

ATTACHMENT A

APS Four Corners Power Plc

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INDENTURE OF LEASE
between
THE NAVAJO TRIBE OF INDIANS
and
ARIZONA PUBLIC SERVICE COMPANY

CONFORMED COPY

As signed 1 December 1960
by the Tribe and the Company

And approved 14 December 1960
by the Secretary of the Interior

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SUPPLEMENTAL EXHIBITS

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Plats in Accordance with U S Land System

Lease Sites - Plant, Dam, Ash Disposal Area showing
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Rights-of-Way for Power Line, Water Pipe Line, and
Access Road to Pumping Plant

INDENTURE OF LEASE

THIS INDENTURE OF LEASE, made and entered into as of this 1 day of Dec, 1960, by and between the NAVAJO TRIBE OF INDIANS, acting through the Navajo Tribal Council and its Chairman, for and on behalf of the Navajo Tribe of Indians, herein designated as the "Tribe", as Lessor, and ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, hereinafter referred to as the "Company", as Lessee,

W I T N E S S E T H:

1. WHEREAS, the Tribe desires to encourage industrial development of the Navajo Reservation, and the construction of a large electric generating station on the Reservation will facilitate achieving this development, and

2. WHEREAS, the Tribe has heretofore entered into a lease with Utah Construction & Mining Co. (hereinafter referred to as "Utah Mining"), dated as of July 26, 1957, as amended by amendment dated as of July 26, 1957, leasing to Utah Mining certain coal lands located on the Reservation in San Juan County, New Mexico (said lands being sometimes herein for convenience referred to as the "Utah Mining Leased Lands"), the said lease contemplating the mining of coal by Utah Mining (the said lease being hereinafter referred to as the "Coal Lease"), and

3. WHEREAS, the Company desires to construct and operate on lands to be leased from the Tribe pursuant to this Indenture of Lease, a large thermal electric power plant on the Reservation, near the lands subject to the Coal Lease, and

4. WHEREAS, subject to this Indenture of Lease be-

coming effective and to certain other matters, Utah Mining and the Company have entered into a Fuel Agreement pursuant to which Utah Mining will supply fuel from the Utah Mining Leased Lands for the operation of the first two units of the said power plant, in whole or in part, with the Company having certain option rights to procure from Utah Mining additional fuel for the operation, in whole or in part, of two subsequent units.

NOW, THEREFORE, IT IS HEREBY AGREED:

1. Leased Property. The Tribe, for and in consideration of the payment by the Company of the rentals specified and the performance by the Company of the covenants hereinafter recited, does hereby, for the term hereinafter set out, lease unto the Company the property hereinafter described, located within the Navajo Reservation, and grant unto the Company the related, supplementary and additional rights over other lands within the Reservation, hereinafter described:

(a) The property shown in Exhibit A hereof (said property being herein referred to as the "plant site"), to serve as a site for a power plant and appurtenant facilities, including coal storage area, switching facilities and general power plant facilities and accessories and appurtenances; this plant site including the portion of the area to be occupied by the lake or reservoir hereinafter referred to in which will be located the intake and discharge works, together with a protective strip in the lake area;

(b) The property shown in Exhibit B hereof (herein referred to as "pumping plant site"), to serve as a site for facilities to divert and pump water from the San Juan River, including diversion works, water intake works, pumping station, water lines and related facilities;

(c) The property shown in Exhibit C hereof (herein referred to as "dam site"), to serve as the location for a dam to be built by the Company, together with the right to construct and maintain a dam thereon;

(d) The property shown in Exhibit D hereof (herein referred to as the "ash disposal area"), to serve as an area for the disposal of ash and refuse products resulting from the operation of the plant and to provide access thereto from the plant site.

A plat showing, among other things, all the above-described items of property (which are collectively herein sometimes referred to as the "leased lands") is attached hereto as Exhibit E hereof.

2. Related Rights. Together with the lease of the premises and the grant of rights above described, the Tribe hereby grants to the Company the auxiliary and related rights (herein for convenience sometimes referred to as "related rights") hereinafter set out:

(a) The right to occupy and use lands within the Reservation to construct, install, operate, maintain and repair additional or extended diversion works on the stream bed of the San Juan River within the Reservation in order to maintain di-

version of water to the pumps to be installed on the parcel described in Exhibit B hereof, in event of change in the location of the stream, including dams, wells, pipelines, facilities and structures for diverting water; and the right to construct and maintain across the lands of the Reservation to the storage lake hereinafter referred to in Paragraph (b) of this Section 2, pipelines and conduits (initially one line and later a second line) which will conduct water from the San Juan River or other sources and will discharge water into the storage lake from the San Juan River or from other sources, together with a power line and a communication line from the plant site to the pumping plant site, and together with access roads extending from the plant site to the pumping plant site, water pipelines and related facilities and storage lake, the location of the aforesaid pipelines, conduits, power line, communication line and access roads to be approximately as shown on the plat attached as Exhibit E hereof.

In the event additional or extended diversion works are constructed or installed in the stream bed of the San Juan River within the Reservation, other than on the property described in Exhibit B, a plat showing the location thereof shall promptly be filed with the Secretary (which term as used in this Indenture of Lease, unless otherwise expressly stated, shall be deemed to mean the Secretary of the Interior or his duly authorized representative) and with the Tribe.

The Company may procure from the Secretary and

the Tribe hereby gives its consent to the grant by the Secretary of the rights-of-way for the said water pipelines, conduits, power line, communication line and access roads shown on the plat attached as Exhibit E.

In addition to the diversion works and water lines hereinabove referred to, the Company shall also have the right to install water lines across the Reservation (in addition to those from the pumping plant site) for the purpose of transporting water for operation of the power plant, together with the right of access thereto, provided, however, that the route and location of any such additional lines shall be first submitted to and approved by the Tribe, and the Tribe agrees that it will not unreasonably withhold its consent to any reasonable routes.

