

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA  
CHARLESTON

CASE NO. 05-0402-E-CN  
MONONGAHELA POWER COMPANY and  
THE POTOMAC EDISON COMPANY, both  
doing business as ALLEGHENY POWER

Application for Certificate of Public  
Convenience and Necessity to Authorize  
Construction of Emission Control Facilities  
At the Ft. Martin Generating Station in  
Monongalia County, West Virginia

CASE NO. 05-0750-E-PC  
MONONGAHELA POWER COMPANY and  
THE POTOMAC EDISON COMPANY, both  
doing business as ALLEGHENY POWER

Application for Financing Order,  
Approval of Affiliated Agreements,  
And Related Relief

**SECOND JOINT STIPULATION AND  
AGREEMENT TO MODIFY FINANCING ORDER**

Pursuant to West Virginia Code § 24-1-9 and Rules 11 and 13.4 of the Commission's Rules of Practice and Procedure, Monongahela Power Company ("Mon Power") and The Potomac Edison Company ("PE," and together with Mon Power, the "Applicants"), the Staff of the Public Service Commission of West Virginia ("Staff"), the Consumer Advocate Division of the Public Service Commission of West Virginia ("CAD"), and the West Virginia Energy Users Group ("WVEUG"), WVEUG, and together with the Applicants, the Staff, and the CAD, the "Parties"), hereby join in this Second Joint Stipulation and Agreement to Modify Financing Order ("Second Joint Stipulation").

**I. Introduction and Procedural Summary**

On January 11, 2006, the Parties filed a Joint Stipulation and Agreement for Settlement ("FO Joint Stipulation") which recommended to the Commission a resolution of two related matters then pending before the Commission: (i) the Applicants' request that the Commission grant a certificate of public convenience and necessity ("Certificate") authorizing the Applicants to construct and operate a flue gas desulfurization system (the "Wet Scrubbers") and related facilities (collectively, the "Project") at the Ft. Martin generating station in Monongalia County, West Virginia ("Ft. Martin"), as set forth in the Application for Certificate of Public Convenience and Necessity ("Certificate Application") filed with the Commission on March 24, 2005 and docketed as Case No. 05-0402-E-CN ("Certificate Case"); and (ii) the Applicants'

request that the Commission issue a financing order pursuant to the provisions of W. Va. Code §24-2-4e (“Section 4e”) to authorize the Applicants to finance the construction of the Project and related financing costs using the securitization financing mechanism (“Securitization”), as provided in the Application for Financing Order, Approval of Affiliated Agreements, and Related Relief (“Financing Order Application,” and together with the Certificate Application, the “Applications”) filed with the Commission on May 24, 2005 and docketed as Case No. 05-0750-E-PC (“Financing Order Case,” and together with the Certificate Case, the “Consolidated Cases”).

2. The Commission issued an Order on April 7, 2006 (“Financing Order”) that, among other things, granted much of the relief set forth in the FO Joint Stipulation and approved the conditions contained in it, except to the extent the Commission modified certain of those conditions.<sup>1</sup> In addition to the many Securitization-related approvals in the Financing Order, the Commission made the following specific findings about the Wet Scrubber, its estimated construction cost, recoverable Financing Costs, and the process by which the Applicants would be permitted to seek the recovery of actual construction costs that exceeded the previously estimated amount.

- The Commission determined that the maximum amount of Environmental Control Costs that would be permitted to be financed from the proceeds of Environmental Control Bonds is \$338 million, the amount included in the FO Joint Stipulation and reflective of the cost estimate for the Wet Scrubber as of May 24, 2005. (FOF ¶9; OP ¶38.)
- The Commission determined that Upfront Financing Costs in an aggregate amount of up to \$27 million would be permitted to be recovered from the proceeds of Environmental Control Bonds, subject to separate cost caps of \$14.25 million on Lender Consent Costs (“Indirect Cost Cap”) and \$12.75 million on certain other costs (“Direct Cost Cap”).<sup>2</sup> (FOF ¶19; OP ¶¶24 and 25.)
- To the extent the “actual amount” of Environmental Control Costs exceeded \$338 million, the Applicants would be permitted to seek recovery of the excess in a subsequent base rate proceeding and any and

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<sup>1</sup> In this Second Joint Stipulation, the Parties’ references to the “Financing Order” are intended to refer to the Commission’s April 7, 2006 order in this docket, as amended at the point in time referenced. For example, the references to the Financing Order in paragraphs 3 and 4 of this Second Joint Stipulation refer to the April 7, 2006 order as amended by the June 13, 2006 Order in the same docket; similarly, discussions of time periods on and after January 17, 2007 include references to the “Financing Order” as it was further amended by the Commission Order entered on January 17, 2007.

