

Appendix D -- Modifications to Memorandum of Understanding

Section 3.

The Use of Excess Funds on Delayed Decommissioning:

the purposes of this provision as plant dismantlement and decontamination to NRC standards plus the completion of additional activities agreed to or imposed in the course of Docket No. 6545 or pursuant to any subsequent law or proceeding, but excluding spent fuel management and any site restoration. Completion of Decommissioning shall be deemed to have occurred for purposes of this MOU notwithstanding that ENVY may choose to re-use the site, and portions of existing structures, systems and components, and that spent fuel is not removed from the site. Site restoration shall mean that, once the VYNPS site is no longer used for nuclear purposes or non-nuclear commercial, industrial or other similar uses consistent with the orderly development of the property, the site will be restored by removal of all structures and, if appropriate, regrading and reseeding the land.

Return of excess funds, in accordance with the second following paragraph, shall occur following the earliest of (i) the date Completion of Decommissioning has occurred and ENVY has satisfied all of its responsibilities for spent fuel management and site restoration or (ii) the date on which Completion of Decommissioning occurs and any of the following occur: (x) settlement between ENVY and the US Department of Energy ("DOE") with respect to spent fuel management responsibilities for VYNPS, (y) final resolution of litigation by ENVY against DOE with respect to spent fuel management responsibilities for VYNPS, or (z) satisfactory performance by DOE of its spent fuel responsibility with respect to VYNPS.

Excess Funds shall mean all funds remaining in the transferred trust funds following the Completion of Decommissioning, less those funds necessary for management of spent nuclear fuel (including reasonable [*339] contingencies for delays in removal of the spent fuel from the VYNPS site, or cost overruns associated with the storage or removal of the spent fuel) and site restoration costs not otherwise payable by the federal government in accordance with (x), (y), or (z) above.

The Excess Funds remaining shall be paid to VYNPC for the benefit of electric consumers in pro rata shares in proportion to the stated ownership percentage of the VYNPC sponsors. VYNPC shall notify the Department of the payment at the time of receipt. For sponsors that remain under rate regulation, such pro rata share shall be refunded by VYNPC to such sponsors in accordance with their aliquot shares pursuant to the power agreements between VYNPC and such sponsors. For sponsors that no longer remain under rate regulation, VYNPC shall notify the Department and the state public utility commission or comparable regulatory body, that either presently exercises or formerly exercised rate regulation authority over each VYNPC sponsor, that the pro rata share of Excess Decommissioning Funds is available. It shall be the responsibility of each state public utility commission or comparable regulatory body to effect the final [*340] distribution of such Excess Funds. In the event VYNPC shall have ceased to exist at the time Excess Funds are to be shared as provided above, ENVY shall notify the

Department and the state public utility commission or comparable regulatory body, that either presently exercises or formerly exercised rate regulation authority over each VYNPC sponsor, that the pro rata share of Excess Funds is available. Upon compliance with the instructions of each such state public utility commission or comparable regulatory body, ENVY and the trustee of the trust(s) holding such funds shall have no further obligation with regard to the Excess Funds or their distribution.

Section 8.

Board Approval for Amendment to Trust Regarding Distribution of Funds

ENVY agrees that the trust agreement with respect to its Qualified Decommissioning Trust Fund and Non Qualified Decommissioning Trust Fund will contain a provision incorporating paragraph 3, as amended by the Board's Order in Docket No. 6545, and that such provision shall not be further amended without Board approval. ENVY also agrees that it will give the Board and Department notice of intent to change any other provision of the trust agreement [*341] at least 30 days in advance of such change.

Section 10.

Transfer of Decommissioning Funds

Pursuant to Section 6.10(b) of the PSA, at Closing the entire fund balance in the VYNPC Qualified Decommissioning Trust Fund and Non Qualified Decommissioning Trust Fund will be transferred to the funds established by Buyer's Post Closing Decommissioning Trust Agreement, as defined in the PSA, and amended by the Board's Order in Docket 6545.

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