***NAIC/ Securities Valuation Office***

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Power and Pipeline**

**Project Information Memorandum**

**A copy of this Memorandum and the required documents must be attached to any SAR or ARS filing which does not have an NRSRO rating.**

**Applicant:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Must be an insurance company.)

**Issue Description:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Issue's CUSIP/PPN/CINS, if available:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Issuer:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Power/Throughput Purchaser's Senior Debt Rating(s):**

(Indicate Rating Agency and whether its rating is for secured or unsecured debt.)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Applicant's Contact Person:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Print name and title of Officer who may be called to discuss this transaction.)

**Telephone Number:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**The undersigned understands and intends that the SVO will rely on the information contained in this Memorandum and any attachments to assign, publish and disseminate an NAIC Designation which will be used by NAIC members to make regulatory decisions.**

**Applicant:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Insurance Company)

**By:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Contact Person)

**Date:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**7/21/95**

**General Instructions:** Attach the following to this Memorandum *(ARS Applicants should submit final or near-final drafts)*: Note Purchase Agreement, Investment Committee Memorandum, Prospectus/Offering Memorandum/Private Placement Memorandum, Independent Engineer's Report (including sensitivity analysis), fuel study(ies), all Opinions of Counsel, and any additional documents or memoranda you deem useful.

An SAR Form or ARS Application must always accompany this Memorandum.

You may address the following topics and questions directly or by reference to an attachment. If, due to the unique features or structure of your Project, any of the topics or questions apply generally, but not specifically, to your Project, please rephrase the topic or question and answer it fully.

**A. Transaction Description, Structure and Legal issues.**

(i) Describe (and provide diagrams of) the Transaction and the Project, identifying all parties, their relationships to each other and the role(s) they have or will have in the Project.

(ii) Provide a list of and summarize the significant terms of each Transaction and Project document which will govern the relationships of the parties, e.g., Note Purchase Agreement, Construction Agreement, Power Purchase Agreement, Guaranty Agreement, etc.

(iii) Describe the legal mechanism by which payments to the note holders will be made, especially if leases or other off-balance sheet features are present.

(iv) Describe the Project's Collateral.

 If the Project is not yet in commercial operation, indicate the construction start date and the date the Project is expected to enter commercial operation.

(v) Describe Project-related (i.e., operating) and payment events of default.

(vi) Identify the legal owner of the Project and any encumbrances on the Project, including limitations on changes of control and sales of assets.

**Responses to the next four items may be either by a formal Opinion of Counsel rendered by an outside law firm or by an informal response by the Applicant's in-house counsel or other appropriate legal counsel. If no Opinion of Counsel addresses any one of these items, please indicate why. If the specific item does not apply to this Project, but the general legal issue does, please modify your response accordingly. If any one of these items does not apply to this Project, address why in your response.**

(vii) In the opinion of legal counsel, will the Project, Collateral or other property sold by the seller be viewed as the property of the seller's bankruptcy estate or will payments originating from the project be subject to the automatic stay provisions of the Code, in the event of seller's filing? or, upon the insolvency of an equity interest will the Collateral be deemed to be a part of the equity owner's estate or payments derived from the property or collateral be subject to automatic stay?

(viii) In the opinion of legal counsel, will the Noteholders have an exclusive first perfected security interest in the Collateral?

(ix) In the opinion of legal counsel, will the transfer of the Project and other collateral be characterized as a sale and not as a loan secured by the pledge of the Project?

(x) In the opinion of legal counsel, will transfer of the Project or of the Collateral provide a basis for a claim of fraudulent conveyance under state or federal law?

(xi) Provide a summary of which outside counsels provided opinions, the subject of those opinons, the reason for providing those opinions and the client for whom the opinions were provided.

(xii)Describe covenants permitting Additional Indebtedness or restricting dividends or other payments to be made by the Project to equity owners.

(xiii) Describe the terms of any subordination agreement.

(xiv) Is Title to the Project site clear? Has title insurance for at least the amount of the Notes been obtained?

**B. Qualitative Analysis.**

**1. Output/Throughput Sales**

(i) If the Project's output/throughput is sold pursuant to spot market arrangement rather than a contract, describe the spot market.

(ii) Describe any covenants which, if breached by the Project, would enable the Power/Throughput Purchaser to cancel the Power/Throughput Contract.

(iii) Indicate what Availability Test, if any, the Project is obligated to meet.

(iv) For each year that the Project has been in operation, indicate whether the Project has met, exceeded or failed to attain the Availability Test.

(v) Describe the amount and applicable terms of the Capacity Payment (or other similar payment) receivable by the Project, with emphasis on payment reductions for failure to meet any performance standard, including the percentage impact on the Project's ability to meet Fixed Costs and the likelihood of such occurrence.

(vi) Describe any "tracking" or escrow accounts, Letters of Credit, or other financial security required.

**Items (vii) - (xi) apply to a power Project.**

(vii) Describe the amount and applicable terms of any Energy Payment receivable by the Project.

(viii) Does the Project's mode of energy pricing track the Project's own cost of producing the energy or is it based on the Offtake Purchaser's avoided energy cost?

(ix) Do the Energy Payments incorporate all variable Project costs, including Operating and Maintenance expenses?

(x) Does the energy pricing formula index the fuel cost component so that the price could be adjusted in the same time frame as fuel costs?