(b) The right to store water behind the dam to be constructed on the dam site shown in Exhibit C hereof, and the right to flood and utilize Reservation lands to the extent which will be required to store the water which can be contained behind that dam, up to a maximum elevation of 5327.5 feet, with a maximum lake area of approximately 1288 acres (including the portions of the lake area included in the plant site and dam site), said lake when at such maximum level to have substantially the contour lines shown on Exhibit F hereof, together with the right to use and draw down the water, to fill, refill and empty the lake, to fluctuate the level of the lake and the lake surface area, to take water from the lake into the power plant and to discharge water back into the lake at a higher temperature, and to utilize

it in any way required for operation of the plant. Company shall have the full right to use the stored waters for plant operations, to clean the lake surface, and to take any action it deems necessary for limiting or preventing undue seepage or for controlling, curtailing or removing debris, weed or vegetable, marine, insect or animal growths, and shall have the right of access to all of the lake area for such purposes. The Company shall also have the right to build dikes and embankments to prevent flooding of roads, as shown on Exhibit F. Insofar as the dam and lake will affect lands subject to existing rights-of-way, to the extent the Tribe has the right to do so, the Tribe hereby grants to the Company the right to construct and maintain said dam and lake and confers upon the Company whatever rights the Tribe may have with respect of construction and maintenance of a dam and lake affecting lands subject to such rights-of-way.

(c) The right to dispose of ashes, refuse products and waste water on the property shown in Exhibit D hereof as the ash disposal area. In addition, the Company shall have the right to construct and maintain on the leased premises from the plant site to the ash disposal area, roads, pipelines, sluice works and other facilities for transporting and for disposal of ashes, refuse products and waste water. In addition, the Company shall have the right to dispose of waste water on the Reservation by permitting waste water from the power plant to flow from the ash disposal area into the Chaco Wash. The Company will install such fencing, dikes, settling basins, or other facilities as may be found necessary to prevent damage or injury to livestock from access to such water.

(d) During the period of construction of the power plant and appurtenant facilities and the dam, but not thereafter except with approval of the Tribe, the Company shall have the right to take and remove rock, clay, sand, shale, gravel and other materials from the lands to be flooded when the dam is filled, within the contour lines of Elevation 5327.5 indicated on the plat attached hereto as Exhibit F, from the area designated as ash disposal areas on the plat attached as Exhibit D, from the areas shown on the plats attached as Exhibit G hereof, and to use the overburden removed by Utah Mining in its mining operations, and subject to first procuring a permit from the Tribe, shall have the right to take such materials from other areas on the Reservation. Company shall have the right of access across the Reservation to said areas for purposes of taking and removing such materials. For all sand and gravel the Company uses for concrete aggregate or road surfacing in the initial construction of the power plant (first four units) and appurtenant roads and facilities, and which is taken from the Reservation (whether taken from areas designated above or from other locations), the Company will pay to the Tribe the sum of Three Cents (3¢) per cubic yard.

(e) The Company may procure from the Secretary, and the Tribe hereby gives its consent to the grant by the Secretary of, rights-of-way for access roads:

- (i) Extending from the plant site to the pumping plant site;
- (ii) From the plant site to the boundary of the Reservation;

such roads to be substantially along the route indicated on the plats attached hereto as Exhibits H and I hereof.

Subject to procuring the prior approval by the Tribe as to route, other similar rights-of-way or

additions to or changes in rights-of-way thereto fore procured, which may hereafter be found necessary for operation of the power plant may be procured, including, but not limited to, rights-of-way for additional access to the Utah Mining Leased Lands and access roads to the Reservation boundary or main highways.

All access roads outside the leased lands shall be subject to being used by members of the Tribe or its permittees in a normal manner not preventing the Company from making normal use of the roads, provided, however, that the Company is not obligated hereby to maintain such roads.

In the event an access road shall be incorporated into the improved road system of the State of New Mexico or the Reservation Road System of the Bureau of Indian Affairs, so as to become open for public use, the Company will surrender its right-of-way for such road.

For heavy haulage during construction periods, in cases where use of the access roads hereinabove described is not practicable, the Company shall have the right of reasonable access across the Reservation to the leased lands.

(f) Company shall have the right to procure from the Secretary, and the Tribe hereby gives its consent to the grant by the Secretary of a right-of-way for power and communication lines and for an access road across the Reservation from the plant site to the Utah Mining Leased Lands, for the purpose of supplying power to Utah Mining for its

mining operations, the location of said right-of-way to be substantially that shown on Exhibit J hereof. The Tribe also hereby consents that the Company may, with the consent of Utah Mining, and subject to its rights under its lease, construct, maintain, relocate, remove and operate on the Utah Mining Leased Lands, any and all power and related electric facilities and communication lines and service roads deemed necessary or appropriate for the purpose of selling and supplying power to Utah Mining for coal mining operations; provided, however, that the location and operations hereunder by the Company on the Utah Mining Leased Lands shall not be in conflict with the rights of Utah Mining, its successors or assigns, under its lease.

The Company may supply electric power to Utah Mining for any facilities used for purposes related to the supply of fuel to the Company, but if and when requested by the Tribe, the Company will cease or refrain from the supply of power to Utah Mining for other facilities or operations on the Utah Mining Leased Lands.

The Tribe further consents that the Company may, when under emergency conditions it is entitled to do so pursuant to its Fuel Agreement with Utah Mining, go upon the Utah Mining Leased Lands and conduct mining operations thereon and remove coal or fuel therefrom, subject to the terms, provisions and limitations of the Fuel Agreement, provided, however, that the Company shall take

no actions hereunder which shall violate the rights of Utah Mining under its Coal Lease and Fuel Agreement.

(g) The right of access to the leased lands and to other lands on the Reservation pursuant to the related rights granted herein, over the access roads and rights-of-way herein provided for, and the right to hold, use and occupy the leased lands, and other lands on the Reservation pursuant to said related rights, subject to the terms and conditions of this lease, shall extend and be available to the Company, its officers and employees, and also the Company's agents, representatives, contractors and licensees.