<sup>2</sup> The Financing Order defined “Direct Costs” to include all the Applicant’s Issuance Costs, Regulatory Costs (other than Financial Advisor Costs), and any other Upfront Financing Costs that do not explicitly fall with the definitions of Issuance Costs and Regulatory Costs. “Upfront Financing Costs” was defined to include the cost of the Financial Advisor to the Commission (FOF ¶16(a)).

all parties would be free to take whatever position they deem appropriate concerning the recovery of the excess amounts. (OP ¶38.)

- The Commission established that the standard for the financing should be that the structuring, marketing and pricing of Environmental Control Bonds will result in the lowest Environmental Control Charges consistent with (i) prevailing market conditions on or about the time of the pricing of the Environmental Control Bonds and (ii) the proposed structure of Environmental Control Bonds approved pursuant to the terms of the Financing Order (the “Lowest Cost Objective”). (Part II.E.2, at pages 41 and 42; FOF ¶4.)
- The Commission also established standards and procedures which the Commission found represent best practices for the benefit of consumers while respecting legitimate interests of the Applicants. The Commission found that these best practices standards and procedures will ensure that the imposition of Environmental Control Charges are just and reasonable, are otherwise consistent with the public interest, and constitute a prudent, reasonable and appropriate mechanism for the financing of Environmental Control activities, as required by W. Va. Code 5 24-2-4e(d)(3)(F). (Part II.E.2, at pages 42 and 43.)
- To ensure that these standards are met, these procedures are followed, and that the benefits of Securitization to the Applicants’ West Virginia customers are realized, the Commission decided it will use additional experts and resources to assist it in implementing its duty to customers. The Commission will act through its designated personnel and a financial advisor (the “Financial Advisor”) to participate in all aspects of the structuring, marketing, and pricing of the Environmental Control Bonds. (FOF ¶¶76-84; OP ¶¶10-23.)
- The Commission directed that the Financial Advisor shall participate as a co-equal joint decision maker with the Applicants in the structuring, marketing and pricing of each series of Certificates and Environmental Control Bonds, with the Applicants and the Financial Advisor working cooperatively to meet the Statutory Requirement and to achieve the Lowest Cost Objective. (FOF ¶79.)

3. On October 3, 2006, the Applicants filed a Petition to Reopen Proceedings and to Amend Financing Order (“Initial Petition”). In the Initial Petition, the Applicants explained that, as a direct result of further engineering and design work, evaluation of site specific conditions at Ft. Martin by the prime contractors, and initial procurement activities, all of which were conducted subsequent to the issuance of the Financing Order, the Applicants’ then-current construction cost estimate for the Project was expected to reach up to \$550 million, exclusive of Financing Costs. The Applicants also explained with accompanying analysis that the Project continued to be the best option for controlling emissions at Ft. Martin, even at the increased

construction cost estimate. To mitigate the exposure to further significant cost escalations that could result from any delay in the Project's schedule and to enable the Applicants to take advantage of relatively lower interest rates in the financial markets, the Applicants requested the Commission consider the Initial Petition on an expedited basis and enter an order by not later than January 1, 2007 that would modify the Financing Order (i) to amend the Applicants' certificate of public convenience and necessity for the Project, (ii) to authorize the Applicants to finance and recover from the Proceeds of Environmental Control Bonds up to \$550 million in Project-related Environmental Control Costs, (iii) to modify the Indirect and Direct Cost Caps, and (iv) to authorize the Applicants to impose Environmental Control Charges on the Applicants' West Virginia customers in amounts that reflect the increased authorizations to issue Environmental Control Bonds (in an amount up to \$573 million, plus Financial Advisor Costs).