(xi) Does the Purchaser require the Project to bear regulatory disallowance of capacity or energy expenses. If so, describe to what extent and describe what mitigation techniques are available to the Project owner.

**Items (xii) - (xiii) apply to a pipeline Project.**

(xii) Describe the amount and applicable terms of any Transportation Payment receivable by the Project.

(xiii) Do the Transportation Payments incorporate all available Project costs, including Operating and Maintenance expenses?

**Sections 2 and 3 apply to a power Project.**

**2. Power Costs.**

(i) What is the cost of the power produced by the Project?

(ii) How does this cost compare to the cost attained by other similar projects?

(iii) Is the Project projected to be cost-competitive throughout the term of the Notes?

(iv) Describe the position of the Project in the resource stack of the Power Purchaser.

(v) Is the Project's power cost dependent on identifiable financial, fuel or operating strategies which might create additional risk to the Project?

(vi) If these costs are transferred to the Power Purchaser, is there a risk of such cost transfer creating regulatory pressure which may lead to disallowance?

**3. Fuel Risk.**

(i) Describe the Project's fuel source and summarize the terms of any fuel and transportation contracts or discuss the spot market. If the term of the contracts are not equal to or greater than the term of the debt, discuss the mitigants of this risk.

 - Describe the financial reliability of fuel and transportation suppliers.

(ii) Do fuel and transportation contracts match delivered fuel costs with the sales price for power? If so, describe the mechanism.

(iii) To what extent can fuel and transportation costs be passed on to the Power Purchaser?

(iv) Are changes in the fuel market likely to erode cash flow needed to pay Fixed Costs?

**4. Structure.**

(i) What is the percentage of owner's equity investment in the project (excluding subordinated debt)?

(ii) What is the percentage of owner's investment in the form of subordinated debt?

 Is subordinated debt considered equity?

(iii) Is there a prohibition against withdrawing ownership equity unless cash flow coverage ratios are and will continue to be met? If so, describe or refer to the appropriate section from the Note Agreement.

(iv) Are distributions to the equity holders limited or precluded until all reserve requirements have been met? If so, describe or refer to the appropriate section from the Note Agreement.

(v) Describe all reserve accounts, including funding mechanism and comment on the appropriateness of the funding mechanism.

(vi) Is the Project the sole business purpose/power in which the project entity can engage?

(vii) Describe all liquidity mechanisms (including reserves) present in the transaction which serve to assure timely debt service and payment of operation and maintenance charges.

(viii) Does the Project have adequate insurance coverage for property damage to operating equipment as well as business interruption insurance? Describe the coverage or refer to the appropriate document.

**5. Development Risk.**

(i) If the Project is or will be under construction, discuss your management and disbursement procedures for construction funds.

(ii) Discuss any actual or potential opposition to the Project, e.g., terrorists, environmentalists, unfriendly local utilities, etc.

(iii) Discuss any unique geophysical or environmental issues.

(iv) Have all necessary permits been granted? If not, please discuss any pending permits.

**6. Technology Risk.**

(i) Why do you believe the Project is likely to meet the Availability Test in view of the mandatory (e.g., maintenance) and unexpected, (e.g., malfunction) outages required by the technology employed?

(ii) Discuss why you believe the technology is sufficiently well understood to enable a confident assessment of the likelihood that it will produce power at the expected cost over the term of the outstanding debt.

 Cover the following topics in your discussion:

 The level of difficulty or complexity suggested by the design and technical requirements for the Project.

 Technical expertise and financial strength of project contractors for this type of Project and/or technology.

 Type and level of credit enhancement or support provided by contractors or third parties and their financial capacity to perform on these obligations.

(iii) Discuss the probability that operating performance could fall to the levels assumed in the downside projections of Independent Engineer's Report.

**C. Financial Analysis.**

(i) Attach complete projections (including details of the Project's Fixed Costs) for at least the life of the Notes.

(ii) Is the Fixed Capacity Payment sufficient to cover Fixed Costs in each year of the life of the Notes?

(iii) Discuss adequacy of debt service coverage ratios in light of the Project's risks.

**D. Cogeneration Projects and Qualifying Facilities.**

(i) What percentage of the Projects revenues will be derived from the sale of steam?

(ii) What is the result for the Project if QF status were to be lost and the Project required to comply with the Federal Power Act and FERC rates?

(iii) Will loss of QF status trigger default under other contracts?

(iv) What is the minimum steam take necessary for the Project to maintain its QF status?

(v) Is there a guarantee of the minimum steam take necessary to maintain QF status?

(vi) Discuss the long-term need for steam.

**E. Foreign Projects.**

(i) Show all sovereign ratings (indicating rating agency) of the host country.

(ii) Describe what mechanisms are in place to mitigate currency risk.

(iii) Describe political risk insurance, if any.

(iv) Describe export agency credit support, if any.

(v) Describe the governing jurisdictions for each of the significant Transaction and Project documents.

(vi) In the event of a US court judgment which would allow attachment or execution against any assets or property located in the host country, indicate whether reciprocal recognition and enforcement of judgments in civil and commercial matters exists between the US and the host country and/or what procedures the Noteholders would follow in seeking enforcement of such judgment.

Please ensure that you have addressed all the significant features of your Project and Transaction. You may alter the above items or topics as necessary or attach any additional information.