3. Transmission and Communication Facilities.

The proposed transmission and communication facilities planned by the Company include the following:

- (i) 345 or 230 kv lines from the plant site in a southwesterly direction to the edge of the Reservation.
- (ii) 230 kv line from plant site to a point on the Reservation north of Gallup, thence a line westward to Leupp (there to connect to an existing 230 kv line), or alternatively by a more direct route, the date for the construction of the line being uncertain.
- (iii) Sites for switching stations, the presently proposed initial stations to be located in the southerly part of the Reservation in Arizona. (The switching station site in Arizona will probably require approximately 40 acres with about 18 acres fenced).
- (iv) Microwave communication stations for controlling the operation of the transmission circuits, for dispatching of power over such circuits, and for directing the operation of the power plant, it being tentative-

ly planned that the stations will be located at one or both of the locations shown in Exhibit K hereof.

The Company shall have the right to procure from the Secretary, and the Tribe hereby agrees to consent to the grant by the Secretary of, rights-of-way for the facilities described in items (i), (ii), (iii) and (iv) above, subject to submission of surveys for Tribal approval as to exact route or location, and to the payment of damages as provided in Section 7 hereof.

It is contemplated that the transmission lines described above will have the voltages set out, but the Company may in the future from time to time change the voltages of these transmission lines.

In addition, it is contemplated by the Company that additional transmission lines may ultimately interconnect the plant with the electric system of the City of Farmington, the U. S. Bureau of Reclamation, and other electric facilities. Rights-of-way for such lines are to be procured in the regular manner at the time when such facilities are to be constructed.

4. Purpose of Lease. The Company represents that it is leasing the leased property for the purpose of constructing and operating an electric power plant thereon, and the Company covenants that it will commence construction thereof in 1960 and proceed with diligence for a presently intended completion date for the first two units in June of 1963. The Company also represents that it will build the transmission lines specified in Paragraph (i) of Section 3, and covenants that it will commence construction thereof before June, 1962, and proceed with diligence for a presently intended completion date prior to

June of 1963.

5. Term. This lease shall extend from the date it becomes effective for a period of twenty-five (25) years, with the right and option in the Company to extend it for an additional twenty-five (25) year term by notice given not less than one (1) year prior to the end of the initial twenty-five year term; provided, however, that the lease rental for the second twenty-five year term shall be subject to adjustment on the basis hereinafter provided in Section 6 hereof. The Company shall have the right at its option, exercisable by written notice given not less than five (5) years after this lease becomes effective, to extend the term of this lease for such period as the Company may specify, up to the limit authorized by law; provided, however, that the rental for the period after the initial fifty (50) years of the term of this lease shall be subject to adjustment on the basis hereinafter provided in Section 6.

6. Lease Rentals. The Company covenants and agrees to pay to the Tribe hereunder an aggregate rental for the initial twenty-five (25) year term hereof of \$1,115,000, payable in annual installments of \$44,600 each, the installments (other than for the period ending December 31, 1960) to be payable in advance on or before January 1 of each year, with the first and last payments to be pro rated, the installment for the initial period from the date this lease becomes effective through December 31, 1960, to be paid when the lease becomes effective. The rental for the initial

25 year extension of the term of this lease shall be the rental for the initial twenty-five year term after adjustment on the basis of the ratio between the average level of the Index for Bituminous Coal in the series of wholesale price indexes of the Bureau of Labor Statistics, for the thirty-six (36) months immediately preceding the commencement of the term hereof and the last 36 months of the initial twenty-five year term hereof. In the event the term of this lease should be extended for a period or periods after fifty (50) years from the effective date of this lease, up to the limit permitted by law, then and in such event, for each twenty-five years (or part thereof if the term of the lease is not to extend for twenty-five years or more after the commencement of each such period) thereafter during which this lease is in effect, the Company agrees to pay a rental which shall be equal to the rental for the initial twenty-five years, prorated if the applicable period is less than twenty-five years, and adjusted on the basis of the ratio between the average level of said Index for the thirty-six months immediately preceding the initial term hereof and the thirty-six months immediately preceding the beginning of such periods.

For such extended terms, the rentals shall similarly be payable in annual installments in advance.

In the event that publication of the Index above referred to is discontinued, the parties agree that a substitute Index of similar character will be adopted. In the event of a change of the base point from which the Index is computed, the base Index figure will be revised in accordance with any pertinent published instructions regarding such revision, or if no instructions are published, a proportionate revision shall be determined mathematically which will fairly reflect any

such change in the base point.

The aforesaid lease rentals are to be in lieu of all taxes, assessments, levies, exactions or charges of any kind made or imposed by the Tribe, and the Tribe covenants that it will not tax or assess, in any manner whatever, directly or indirectly, the property of the Company located on the leased lands or pursuant to the related rights granted in this lease, its activities under this lease, or its ownership, construction and operation of a power plant and related facilities pursuant to this lease, or the power generated thereon or the transmission, sale or disposal of such power, its income, or otherwise, or the sale or delivery of fuel to the Company by the suppliers of its fuel, or the severance or extraction thereof by such suppliers (other than royalties provided in their leases from the Tribe); provided, however, that after thirty-five (35) years from the commencement of commercial operation of the last unit of generating capacity installed in the power plant during the first ten (10) years of the lease term, the foregoing covenant shall lapse as to taxation of the property of the Company located on the leased lands, or pursuant to the related rights, or on or pursuant to the rights-of-way referred to in Sections 2, 3 and 7 hereof, provided that during the remainder of the term hereof, no property taxes shall be levied by the Tribe on such property at a rate or in an amount, in relation to value, in excess of one-half (1/2) of the rate of property taxes of the States of New Mexico or Arizona, as the case may be, applicable to such property at that time, and further provided that in the event state taxes should not then apply or should cease to apply to such property, then the rate of taxation of such property by the Tribe may be increased up to the rate of taxation to which the property would be subject if state taxes were then applicable to such property.

7. Right-of-Way Charges. For the rights-of-way to be procured from the Secretary of the Interior for the transmission and communication facilities of the Company, referred to in Section 3 hereof, and for the various rights-of-way referred to in Sections 2 and 12 hereof, the Company will pay the charges fixed by the Superintendent. In regard to the initial transmission facilities (those for the first four units of the plant), if the Superintendent shall fix or approve such charges, the Company agrees to pay and the Tribe agrees to accept a standard charge (inclusive of timber damages) of \$250 per mile for a right-of-way 135 feet wide, and \$430 per mile for a right-of-way 165 feet wide (subject to adjustment for variance in width) and in the case of microwave stations, substations or switching stations and similar structures, \$100 per acre for such right-of-way. Such rights-of-way shall be for a term of fifty (50) years with payment of the charges above stated to be made as of the time of the initial grant of such right-of-way and as of the commencement of the second twenty-five years of said fifty-year term. The Company shall have the right to procure an extension after the initial fifty year term, for an additional fifty year term, in which event it will make like payments each twenty-five years during any such extension.