4. On December 18, 2006, the Parties entered into a Joint Stipulation and Agreement to Modify Financing Order ("First Joint Stipulation"). The First Joint Stipulation recommended that the Commission modify the Financing Order: (i) to increase from \$338 million to \$450 million the maximum amount of the Environmental Control Costs that would be permitted to be financed from the proceeds of the Environmental Control Bonds issued under the authority of the Financing Order; (ii) to decrease from \$27 million to \$16.5 million the amount of Upfront Financing Costs that would be permitted to be recovered from Environmental Control Bond proceeds by reducing the Indirect Cost Cap to \$1 million and increasing the Direct Cost Cap to \$15.5 million; (iii) to implement certain changes regarding the Staff's audit and review of Project construction expenditures; (iv) to alter the Environmental Control Charge from the Applicants' electric customers in West Virginia consistent with the modification to the maximum amount of Environmental Control Bonds permitted to be issued; (v) to provide a framework for the Applicants to seek recovery of a return on the amounts of actual construction work in progress expenditures that exceed the \$450 million maximum for securitization financing during the period prior to the completion and placing of the Project into commercial service; and (vi) to amend the Applicants' certificate of public convenience and necessity for the Project at the revised construction cost estimate reflected in the Initial Petition.

5. In a Commission Order dated January 17, 2007, the Commission approved the First Joint Stipulation. The Commission authorized the Applicants to use Securitization to finance and recover from the proceeds of Environmental Control Bonds up to \$450 million in Environmental Control Costs, along with \$16.5 million in Direct Costs, for a total amount not to exceed \$466.5 million (exclusive of Financial Advisor costs). The Commission also concluded that, to the extent that the actual amount of the Environmental Control Costs were to exceed the \$450 million maximum, the Applicants could use traditional financing mechanisms and then seek recovery of the excess amounts in a subsequent rate proceeding.

6. On April 17, 2007, each of the Applicants caused to be completed the sale of a series of Environmental Control Bonds issued by a special purposes subsidiary under the authority granted by the Commission in the Financing Order (the "Initial Bonds") in the total amount of \$459.3 million (\$450 million for Environmental Control Costs, plus \$7.957 million in the Applicants' Direct Costs (reduced from \$16.5 million after review by the Commission's Financial Advisor) and \$1.343 million for the Commission's Financial Advisor and their counsel's expenses).

7. Construction on the Project commenced with fabrication of the absorber vessels in September 2006. The Applicants have informed the Parties that the Project is still on schedule to meet its expected completion date, with anticipated in-service dates of November 21, 2009 for Unit 1 and October 31, 2009 for Unit 2. The Applicants have also indicated that Project costs have not increased from the levels projected in the Initial Petition. Thus, the total Environmental Control Costs are still estimated to be approximately \$550 million.

8. On July 1, 2009, the Applicants filed a Second Petition to Reopen Proceedings and to Amend Financing Order (“Second Petition”). The Applicants asserted that, although Project costs have not changed, the Applicants believe that financing the costs in excess of \$450 million for the Project through traditional means and seeking recovery of those investments in a subsequent rate proceeding is not the best alternative for the Applicants or their West Virginia customers at this time. The Applicants asserted, among other things, that the issuance of additional Environmental Control Bonds in an amount up to \$105 million, plus Financial Advisor costs, if any (“Additional Bonds”), is preferable because the overall costs to customers from the issuance of Additional Bonds will be lower than would result from the use of traditional utility financing mechanisms. The Applicants requested that the Commission consider the Second Petition on an expedited basis and enter an order by not later than October 1, 2009 that would modify the Financing Order as it relates to the authorization and structure of the transaction for the issuance of Additional Bonds. Specifically, the Applicants requested that the Commission:

- a. Increase the present authorization to finance a maximum of \$450 million of Project-related Environmental Control Costs, exclusive of Financing Costs, to the current construction cost estimate of up to \$550 million, exclusive of Financing Costs and cost of a financial advisor, to the extent one is required for the transaction;
- b. Authorize the Applicants to issue one or more additional series of Environmental Control Bonds, according to the transaction structure provided for in the Financing Order (as modified to the extent provided in the order granting this Second Petition), in an amount up to \$105 million (a cumulative amount of up to \$564.3 million for all Environmental Control Bonds), plus the costs of a Financial Advisor, to the extent one is required for the transaction;
- c. Authorize the Applicants to expend up to \$5 million in Direct Costs for the issuance of one or more additional series of Environmental Control Bonds, plus the costs of a Financial Advisor, to the extent one is required for the transaction, and to determine that all of these costs constitute recoverable Financing Costs, to be amortized over the life of the Additional Bonds to be issued;
- d. Clarify the Financing Order to make it clear that the Additional Bonds may be issued through a private offering exempt from the registration requirements of the Securities Act of 1933, as amended, if approved by authorized personnel of the Commission or the Financial Advisor, based

on their assessment of then-prevailing market conditions, as the Applicants believe that such a private offering might be preferable for the issuance of the Additional Bonds and due to the fact that the small size of the contemplated offering, the additional time and expense of a public offering might outweigh the benefit of marginal differences in pricing that might result from a public offering

- e. Use the same basic structure outlined in FOF ¶¶20-35 and OP ¶¶29-41 of the Financing Order and used in connection with the issuance of the Initial Bonds and use MP Environmental, PE Environmental, and one or more of the existing First Tier Subsidiaries or use one or more newly-created special purpose entities and first tier subsidiaries, or any combination thereof, as appropriate or desirable, in connection with the issuance of any Additional Bonds;
- f. To facilitate the timely issuance of the Additional Bonds and take advantage of any available cost savings associated with the potential use of the same underwriters, underwriters' counsel, tax counsel, bankruptcy counsel, securities law counsel, trustees, and other consultants used in respect of the issuance of the Initial Bonds, if approved by authorized personnel of the Commission or by the Financial Advisor, the Commission would not require a competitive process for the selection of these transaction participants;
- g. Authorize the Applicants to impose related Environmental Control Charges ("ECCs") (and associated normalization surcharges ("ECC Normalization Surcharges")) reflecting the requested increase in financing authority, including Ongoing Financing Costs, all other costs or charges that are to be recovered through the ECCs, and all annual and other true-up adjustments, as presently authorized in the Financing Order;
- h. Approve certain affiliate agreements necessary to effectuate the transaction; and
- i. Make such other changes in and modifications to the Financing Order as may be necessary or convenient to accomplish the purposes set forth in this Second Petition.

9. Finally, in the Second Petition the Applicants requested that the Commission retain the same methodology for allocating financing costs among customer classes and the same proposed adjustment mechanism for the ECCs as that currently contained in the Financing Order.

## **II. Discussions Leading to Second Joint Stipulation**

10. Prior to and following the Applicants' July 1, 2009 filing of the Second Petition, the Applicants, the Staff, the CAD, and the WVEUG discussed the issues raised in the Second

Petition and attempted to negotiate a proposed settlement of those issues. Specifically, during conferences held in July and August 2009, and in various correspondence, meetings, and telephone discussions during that period, the Parties attempted to address, narrow, or eliminate certain of the issues and concerns raised by the Parties with respect to the Second Petition. Based on these negotiations, the Parties have reached the recommended settlement of the Second Petition, the terms of which are described in Sections III, IV, and V of this Second Joint Stipulation.

11. The Parties understand that specific language used in the Financing Order, together with the provisions of Section 4e, will be taken into account by rating agencies that will be invited to assign ratings for Additional Bonds to be issued under the authority of the Financing Order. Consequently, the Parties stipulate, agree, and recommend that the Commission amend the Financing Order consistent with the terms of this Second Joint Stipulation in its entirety, without additions, deletions, or modifications unless (1) such additions, deletions or modifications are required to comply with existing law; (2) will not impair the current ratings of the Initial Bonds; and (3) is likely to facilitate achievement of the Lowest Cost Objective or to protect other customer interests.

