions referenced in paragraph 17 above may not have an impact on rates until approximately October 2017, approval of the Amendment Agreement is necessary as soon as possible so that AmBit's creditors can be made aware of the

Commission's approval of the Amendment Agreement's terms, allowing any needed renegotiation of existing financial and lending arrangements.

28. To that end, AmBit seeks to implement the Amendment Agreement not later than August 21, 2015. Accordingly, AmBit requests that the Commission grant this Joint Petition expedited consideration in accordance with the Commission's applicable procedures and to enter an Order granting the relief specified below on or before August 21, 2015. Mon Power consents to AmBit's request for expedited relief. Mon Power also consents to AmBit's request that the Commission retain this case in lieu of a referral to the Division of Administrative Law Judges and promptly issue a notice of filing and establish a deadline for intervention.

WHEREFORE, for the foregoing reasons:

1. AmBit and Mon Power jointly request that the Commission reopen this case and approve the Amendment Agreement, without approving the specific terms and conditions thereof; and

2. AmBit and Mon Power request that the Commission:

(a) approve the ratemaking treatment of recovery of all incremental costs arising from the Amendment Agreement timely through the annual ENEC proceeding and the continuation of deferred accounting;

(b) retain this case for processing in lieu of referring it to the Division of Administrative Law Judges;

(c) promptly issue a notice of filing and establish a deadline for intervention;

(d) grant this Joint Petition expedited consideration so that the Commission may enter an Order granting the requested relief by August 21, 2015; and

(e) grant such other relief as the Commission may determine to be warranted.

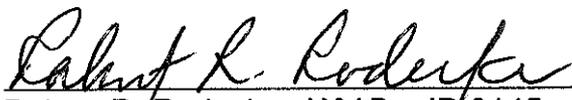
(signature page follows)

Respectfully submitted this 5th day of JUNE, 2015.

AMERICAN BITUMINOUS POWER
PARTNERS, L.P.

MONONGAHELA POWER COMPANY

By Counsel



Robert R. Rodecker, WV Bar ID 3145
John R. McGhee, Jr., WV Bar ID 5205
Kay Casto & Chaney PLLC
1500 Chase Tower, 15th Floor
707 Virginia Street, East
Charleston, WV 25301
Telephone: (304) 345-8900

Counsel for American Bituminous Power Partners, L.P.



Christopher L. Callas, WV Bar ID 5991
John Philip Melick, WV Bar ID 2522
JACKSON KELLY PLLC
1600 Laidley Tower
Post Office Box 553
Charleston, West Virginia 25322
(304) 340-1251

Gary A. Jack, WV Bar ID 1855
Senior Corporate Counsel
FirstEnergy
5001 NASA Blvd.
Fairmont, WV 26554
Phone: 304-534-7409

Counsel for Monongahela Power Company

EXHIBIT A

AMENDMENT
AGREEMENT

AMENDMENT AGREEMENT

This Amendment Agreement (the "Amendment Agreement") is entered into as of June __, 2015 between Monongahela Power Company ("Buyer") and American Bituminous Power Partners, L.P. ("Seller").

WITNESSETH:

WHEREAS, Buyer is an Ohio corporation and an electric public utility subject to the jurisdiction of the Public Service Commission of West Virginia (the "Commission");

WHEREAS, Seller is a Delaware limited partnership, which operates a coal waste disposal power project in West Virginia, with a gross design capacity of approximately 91.23 megawatts and a net design capacity of approximately 80 megawatts, referred to as the Grant Town Project;

WHEREAS, the County Commission of Marion County (West Virginia) has issued its Solid Waste Disposal Facility Revenue Bonds that mature on October 1, 2017 to finance a portion of the costs of the coal waste disposal power project (the "Bonds");

WHEREAS, the Bonds issued by Marion County are payable from, and secured by, revenues from the coal waste disposal power project;

WHEREAS, Buyer entered into an Electric Energy Purchase Agreement with Seller, dated September 15, 1988, as amended to the date hereof (the "EEPA"), pursuant to which Buyer purchases electricity from the Grant Town Project;

WHEREAS, pursuant to the EEPA, Seller is obligated to pay amounts due Buyer pursuant to a Tracking Account until the Tracking Account balance is reduced to zero; and

WHEREAS, Buyer and Seller have agreed to amend the EEPA; and capitalized terms used in this Amendment Agreement and not otherwise defined shall have the meanings set forth in the EEPA.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, and intending to be legally bound, Buyer and Seller agree as follows:

1. Additional Project Energy. Buyer and Seller agree to delete the existing language in Section 1.1(c) of the EEPA and insert the following in lieu thereof:

"(c) The obligation of Seller to sell and deliver, and the obligation of Buyer to accept and purchase, Project Energy pursuant to Section 1.1(a) shall in no event exceed the Contract Output; provided, however, Seller shall have the right to sell (in which case Buyer shall be obligated to purchase), any Project Energy in excess of the Contract Output (or, during any period of Prolonged Boiler Interruptions, in excess of 50% of the Contract Output) ("Additional Project Energy") such that the Project's gross design capacity does not exceed the existing capacity noted above. Notwithstanding the foregoing, each of Buyer and Seller shall have the right, in

its reasonable discretion and subject to considerations of sound electric utility practice, to interrupt or reduce deliveries of Additional Project Energy in order to adjust said deliveries to operating conditions on Buyer's system or at the Project, as the case may be; provided, however, that during seasonal peak periods of APS Demand, Seller shall use all reasonable efforts to make uninterrupted deliveries to Buyer of any Additional Project Energy that may be requested by Buyer from time to time pursuant to this Section 1.1(c). Notwithstanding Section 1.2 (b)(i), Buyer shall pay Seller for all Additional Project Energy delivered to it during each Billing Period at a rate per kilowatthour equal to 95% of the real-time hourly wholesale price of generation delivered to the applicable PJM Pnode as reported by PJM and paid by or through PJM to Buyer."

2. Purchase Price. Buyer and Seller agree to delete Section 1.2(b)(i), (ii) and (iii) of the EEPA and insert the following in lieu thereof:

"(i) during any period while the Project is being operated in the QF Control Mode, Buyer shall (A) pay for any Project Energy delivered to it pursuant to Section 1.1, up to an amount not exceeding the Contract Output, at a rate per kilowatthour equal to 85% of all aggregated net revenues for energy, capacity, ancillary services and any other revenues for the Project as reported and paid by or through PJM to Buyer as initially billed and paid plus any billing adjustments through subsequent PJM billing statements; provided, however, such rate shall be no less than the sum of the Energy Cost Rate plus 3.425 cents per kilowatthour, nor more than the sum of the Energy Cost Rate plus 4.000 cents per kilowatthour, which rate per kilowatthour shall be applied to the Project Energy delivered to Buyer for each Billing Period during the term of this Agreement; provided, however, that during any period of Prolonged Boiler Interruptions, Buyer shall pay the Energy Cost Rate for any Project Energy delivered to it in excess of 50% of the Contract Output; and (B) pay for any Additional Project Energy at a rate per kilowatthour as specified in Section 1.1(c);

(ii) during any period while the Project is being operated in the Manual Dispatch Mode, Buyer shall pay to Seller, the rate per hour specified in Section 1.2(b)(i) for each kilowatthour of Project Energy delivered to Buyer pursuant to Section 1.1; provided, however, that for any hour during such period when the Project Energy delivered to Buyer pursuant to this Agreement is less than 95% or greater than 105% of the Dispatch Output, Buyer shall pay to Seller a rate per hour equal to 30% of such rate;

(iii) during any period while the Project is being operated in the Automatic Dispatch Mode, Buyer shall pay to Seller, the rate per hour specified in Section 1.2(b)(i) for each kilowatthour of Project Energy delivered to it pursuant to Section 1.1; and

(iv) during any period while the Project is being operated in the Off Line Dispatch Mode, Buyer shall pay to Seller, the rate per hour specified in Section 1.2(b)(i) for each kilowatthour of Project Energy delivered to it pursuant

to Section 1.1; provided, however, that if Seller shall not have ceased generating Project Energy within 120 minutes after receipt of Buyer's notice pursuant to Section 3.2(b)(iii), the amount to be paid by Buyer to Seller pursuant to this Section 1.2(b)(iv) shall be limited to a rate per hour for each hour during such period equal to 30% of such rate until Seller shall have so ceased generating Project Energy."

3. Tracking Account. Section 1.3 and Part II of Exhibit B of the EEPA shall be deleted and the Tracking Account and all provisions thereof with respect thereto shall be terminated from and after the Rate Change Date. No amounts shall be due or payable by Seller to Buyer pursuant to the Tracking Account and no amounts shall be subtracted from any future payments to Seller.