The payments made by the Company are to be in lieu of all taxes, assessments, levies or charges of any kind made or imposed by the Tribe, and the Tribe covenants that it will not, directly or indirectly, tax or assess, in any manner whatsoever, the facilities constructed or located on the rights-of-way so procured, or the use or transmission of power or communications over those facilities, or the sales or disposal of power transmitted over said facilities, or otherwise, except for the period and to the extent permitted in Section 6 hereof.

The payments made by the Company are in consideration not

only of the rights-of-way but also the other provisions and covenants of this lease.

8. Damages to Permittees. The Company will pay to or for the account of the Tribe for the benefit of its individual Indian permittees the direct and reasonable damages for impairment of their use rights, i. e., the removal of buildings, hogans or structures of Permittees made necessary by construction on the rights-of-way, or damage to crops of Permittees, arising as a consequence of the construction and operation of the power plant and its auxiliary facilities.

9. Smoke and Ash. It is recognized by the Tribe that the power plant, in normal operation, will give off some stack gases, smoke and fly ash, and the Tribe consents to such conditions. The Company will, however, adopt standard practices to keep such gases, smoke and fly ash to a reasonable minimum, consideration being given to normal engineering practices for coal-burning power plants in similar areas similarly located in relation to population centers.

10. Storage Lake. In regard to the storage lake hereinabove referred to and indicated on the plat attached as Exhibit F hereof, it is understood that: (1) the Tribe will retain control of the lake shores and the lake surface (other than the part included in the premises described in Exhibit A), and may use or permit the use of said lake and its waters for recreational purposes and for other purposes not interfering with the use of the water by the Company hereunder; and (2) the Company shall not have control over or responsibility for such use or for injuries or deaths resulting therefrom; provided, that there shall be no use (other than stock watering), which will divert or consume the water or contaminate it or raise its temperature or add foreign matter or debris, or otherwise be inconsistent with use of the water in the operation of the plant. It is recognized that fluc-

tuations in the amount of stored water incident to power plant operation will result in fluctuations in the surface area of the lake and hence in the location of the shoreline of the stored water.

11. Water for Stock and Other Tribal Use. Along any water lines installed by the Company pursuant to Section 2(a) outside the plant site, the Company will install, on request by the Tribal Council and where needed for stock watering, not more than two (2) valves (not over one (1) inch in diameter) per mile for the purpose of furnishing water for stock. The Company will initially at its own expense, install water tanks for stock watering at each valve, and thereafter the Company will endeavor to operate the pumps at the pumping plant on the San Juan River sufficiently often so that water will normally be available in the tanks through the period from May through September, provided water is available to the Company at the diversion point, and provided that such use is not inconsistent with the rights of the Company or Utah Mining under the Permit referred to in Section 16 hereof. The Company will maintain and replace such valves and tanks, but any expenses thereby incurred by the Company are to be reimbursed by the Tribe.

The Company will, if requested by the Tribe, cooperate with it to try to work out mutually satisfactory arrangements whereby the diversion and pumping facilities of the Company can be enlarged and utilized to pump water for the Tribe under equitable arrangements for reimbursement of costs and expenses.

12. Transport of Water to Utah Mining. In addition to the rights of the Company hereunder to occupy and utilize Reservation lands to install and maintain a pumping station, water pipelines and related facilities, the Company may

utilize such facilities to transport water for Utah Mining, or its assignees (or permit Utah Mining to utilize the Company's water pipelines and related facilities to transport water), from the diversion works and pumping plant site to the Utah Mining Leased Lands, whether such water be conducted to the Utah Mining Leased Lands by a pipeline from the Company's water pipelines referred to in Section 2(a), from the storage lake, or the plant site. In connection therewith, the Company may procure a right-of-way from the Secretary, and the Tribe hereby grants its consent to a right-of-way to the Company to construct and maintain water pipelines on the Reservation from the Company's water pipelines, storage lake or plant site to the Utah Mining Leased Lands; provided, that the routes of such lines, if built, shall be more or less along the routes indicated on the plat attached as Exhibit L.

13. Removal of Improvements. The permanent buildings hereinafter listed located on the leased lands (hereinafter referred to as "non-removable buildings") shall be and become affixed to and a part of the leased realty, shall not be removable, and at the termination of the lease shall become the property of the Tribe; provided, however, that until the termination of the lease, these non-removable buildings shall remain the property of the Company, and the Company may make such replacements, in whole or in part, and either in separate structures or combined with other such non-removable buildings in one structure, and such relocations of any of said non-removable buildings, as it may deem advisable from time to time and may remove the components thereof so replaced. The plans for the various permanent buildings are not yet developed, and it is possible some of those listed

below may not be built or may be combined with each other. It is agreed by the Company that, if built, the following buildings shall, as hereinabove stated, be deemed non-removable buildings:

Office Building
Warehouse Building
Laboratory
Machine Shop
Cafeteria and Kitchen Building
Recreation Building

All other facilities, structures, improvements or property of the Company of any nature located on the leased lands or elsewhere on the Reservation, pursuant to the related rights granted in this lease (and on rights-of-way referred to in this lease), expressly including but not being limited to the power plant, switch yard and all related and auxiliary facilities, shall be deemed not affixed to the realty and to be removable by the Company and may be removed by the Company at any time prior to or on the termination of this lease. All such property of every nature not removed at or prior to the termination of the lease shall become the property of the Tribe after the termination of the lease, provided, however, at the termination of the lease, as to any structures (including the power plant), other than the non-removable buildings, Company will, if requested by the Tribe, remove such structures and any concrete foundations relating to them. As to all other improvements (other than the non-removable buildings and the structures and foundations above mentioned), and including roads, dams and other improvements or betterments, the Company may at its option leave such improvements in place and not remove them.