### **III. Stipulation and Agreements as to the Estimated Project Construction Cost, the Securitization Amount, Recoverable Financing Costs, Related Matters, and Withdrawal of Request for Interim ENEC Relief in Case No. 09-1124.**

12. The Parties stipulate, agree, and recommend that the Commission make the findings and determinations set forth in this Section III, and in so doing modify the Financing Order: (i) to increase by an additional \$100 million the present authorization to finance Project-related Environmental Control Costs (from a maximum of \$450 million, exclusive of Financing Costs, to an amount of up to \$550 million), including authorization for the issuance of one or more series of the Additional Bonds; (ii) to authorize the Applicants to expend up to \$5 million in Upfront Financing Costs plus the costs of a Financial Advisor to the Commission in respect of the issuance of Additional Bonds, and to finance those amounts as a component of the Additional Bonds; (iii) to increase the level of Ongoing Financing Costs permitted to be recovered from customers in an amount necessary to reflect the issuance and servicing of the Additional Bonds; (iv) to authorize the use of ECCs and related ECC Normalization Surcharges to reflect the issuance and servicing of the Additional Bonds; (v) to extend the authority to apply the routine and non-routine true-up mechanism established in the Financing Order to the ECCs and ECC Normalization Surcharges associated with the Additional Bonds; and (vi) to approve certain new affiliate agreements between the Applicants and their affiliates necessary to effectuate the transaction.

13. Financial Advisor. The Parties found that the Commission's Financial Advisor was helpful in achieving the Lowest Cost Objective and in ensuring that customers' interests were protected in connection with the Initial Bonds. The Parties therefore stipulate, recommend and agree that the Commission retain a Financial Advisor, and that the Financial Advisor is required to help achieve the objectives of this Joint Stipulation, including the timely and efficient issuance of Additional Bonds and the Lowest Cost Objective. The Financial Advisor should have the same duties and responsibilities as described in the Financing Order

14. Current Estimate of Environmental Control Costs. Based on the Applicants' current estimate of Environmental Control Costs of \$550 million, the Parties continue to agree that the Project is necessary and prudent under the circumstances, and is preferable to any alternatives available to the Applicants at this time. The Parties agree that the authorized aggregate amount of Environmental Control Costs to be financed by Environmental Control Bonds should be increased by \$100 million to \$550 million.

15. Recoverable Upfront Financing Costs. The Parties agree that the maximum amount of Direct Costs that the Applicants may recover from the proceeds of the Additional Bonds shall be \$5 million. In addition, the Parties agree that the costs of a Financial Advisor shall be determined independently and solely by the Commission, and that the Applicants also shall recover such costs of a Financial Advisor from proceeds of the Additional Bonds.

16. Recoverable Ongoing Financing Costs. As mentioned in the Financing Order, Ongoing Financial Costs are the costs of servicing the Environmental Control Bonds over their life, and include both Determinable Ongoing Financing Costs and Variable Ongoing Financing Costs. The Parties agree that the Applicants are entitled to recover Ongoing Financial Costs resulting from the issuance of the Additional Bonds through ECCs.

17. Transaction Structure. The Parties agree that the Applicants and the Financial Advisor, with respect to the issuance of the Additional Bonds, shall in all material respects follow the transaction structure described in FOF ¶¶20-35 and OP ¶¶29-41 of the Financing Order and used in connection with the issuance of the Initial Bonds, except as otherwise modified in this Joint Stipulation and expect as might be necessary or helpful to achieve the Lowest Cost Objective.

18. Subsidiaries. The Parties agree that the Applicants may use MP Environmental, PE Environmental, and one or more of the existing First Tier Subsidiaries or use one or more newly-created special purpose entities and first tier subsidiaries, or any combination thereof, as appropriate or desirable, in connection with the issuance of any Additional Bonds.

19. Private Offering Permitted. The Parties agree that the Additional Bonds may be offered and sold through a private offering exempt from the registration requirements of the Securities Act of 1933, as amended, subject to the requirements of the Lowest Cost Objective and other terms and conditions of the Financing Order.