4. Suspension of Purchases. Buyer and Seller agree to delete the existing language in Section 1.4(c) of the EEPA and insert the following in lieu thereof:

"(c) In addition, Buyer shall have the right, at Buyer's discretion, to reduce to as low as 32 megawatts the amount of Project Energy accepted from Seller on as many as 16 occasions during each calendar year for an aggregate total of not more than 100 hours in each calendar year. Buyer shall give Seller at least 30 minutes advance notice, in writing, of (i) the period of each such reduction and (ii) the amount of Project Energy it will accept during the period of reduction. In no event shall the period of each such reduction be less than five (5) hours. Buyer shall be required to pay Seller the purchase price as specified in Section 1.2(b)(i) for the Project Energy Buyer accepts pursuant to this amended Section 1.4(c)."

5. Capacity Cost Rate. Buyer and Seller agree to delete the definition of Capacity Cost Rate in Section 9.1 of the EEPA and insert the following in lieu thereof:

"Capacity Cost Rate" means 3.425 cents per kilowatthour."

6. PJM. Buyer and Seller agree to insert a definition for PJM to Section 9.1 as follows:

"PJM" means PJM Interconnection, LLC or its successor."

7. Minimum Reserve Fund Requirement. Buyer and Seller agree to delete the definition of Minimum Reserve Fund Requirement in Section 9.1 of the EEPA and insert the following in lieu thereof:

"Minimum Reserve Fund Requirement:" means \$8,000,000."

8. Commission Approval. Buyer and Seller shall each use its commercially reasonable efforts to obtain approval of the Commission as promptly as possible of (i) this Amendment Agreement and (ii) the recovery by Buyer of any incremental cost increases to Buyer associated with this Amendment Agreement from its customers and those of The Potomac Edison Company in West Virginia.

9. Benefit. This Amendment Agreement shall inure to the benefit of and be binding upon Buyer, Seller, and their respective successors and assigns.

10. Governing Law. This Amendment Agreement shall be governed by, construed under, and enforced in accordance with the laws of West Virginia without regard to principles or provisions of conflict of laws.

11. Buyer Representations. Buyer hereby represents and warrants to Seller that:

a. it has the full power and authority to execute, deliver, and perform its obligations under this Amendment Agreement and to carry out the transactions contemplated thereby; and

b. it has duly authorized, executed, and delivered this Amendment Agreement and this Amendment Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms and conditions hereof.

12. Seller Representations. Seller hereby represents and warrants to Buyer that:

a. it has the full power and authority to execute, deliver, and perform its obligations under this Amendment Agreement and to carry out the transactions contemplated hereby; and

b. it has duly authorized, executed and delivered this Amendment Agreement and this Amendment Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof.

13. Condition Precedent. The effectiveness of this Amendment Agreement is expressly conditioned on the issuance by the Commission of a final non-appealable order, satisfactory to each party in all material respects, approving this Amendment Agreement and any related relief requested in the joint petition filed to obtain Commission approval of it.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed this Amendment Agreement as of the day and year above first written.

Attest:

MONONGAHELA POWER COMPANY

By: _____

Title: _____

Attest:

AMERICAN BITUMINOUS POWER
PARTNERS, L.P.

By: _____

Title: _____

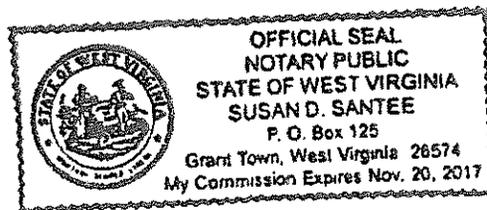
VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF MARION, to-wit: _____

Kenneth Nieman, after being duly sworn upon his oath, states that he is Executive Director of American Bituminous Power Partners, L.P., named in the attached and foregoing Joint Petition, and that he has read the same, and the statements and facts therein contained are true and correct except insofar as they are therein stated to be on information and belief, and that, insofar as they are therein stated to be on information and belief, he believes them to be true.

Susan D. Santee

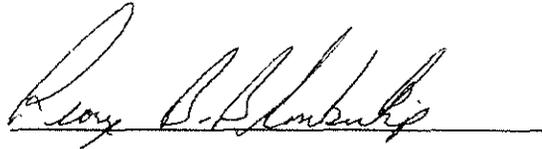


VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF MARION, to-wit:

George B. Blankenship, after being duly sworn upon his oath, states that he is Director, State Affairs of Monongahela Power Company, named in the attached and foregoing Joint Petition, and that he has read the same, and the statements and facts therein contained are true and correct except insofar as they are therein stated to be on information and belief, and that, insofar as they are therein stated to be on information and belief, he believes them to be true.

A handwritten signature in cursive script, reading "George B. Blankenship", is written over a horizontal line.