The Company may remove at or prior to the termination

of the lease all property located on the leased lands other than the non-removable buildings listed above, and the Tribe consents that the Company may utilize any access roads for which the Company then holds rights-of-way (and any public highways on the Reservation) or any rights-of-way then held by the Company for transmission lines, for the removal of such property, and further consents that the rights-of-way for such roads and transmission lines may include provisions expressly permitting the Company, and the Tribe hereby agrees to permit the Company, to utilize such rights-of-way for access to the plant and for removal of such property.

On expiration of the lease, the Company may either (1) leave in place the water lines running from the lake to the diversion works and any electrical or communication lines extending from the plant site to the diversion works, or to the Utah Mining Leased Lands, in which case it will, if requested by the Tribe, and upon payment by Tribe to Company of net salvage value, deliver to the Tribe a bill of sale, quit-claiming to the Tribe its interest in such lines; or (2) remove all or any portion of said lines, in which event Company shall refill any holes caused in the removal, or in lieu thereof, pay reasonable damages for the loss of value of the land caused by such removal.

14. Mortgage and Transfer of Leasehold Interest.

Company shall have the right at any time and from time to time to mortgage and pledge its leasehold interest, and all property located on the leased lands and elsewhere on the Reservation pursuant to the related rights granted in this

lease (and on any rights-of-way referred to herein), and to assign this lease to a trustee under a deed of trust or a mortgage, without need for consent by the Tribe or the Secretary of the Interior, and any mortgagee or trustee of the Company and any successor or assign thereof, or any receiver, referee or trustee in bankruptcy or receivership or reorganization of the Company, or any successor by action of law or otherwise, or any purchaser, transferee or assignee of any thereof, may, without need for consent of the Tribe or the Secretary, succeed to and acquire all the Company's rights hereunder, and may take over possession of the Company's properties, rights and interests hereunder, subject to all the Company's obligations under this lease.

In addition, the Company shall have the right to transfer or assign this lease without need for consent of the Tribe or Secretary of the Interior at such time to any corporation acquiring all or substantially all of the property of the Company, or to any corporation into which or with which the Company may be merged or consolidated, provided that any such successor shall become subject to all the Company's obligations hereunder, and provided that such successor shall notify the Tribe and the Secretary of such transfer, assignment or merger and shall furnish to the Tribe and the Secretary evidence of such transfer, assignment or merger.

15. No Encumbrances. Nothing herein shall authorize the Company in any way to encumber the title of the Tribe to the real property subject hereto.

16. Water Rights. The Tribe consents to the diversion of water from the San Juan River by the Company for use in connection with its operations under this lease, provided that such diversion of water shall be limited (1) to waters as to which the Company's rights are derived from the rights

of Utah Mining under its filing heretofore made with the New Mexico State Engineer, and as to which Permit 2838 has been issued, granted October 9, 1958, by the New Mexico State Engineer, whether the rights of the Company arise out of or result from the Company's acting as an agent of Utah Mining or under a contractual arrangement with Utah Mining or by virtue of an assignment to the Company by Utah Mining of some portion of its water rights; (2) to water which at any time or from time to time the Company may purchase from the Tribe, or (3) to other water which at any time or from time to time the Company may have lawfully acquired the right to divert and use by purchase from the previous owner or otherwise, provided, that this provision shall not be deemed in any way to prejudice any rights which the Tribe may have in regard to such other water.

17. Operation of Power Plant. The Tribe recognizes that the purpose of this lease is for the Company to construct a power plant on the Reservation which it will operate to produce power and energy which the Company will sell, at wholesale or retail, in the conduct of its business. The Tribe covenants that, other than as expressly set out in this agreement, it will not directly or indirectly regulate or attempt to regulate the Company or the construction, maintenance or operation of the power plant and transmission system by the Company, or its rates, charges, operating practices, procedures, safety rules, or other policies or practices, or its sales of power; provided, however, that this shall not be deemed a waiver of whatever rights the Tribe may have to regulate retail distribution on the Reservation,

and further provided that the Tribe will not attempt to regulate the sale of power by the Company to Utah Mining, referred to in Section 2(f) hereof. Nothing herein shall convey to the Company any rights to engage in retail distribution on the Reservation, other than the sale of power to Utah Mining as referred to in Section 2(f) hereof.

18. No Unlawful Use. The Company will not suffer or permit any unlawful use of the leased premises.

19. Employment of Navajo. Company agrees that in selecting applicants for employment on the Reservation, it will employ Navajo Indians when available in all positions for which they are qualified in the judgment of the Company, and will pay prevailing wages to such Navajo employees.

20. Navajo Labor Policy. All work in connection with this project shall be covered by the applicable provisions of Tribal Council Resolutions CA 49 58 and CA 54 58 which have been duly adopted by the Navajo Tribal Council, and which the Company agrees to observe and be bound by.

21. Insurance. The Company will maintain public liability and property damage insurance covering its operations on the Reservation, such coverage to be in an amount not less than One Million Dollars (\$1,000,000), provided, however, that the Company may be a self-insurer as to the first Fifty Thousand Dollars (\$50,000) on any one claim.

22. Payment of Taxes and Liens. The Company agrees that it will pay, prior to delinquency, all lawful taxes, charges, assessments and governmental impositions, and all other lawful assessments, charges and impositions, general

and special, ordinary and extraordinary, of every kind and nature whatsoever, including taxes levied by the Tribe pursuant to Section 6 hereof (herein called "taxes and impositions") levied or assessed upon its interest in the leased property or upon any improvements, structures, equipment, facilities or property of any kind of the Company situate thereon or on the Reservation pursuant to the related rights granted herein; provided, that in the event any of such taxes and impositions are payable in installments, or may be paid in installments, the Company is obligated hereunder only to pay the installments falling due during its tenancy, prior to the time the installment becomes delinquent. The Company will not suffer any liens to remain in effect unsatisfied against the said property, other than the lien of a mortgage or mortgages or pledges or similar encumbrances placed thereon by the Company, and other than liens for taxes or assessments not yet delinquent, or liens for workmen's compensation awards or for labor and material, not yet delinquent, and undetermined charges or liens incidental to construction; provided, however, that the Company is not required to pay or discharge any taxes, assessments, charges, impositions or fees or to remove any lien, charge or encumbrance upon the said property as long as the Company, in good faith and at its own cost and expense, shall be contesting the same or the lawfulness or validity thereof by appropriate legal proceeding which shall operate during the pendency thereof to prevent the collection or enforcement of the taxes, assessments, charges, impositions, fees, liens or encumbrances so contested.