20. Determination of ECCs. As stated previously in the FO Joint Stipulation, and as described and provided for in detail in the Financing Order, the ECCs are the amounts needed to recover the Environmental Control Costs and Ongoing Financing Costs. The Parties agree and recommend that the Applicants should be allowed to recover an ECC from their electric customers in West Virginia in amounts necessary to reflect the issuance and servicing of the Additional Bonds, as requested in this Second Joint Stipulation. The Parties agree, therefore, that Appendix A to this Second Joint Stipulation is one alternative and is a reasonable estimate of the expected impact of the estimated ECC for each of the Applicants' customer classes based upon current demand levels and the above-described modifications to the maximum amounts of Environmental Control Costs and Financing Costs authorized to be financed. The Parties agree

that the final characteristics of the Additional Bonds, including but not limited to the timing, principal amount, interest rate, and term of each issuance, as well as the allocation of costs to customer classes based on forecasted demand relative to other classes, may differ from the estimates set forth in Appendix A.

21. Treatment for Environmental Control Costs Less than or in Excess of \$550 Million.

- a. The Parties stipulate, recommend and agree that, to the extent the Net Proceeds from the sale of the Additional Bonds are not needed immediately to pay costs of the Project and related Environmental Control Costs, the remaining Net Proceeds shall be invested and the interest earnings thereon shall either be (1) applied and disposed of as provided in Ordering Paragraph 32 of the Financing Order or (2) applied to reduce future ECCs. Additionally, upon completion of construction of the Project, to the extent Net Proceeds are not needed to pay costs of the Project and related Environmental Control Costs, then the remaining Net Proceeds shall either be (1) applied and disposed of as provided in Ordering Paragraph 40 of the Financing Order or (2) applied to reduce future ECCs. The Parties agree and recommend that the disposition of interest earnings and/or excess Net Proceeds, as referenced in this subsection, shall be based on the recommendation of special bankruptcy counsel for the Applicants. In no event shall the disposition of interest earnings and/or excess Net Proceeds be other than the options listed in this section.
- b. The Parties stipulate, recommend and agree that any over-collection of ECCs above the amount necessary to pay the Periodic Bond Payment Requirement (as defined in the Financing Order) will be deposited to the respective Excess Funds Subaccounts, thereby reducing future ECCs.
- c. Neither the Applicant nor the remaining Parties presently anticipate that the actual amount of Environmental Control Costs will exceed \$550 million. The Parties stipulate, recommend and agree that, in the event that the Environmental Control Costs exceed \$550 million, the Applicants may seek recovery of the excess in a subsequent base rate proceeding, and any and all parties are be free to take whatever position they deem appropriate concerning the recovery of the excess amounts.

22. Timeliness.

- a. The Parties agree that the prospects of a successful and optimal issuance of Additional Bonds will be enhanced if the Commission expedites its review of this Joint Stipulation and issues an order as soon as practicable. Therefore, the Parties request that the Commission issue an order granting the relief requested as quickly as practicable, but in any event no later than October 1, 2009 to ensure that the Applicants and Financial Advisor have maximum flexibility to access the fixed income capital markets on a timely basis and optimally prior to December 1, 2009, and to allow the Applicants' customers to realize the benefits arising from the lower interest costs as well as the lower revenue requirements from the issuance of the Environmental Control Bonds. To facilitate this process, the Parties agree that the Applicants will, at the Commission's direction, submit a Proposed Order to the Commission as soon as possible for the Commission's

consideration in evaluating this Joint Stipulation. The Parties acknowledge that the last in-service date of the Project is anticipated to be November 21, 2009, and that the Applicants are not required to have the Environmental Control Bonds issued prior to the in-service date.

- b. To facilitate the timely issuance of the Additional Bonds and take advantage of any available cost savings, specialized knowledge or experience associated with the potential use of the one or more of the same underwriters, underwriters' counsel, tax counsel, bankruptcy counsel, securities law counsel, trustees, and other consultants or personnel used in respect of the issuance of the Initial Bonds, if approved by authorized personnel of the Commission or the Financial Advisor, the Commission shall not require a competitive process for the selection of these transaction participants by the Applicants.