23. Destruction of Plant. In the event that during any period after the initial twenty-five year term hereof,

the power plant should be so completely or substantially destroyed by earthquake, bomb, explosion or similar casualty, that in the light of the circumstances then present, rebuilding the power plant is uneconomical, the Company shall be entitled to terminate the lease on notice to the Tribe, with payment of rentals continuing for twelve (12) months thereafter.

24. Quiet Enjoyment. Excepting only for and to the extent of the prior rights, if any, of holders of existing oil and gas leases and pipeline easements heretofore granted affecting the leased lands and lands subject to the related rights, the Tribe agrees that Company shall have quiet enjoyment and peaceful and exclusive possession of its leasehold rights during the term of this agreement, and further covenants that neither the Tribe nor its members or others will interfere with such quiet enjoyment of any rights given the Company under this lease or any right-of-way on the Reservation procured from the Secretary.

In regard to access roads, it is understood that said roads may be used as roads by members of the Tribe or by others, and that such use, unless it shall prevent the Company from making normal use of said roads, shall not be deemed to be a violation of this covenant.

To the extent that is feasible without interference with the rights of the Company under this lease, or its utilization of such rights for and in connection with the construction and operation of a power plant or plants, development of oil and gas resources of the property subject to this lease and the rights herein granted may be permitted by the Tribe and Secretary.

25. Avoidance of Subsidence. The Tribe recognizes that the security of the Company's facilities on the plant site and on the dam site is dependent upon the stability of the earth and rock structures upon which their foundations rest, and that any subsidence or shifting of such earth and rock structures

could result in disastrous damage. The Tribe, accordingly, will not conduct or permit mining operations involving removal of coal, ores, or other solid material under the power plant site or the dam site, or within an outward angle of 45° of their surface area down to 5,000 feet below the surface, and the Tribe will not conduct or permit seismic explosions within 1,000 feet of the boundaries of the plant site or dam site (except pursuant to rights existing on the date hereof, if any).

26. Force Majeure Clause. Neither party shall be deemed in default in performance of any of its duties and obligations under this lease if and so long as such failure to perform is occasioned or caused by reason of uncontrollable forces or force majeure, which shall be deemed to include but not be limited to, acts of God or the public enemy, accidents, fires, the elements, explosions, riots, restraint by any Federal or State Court or judge granted in any bona fide legal proceeding or action, or any order of any Federal or State Commission, tribunal or public authority having jurisdiction in the premises, or compliance with any valid and applicable law, or any other cause reasonably beyond the control of the party involved, whether of the kind enumerated or otherwise.

27. Determination of Disputes. All disagreements or disputes between the parties arising under or in connection with this lease or concerning the validity or binding effect of the lease, including any disputes arising as to the provisions of the lease or the rights, duties and obligations of the parties under the lease or as to any questions of fact affecting the application of the provisions of this lease, or in any manner whatsoever arising out of or related to this lease, are to be referred to the Secretary of the Interior for determination, if not theretofore resolved by agreement between the parties. As used in this section,

the term "Secretary" means the Secretary of the Interior or such person or agency as he may expressly designate to perform the functions herein provided to be performed by him, or such federal agency as may succeed to the duties of the Secretary hereunder.

In the event of any such dispute arising under or in connection with this lease, either party may, by written notice to the other, call for a meeting of representatives of the parties to consider and, if possible, resolve the dispute. Such notice shall indicate what the issues and facts involved in the dispute are with sufficient clarity and detail to apprise the other party of the matters involved.

In the event the parties fail to resolve the dispute promptly in accordance with the procedure outlined above, either party may at any time submit the dispute to the Secretary for decision. Such submission shall be in writing, setting forth the issues and facts involved with sufficient clarity and detail to apprise the Secretary and the other party of the nature of the dispute, and a copy thereof shall be delivered to the other party, concurrently with the delivery to the Secretary. It is understood that the Secretary will give notice to the other party of the matter submitted for his decision and will afford the parties opportunity to submit written or oral support for their respective views. The procedures followed by the Secretary in reaching his decision shall be in accordance with such practices and procedures as the Secretary may adopt from time to time.

After the Secretary has reached his decision on a matter submitted to him for decision as herein provided, written notice of the decision shall be sent to the parties.

If the Secretary determines that a material default exists, he shall determine whether it is of a nature which should be and can be cured by some action to be taken by the defaulting party to prevent recurrence, which action is practical and reasonable, and feasible under the circumstances (such action being herein referred to as "feasible"), or whether the cure should be by payment of money damages to compensate the other party for the damages caused by the default, or whether the cure of the default should be in part by feasible action to prevent further default from occurring, if feasible, and in part by payment of money damages, or whether, if action to prevent further default from occurring is not feasible (whether because of inordinate cost in proportion to the damage caused, or otherwise), money damages should be paid to constitute a cure of or compensation for such past and continuing damages. If he determines that the default should be cured (in whole or in part) by the payment of money damages, he shall determine the amount of such money damages, and if he determines that the default should be cured (in whole or in part) by the taking of feasible action, he shall specify the action to be taken, and the defaulting party shall pay or tender payment or commence the taking of such action within sixty (60) days after notice of the final determination by the Secretary.

It is the intent of the parties hereto that this lease shall remain in effect in accordance with its terms and that no default shall constitute a ground of cancellation until the existence of a default has first been determined and the party in default has been given an opportunity to cure the default through payment of money damages or the taking of

feasible action to prevent further default from occurring, or both, and has failed within the time provided to make such payment or to take or commence such action to cure the default. It is further the intent of the parties that payment of money shall be the means of making reimbursement for past defaults where damage has been sustained, and for continuing defaults in the event that removal of the cause is not feasible.