23. Continued Applicability of Remaining Portions of Financing Order. The Parties stipulate, recommend and agree that all of the requirements, procedures, practices, protections, benefits, and relief authorized or ordered under the Financing Order and Section 4e in respect of the issuance and servicing of the Initial Bonds shall also be authorized or ordered in respect of the issuance and servicing of the Additional Bonds and, to the extent applicable, shall continue in full force and effect as to the Additional Bonds. As the Commission has previously noted, the "Financing Order grants authority to issue Environmental Control Bonds and to impose and collect Environmental Control Charges only if the final structure of the transaction and the procedures followed comply in all respects with these [best practices] standards and procedures." Financing Order at page 42, Part II.E.2.

24. Discretion Relating to Bond Issuance. The Parties stipulate, recommend and agree that, except as otherwise provided in the Financing Order, the Applicants and Financial Advisor shall be accorded flexibility in determining the final terms of the Additional Bonds, including the levels of placement and placement agent costs, if any included in the Upfront Financing Costs. As the Commission specified in the Financing Order in respect of the Initial Bonds (*see* Financing Order at 93, Ordering Paragraph 77) the Applicants shall have the sole discretion as to whether and when to proceed with the issuance of the Additional Bonds and the completion of all related transactions.

25. Irrevocability of Financing Order, as Modified. The Parties stipulate, recommend and agree that, except for the Adjustment Mechanism and as provided in the Financing Order, the Financing Order, as amended pursuant to the Commission's consideration of this Second Joint Stipulation, will continue to be "irrevocable" within the meaning of Section 4e(f) and applicable law.

26. Affiliate Agreements. The parties agree that the Commission should approve the affiliate agreements specified in Appendix F to the Applicants Second Petition to Reopen Proceedings and to Amend Financing Order, the forms of which were filed with the Commission, without approving the specific terms and conditions thereof.

27. Interim ENEC Relief. On July 10, 2009, the Companies filed a Petition for Implementation of Interim ENEC Rate Increase, Effective October 1, 2009 ("Interim ENEC

Petition”). In the ENEC Petition, the Applicants sought to have the Commission implement an interim ENEC increase effective October 1, 2009, based on the Applicants’ ENEC under-recovery balance during the ENEC actual cost period ending June 30, 2009. As part of this Joint Stipulation, the Applicants agree that they shall discontinue their efforts in pursuing the relief sought by the Interim ENEC Petition and, upon the Commission’s issuance of a Financing Order, shall withdraw the Interim ENEC Petition.

## **V. Required and Recommended Findings**

28. The Parties stipulate, recommend and agree that the Commission should approve this Joint Stipulation without additions, deletions, or substitutions, and should amend the Financing Order pursuant to this Second Joint Stipulation. In so doing, the Parties stipulate, recommend, and agreed that the Commission should make the findings of fact and conclusions of law specified in this Section V. For purposes of this Section V, all capitalized terms not otherwise defined herein shall have the meanings and values ascribed to them in the Financing Order.

### **A. Required Findings Under Section 4e(d)(3).**

29. Each of the Applicants is and remains a Qualifying Utility within the meaning of Section 4e(b)(23).

30. The Environmental Control Activities, including the Wet Scrubbers to be installed at Ft. Martin and all other aspects of the Project, remain Environmental Control Activities within the meaning of Section 4e(b)(5), are necessary and prudent under the circumstances, and are preferable to any alternatives available to the Applicants.

31. The cost of the Environmental Control Activities, and all other aspects of the Project, is reasonable.

32. Increasing the authorized amount for the issuance of Environmental Control Bonds to the amount of \$564.3 million, plus any Financial Advisor costs, including the issuance of the Additional Bonds consistent with the Lowest Cost Objective of the Financing Order, is reasonable and will result in costs to the Applicants’ respective customers in the State that (i) are lower than would result from the use of traditional utility financing mechanisms, and (ii) are just and reasonable.

33. The financing of the Environmental Control Costs and Upfront Financing Costs through the issuance of the Additional Bonds to the extent authorized will result in benefits to the Applicants’ respective customers and the State in general.

34. The issuance of Environmental Control Bonds, including the Additional Bonds, together with the collection of the related ECCs from the Applicants’ customers in the State in amounts consistent with the relief requested in this Second Petition, is just and reasonable, is otherwise consistent with public interest, and constitutes a prudent, reasonable, and appropriate mechanism for the financing of the Environmental Control Activities.