No cancellation of this lease shall be effected unless and until (i) there has been a decision by the Secretary that a material default exists and stating the payment to be made and/or the feasible action to be taken to cure or make reimbursement for the default, and (ii) the party in default has not within sixty (60) days after notice of the final decision of the Secretary made the payment or taken or commenced taking the action specified in the decision, and has thereafter received not less than sixty (60) days' notice of the Secretary's intent to declare the lease cancelled because of such default unless it is cured by making such payments or taking such action, and (iii) the party in default has not within such sixty (60) day period either (a) cured the default by making such payments or taking such action, or (b) if the nature of the action to be taken is such that it cannot be completed within sixty (60) days using reasonable diligence, commenced action in good faith to so cure the default, and thereafter continues action diligently and in good faith to so cure the default. In the event the above decision has been made and notices given and a party remains in default, the Secretary, if, but only if, requested in writing by the party not in default to do so, shall declare the lease terminated.

No cancellation shall be effected hereunder if the failure to cure or to institute or continue action in good faith to cure the default by making such payment or taking such action as specified in the decision was due to force majeure (as defined in this lease).

In the event of termination of federal trust responsibilities to the Navajo Tribe, and if the Secretary is then no longer authorized by law to perform the duties and functions provided herein, if the Secretary's powers, duties and functions hereunder are lawfully transferred to some other official or agency of the Federal government, then such official or agency shall perform the functions herein provided to be performed by the Secretary, and if not, the parties agree that a board of arbitration will be created to make the decisions and perform the functions herein provided to be done by the Secretary, such board to be created and to act in accordance with the procedures hereinafter provided.

In the event that, under the circumstances above provided, a board of arbitration is to be created to make a decision or perform a function under or in connection with this lease, then, in the event of a dispute arising hereunder, either party may call for submission of such dispute to arbitration in the manner herein set forth. The party calling for arbitration shall give notice to the other party and in such notice shall (i) set forth the issues to be arbitrated and (ii) appoint a person to serve as one arbitrator. Within ten (10) days from such notice, the other party shall give notice appointing a person to serve as a second arbitrator and setting forth additional related issues, if any, to be arbitrated.

The two persons so appointed shall then agree upon and secure a third arbitrator. If the third arbitrator should

not be secured within ten (10) days from the appointment of the second arbitrator, or if the second arbitrator should not be appointed within ten days from the appointment of the first then the party calling for the arbitration, with notice to the other party, may call upon the American Arbitration Association to appoint the third arbitrator, or the second and third arbitrators as the case may be.

The arbitrators so appointed shall hear the evidence submitted by the respective parties and may call for additional information. A determination of a majority of the arbitrators shall be conclusive with respect to the issues submitted and shall be binding upon both parties.

Each party shall bear the fee and personal expenses of the arbitrator appointed by it or for it, the fees and expenses of its counsel and the expenses of its own witnesses. All other costs and expenses of the arbitration shall be borne in equal parts by the parties, unless the decision of the arbitrators shall specify a different apportionment of any or all of such costs and expenses.

28. Company's Rights in Event of Utah Mining Default.
The Company represents that the Fuel Agreement between Utah Mining and the Company provides, among other things, in summary as follows: (a) that Utah Mining will dedicate to and reserve for delivery to the Company, to furnish sufficient fuel supply for the first two generating units of its power plant, coal contained in a certain described area (herein referred to as the "dedicated area"), and will conditionally dedicate or reserve for the Company (to furnish the fuel supply for the third and fourth units, if built) the coal con-

tained in another area (herein referred to as "designated area"); (b) that a plat signed on behalf of both the Company and Utah Mining, showing the location of said areas is to be filed with the Superintendent (the word "superintendent" as used herein meaning the superintendent or other official in charge of the Indian Agency having jurisdiction over the Utah Mining Leased Lands), and with the Executive Secretary of the Navajo Tribe; (c) that a portion of the designated area will become a dedicated area if and when the Company exercises its options to require Utah Mining to furnish the fuel supply for the third and for the fourth units of the power plant, respectively; (d) that if and when a portion of the designated area so becomes a dedicated area, new plats signed on behalf of both the Company and Utah Mining will be filed showing the revised dedicated areas; (e) that the dedicated and designated areas may be changed as provided in the Fuel Agreement, and if so changed, revised plats signed on behalf of both the Company and Utah Mining will be filed; (f) that Utah Mining will at or shortly after this Indenture of Lease becomes effective, file with the Executive Secretary of the Navajo Tribe and the Superintendent copies of the plats hereinabove referred to and an instrument of assignment executed on behalf of Utah Mining assigning to the Company all of its rights under said Coal Lease insofar as it relates to the dedicated and designated areas shown on the plats of the dedicated and designated areas which are on file with the Executive Secretary of the Navajo Tribe and the Superintendent at the time said instrument of assignment becomes effective (which have not been revised or supplanted by plats subsequently filed), said instrument

of assignment being conditioned to become effective if and when Utah Mining becomes in default in performance of its Coal Lease or its Fuel Agreement; (g) that Utah Mining shall be deemed in default under its Fuel Agreement, and the said instrument of assignment shall provide that Utah Mining shall be deemed in default under its Fuel Agreement, at such time as the existence of such a default has been determined either (1) by agreement between Utah Mining and Company that it is in default, or (2) by a judgment or decision of a court having jurisdiction over the matter, and such default has not been cured; (h) that Utah Mining shall be deemed in default in performance of its Coal Lease and said instrument of assignment shall provide that Utah Mining shall be deemed in default under its Coal Lease, when and if there has been a determination of such default and a final notice has been given effectively cancelling or forfeiting the Coal Lease insofar as it relates to lands other than dedicated and designated areas, in accordance with its terms and pursuant to applicable law and regulation; (i) that in the event that this Indenture of Lease should terminate or if Utah Mining's obligations under the Fuel Agreement shall be fulfilled, or if the Company should be in default under the Fuel Agreement (default by the Company to be determined in the same manner as default thereunder by Utah Mining), the assignment shall thereupon become void and may be withdrawn by Utah Mining and that the instrument of assignment shall so provide.

In the event Utah Mining shall be in default in its performance under its Coal Lease or Fuel Agreement, as provided above, and in the instrument of assignment, the assignment filed by Utah Mining as herein provided shall thereupon become effective. No cancellation or forfeiture of the Coal

Lease shall be operative as to the dedicated and designated areas until the Company shall have had a reasonable opportunity to cure the default as to such dedicated and designated areas and shall have failed so to do.

If and when Utah Mining's assignment to the Company shall become effective as aforesaid, the Company shall be deemed successor lessee to Utah Mining's entire interest under the Coal Lease, and upon the same terms and conditions as are set out in said Lease, insofar as (but only insofar as) the dedicated and designated areas are concerned, and the Company shall have the right, as to such dedicated and designated areas, to go upon the lands, to mine coal and to remove it from such lands, and to exercise all rights, and shall be subject to all obligations of Utah Mining under the Coal Lease, with such lease to be deemed assigned to the Company insofar as it relates to the dedicated and designated areas. The dedicated and designated areas covered by the assignment shall be those shown on the plats on file with the Executive Secretary of the Navajo Tribe and the Superintendent at the time the assignment becomes effective and which have not been revised or supplanted by plats subsequently filed. At the time the assignment becomes effective, there shall be required no further consent on behalf of the Tribe and no approval by the Secretary, his approval of this Indenture of Lease between the Tribe and the Company to constitute approval in advance of such assignment.

In the event that the assignment should become effective prior to the expiration of the option period in the Fuel Agreement and at a time when the option has not yet been exercised, the assignment shall become effective as to both the dedicated

and designated areas, but in such case, if the Company before the end of the option period shall not have installed or made commitments to install a third unit in its power plant, or a third and a fourth unit, the assignment of Utah Mining's interest as to the areas designated in respect of coal supply for such units shall be deemed to have lapsed, and new plats shall be filed by the Company eliminating such areas.

29. Independent Covenants. The covenants of this lease agreement are to be deemed to be independent covenants, not dependent covenants, and the obligation of each party to perform all the covenants to be performed by it is not conditioned on the performance by the other party of all the covenants to be performed by it.

In the event that any provision of this lease, or the application of such provision to any person or circumstance, shall be held invalid by any court having jurisdiction in the premises, the remainder of the lease, and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

30. Notices. Any notice, demand or request provided for in this lease, or given or made in connection with it, shall be deemed to be properly given if delivered in person or sent by registered or certified mail, postage prepaid, or by telegram, to the persons specified below:

To or upon the Tribe:

Secretary
Navajo Tribal Council
Window Rock, Arizona

To or upon the Company:

Secretary
Arizona Public Service Company
501 South Third Avenue
Phoenix, Arizona

Either party may at any time by written notice to the other change the designation or address of the person so specified as the one to receive notices hereunder.

31. Lease Unaffected by Termination of Federal Responsibility. Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the leased lands during the term of this lease; however, such termination shall not affect the rights, duties and obligations of the Company and the Tribe under this lease (except to the extent expressly set out in Section 27 hereof).

32. Successors in Interest. Every obligation hereunder shall extend to and be binding upon and every benefit hereof shall inure to the successors and assigns of the respective parties, and shall be construed as covenants running with the land.

33. Effective Date. This Agreement shall become effective when:

1. It has been duly executed on behalf of the parties hereto and has been approved by the Secretary;
2. The plan of development referred to in Section 3(d) of the Coal Lease has been approved by the Secretary as provided in the Coal Lease;
and
3. The Fuel Agreement has become effective.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be signed in their behalf by their duly authorized officers as of the date first above set out.

THE NAVAJO TRIBE OF INDIANS

(signed)

By Paul Jones
Chairman,
Navajo Tribal Council

ARIZONA PUBLIC SERVICE COMPANY

(signed)

By Walter T Lucking
President

ATTEST:

(signed)

W E Mueller
Assistant Secretary

(Corporate Seal)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Washington 25, D. C.

14 December, 1960.

The foregoing instrument is hereby approved.

ACTING SECRETARY OF THE INTERIOR

(signed)

Elmer F Bennett

ACKNOWLEDGMENT OF LESSOR
(Arizona Form)

State of Arizona)
) ss
County of Apache)

Before me, a notary public, on this 2nd day of
Dec, 1960, personally appeared PAUL JONES, to me
known to be the identical person who executed the within
and foregoing instrument, and acknowledged to me that he
executed the same in his official capacity as Chairman of
the Navajo Tribal Council, for and on behalf of the NAVAJO
TRIBE OF INDIANS, as its free and voluntary act and deed
for the uses and purposes therein set forth.

(signed)

Walter F. Wolf Jr.

My commission expires:

Notary Public

6 Jan 1963

(Seal)

(New Mexico Form)

State of Arizona)
) ss
County of Apache)

On this 2nd day of Dec, 1960, before me,
appeared PAUL JONES, to me personally known, who being by me
duly affirmed, did say that he is the Chairman of the NAVAJO
TRIBE OF INDIANS and that the said foregoing instrument was
signed in behalf of the said Tribe by authority of the Tribal
Council and the said Paul Jones acknowledged said instrument
to be the free act and deed of the said NAVAJO TRIBE OF
INDIANS.

(signed)

Walter F. Wolf Jr

My commission expires:

Notary Public

6 Jan 1963

(Seal)

ACKNOWLEDGMENT OF LESSEE
(Arizona Form)

State of Arizona)
) ss
County of Maricopa)

On this, the 1st day of December, 1960, before me, Mabel L. Spencer, the undersigned notary public, personally appeared WALTER T. LUCKING, who acknowledged himself to be the President of ARIZONA PUBLIC SERVICE COMPANY, a corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(signed)

Mabel L. Spencer

My commission expires:

Notary Public

June 29, 1963

(Seal)

(New Mexico Form)

State of Arizona)
) ss
County of Maricopa)

On this 1st day of December, 1960, before me appeared WALTER T. LUCKING, to me personally known, who, being by me duly sworn, did say that he is the President of ARIZONA PUBLIC SERVICE COMPANY, a corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said WALTER T. LUCKING acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(signed)

Mabel L. Spencer

My commission expires:

Notary Public

June 29, 1963

(Seal)