35. The standards and procedures established by the Commission in the Financing Order represent best practices for the benefit of customers while respecting legitimate interests of the Applicants. The Commission finds that these best practices standards and procedures will ensure that the imposition of ECCs are just and reasonable, are otherwise consistent with the public interest, and constitute a prudent, reasonable and appropriate mechanism for the financing of Environmental Control Activities, as required by Section 4e(d)(3)(F).

**B. Required Findings Under Section 4e(d)(4).**

36. The maximum amount of Environmental Control Costs that shall be financed under authority of a modified Financing Order should be increased from the \$450 million amount presently reflected in the Financing Order to \$550 million, exclusive of Upfront Financing Costs.

37. The Applicants may recover Financing Costs as follows: The Commission finds and determines that the Upfront Financing Costs (which include Regulatory Costs, the Issuance Costs, the Lender Consent Costs, the Financial Advisor Costs, and the Other Costs) and the Ongoing Financing Costs, all relating to the issuance of the Additional Bonds, are general categories of costs that fall within the definition of Financing Costs in Section 4e(b)(14) and may be recovered as subject to the limitations set forth in the Financing Order. The maximum amount of additional Upfront Financing Costs that the Applicants may recover from the proceeds of the Additional Bonds to be issued shall be \$5 million, plus Financial Advisor Costs.

38. The Applicants have requested that the Commission retain the same methodology for allocating Financing Costs among customer classes and the same proposed adjustment mechanism for the ECC s as that currently contained in the Financing Order. The current Adjustment Mechanism provided in the Financing Order, as modified, is just and reasonable and may be applied with the frequency and in the manner specified in the Financing Order, as modified.

39. The proceeds of the Additional Bonds may be used to pay, and secure the payment of, the Environmental Control Costs authorized by the Commission in the Financing Order.

**VI. Disposition of Consolidated Cases and Related Matters**

40. The Parties agree that this Second Joint Stipulation resolves all the issues in contention among the Parties arising from the Second Petition.

41. This Second Joint Stipulation is entered into subject to the acceptance and approval of the Commission. It results from a review of the information filed by the Applicants, the other Parties' review of that information, and extensive discussions. It reflects compromises by the Parties and is being proposed to expedite the resolution of these matters and to make time-consuming and costly hearings unnecessary, to the benefit of the Applicants' respective customers generally.

42. This Second Joint Stipulation also reflects the Parties' shared belief that financing the maximum amount of \$550 million of Project Environmental Control Costs and related Financing Costs through this financing will provide significant cost benefits to the Applicants' electric customers in West Virginia. Accordingly, the Parties recommend and urge the Commission to review this Second Joint Stipulation and to amend the Financing Order consistent with the provisions herein in an expedited fashion to ensure that any Additional Bonds issued under the authority of an amended Financing Order will reflect the most beneficial financial market rates and lowest revenue requirements possible.

43. This Second Joint Stipulation is made without any admission or prejudice to any other positions that may be taken by any Party on other issues, or to positions that may be taken by any Party on the same or similar issues in subsequent proceedings, except to the extent to enforce the provisions agreed to herein.

44. The Parties agree this Second Joint Stipulation is in the public interest and represents a consensus by parties representing a broad range of interests. The settlement is fair, reasonable and supported by the record. The Parties acknowledge that it is the Commission's discretion, however, to accept, reject or modify any joint stipulation. In the event that this Second Joint Stipulation is rejected or modified by the Commission, it is expressly understood by the Parties that they are not bound to accept this Second Joint Stipulation as modified or rejected and may avail themselves of whatever rights are available to them by law including proceeding to hearing, and may pursue fully all issues and positions herein as if no proposed settlement or stipulation existed. In such circumstances, this Second Joint Stipulation shall not be admissible as to that party for any purpose other than enforcement of this paragraph.

WHEREFORE, the Parties respectfully request that the Commission make appropriate findings of fact and conclusions of law adopting and approving this Second Joint Stipulation and Agreement to Modify Financing Order as soon as practicable.

Respectfully submitted this 9th day of September, 2009.

MONONGAHELA POWER COMPANY

and

THE POTOMAC EDISON COMPANY,

each d/b/a ALLEGHENY POWER

By Counsel

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