



FLEMING-MASON ENERGY  
COOPERATIVE, INC.

P.O. BOX 328 • FLEMINGSBURG, KENTUCKY 41041 • (606) 845-2661 • FAX (606) 845-1008

November 20, 2007

RECEIVED  
NOV 26 2007  
PUBLIC SERVICE  
COMMISSION

Ms. Beth A. O'Donnell  
Executive Director  
Kentucky Public Service Commission  
P O Box 615  
Frankfort, KY 40602-0615

RE: Fleming-Mason Energy  
Application Regarding  
CFC Perpetual Line of Credit

Dar Ms. O'Donnell:

2007-490

Enclosed please find the original and 10 copies of an Application on behalf of Fleming-Mason Energy Cooperative, Inc. to receive approval of a Perpetual Line of Credit from CFC in the amount of \$10,000,000.00.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Christopher S. Perry".

Christopher S. Perry  
President & CEO

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

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COMMISSION

**In the Matter of:**

**APPLICATION OF FLEMING-MASON ENERGY )  
COOPERATIVE, INC. FOR AN ORDER PURSUANT )  
TO K.R.S. 278.300 AND 807 K.A.R.5:001, SECTION 11 )  
AND RELATED SECTIONS AUTHORIZING THE )  
COOPERATIVE TO OBTAIN A PERPETUAL LINE )  
OF CREDIT NOT TO EXCEED \$10,000,000.00 AT ANY )  
ONE TIME FROM THE NATIONAL RURAL UTILITIES )  
COOPERATIVE FINANCE CORPORATION )**

**CASE NO. 2007-490**

**Attached hereto is data required in the above-mentioned application:**

- Exhibit 1      Certificate of Existence**
- Exhibit 2      Outstanding Debt Schedule**
- Exhibit 3      Restated Mortgage and Security Agreement**
- Exhibit 4      Statement of Operations Ending September 30, 2007**
- Exhibit 5      Balance Sheet as of September 30, 2007**
- Exhibit 6      NRUCFC Credit Confirmation**
- Exhibit 7      Certificate of Resolutions and Incumbency**
- Exhibit 8      CFC Term Sheet**
- Exhibit 9      Revolving Line of Credit Agreement**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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APPLICATION OF FLEMING-MASON ENERGY )  
COOPERATIVE, INC. FOR AN ORDER PURSUANT )  
TO K.R.S. 278.300 AND 807 K.A.R.5:001, SECTION 11 )  
AND RELATED SECTIONS AUTHORIZING THE ) CASE NO. \_\_\_\_\_  
COOPERATIVE TO OBTAIN A PERPETUAL LINE )  
OF CREDIT NOT TO EXCEED \$10,000,000.00 AT ANY )  
ONE TIME FROM THE NATIONAL RURAL UTILITIES )  
COOPERATIVE FINANCE CORPORATION )

APPLICATION

Fleming-Mason Energy Cooperative, Inc. ("Fleming-Mason") respectfully submits this application seeking approval to obtain a perpetual line of credit not to exceed \$10,000,000.00 at any one time from the National Rural Utilities Cooperative Finance Corporation (NRUCFC). Fleming-Mason submits this original and 10 copies of the application with this filing.

1. Fleming-Mason is a nonprofit electric cooperative without capital stock, duly organized and existing under KRS Chapter 279 and is engaged in the business of distributing retail electric power to member consumers in the Kentucky counties of Bath, Bracken, Fleming, Lewis, Mason, Nicholas, Robertson, and Rowan.

2. Fleming-Mason's full name is "Fleming-Mason Energy Cooperative, Inc." and its post office address is Post Office Box 328, Flemingsburg, Kentucky, 41041-0328.

3. As of September 30, 2007, Fleming-Mason serves 23,798 member consumers. It has 3,472 miles of distribution lines in its eight county service territory, and owns additional facilities necessary to support this distribution system. The total original cost of these distribution lines and additional facilities as of September 30, 2007 is \$75,902,674.00.

4. The Articles of Incorporation and all amendments thereto for Fleming-Mason were filed with the Commission in PSC Case No. 1990-00081, Adjustment of Rates of Fleming-Mason Rural Electric Cooperative Corporation. [807 KAR 5:001, Section 8(3)]

5. The Applicant further states that:
  - a. No amount or kinds of stock are authorized by Fleming-Mason.
  - b. No amount of kinds of stocks are issued or outstanding by Fleming-Mason.
  - c. No preferred stock has been issued or is outstanding by Fleming-Mason.
  - d. Exhibit 2, which is attached, lists the outstanding notes secured by mortgages which have been executed by Fleming-Mason as Mortgagor and delivered to the United States of America and the National Rural Utilities Cooperative Finance Corporation as Mortgagees as of the date of this Application. The balance outstanding on these notes as of September 30, 2007, as well as the interest paid on these notes up through September 30, 2007, is as shown in Exhibit 2. A copy of the restated mortgage dated September 1, 2004 is attached for the record as Exhibit 3.
  - e. No bonds are authorized or issued by Fleming-Mason.
  - f. Fleming-Mason has no other indebtedness except current liabilities which occur in the ordinary course of business and which are unsecured.
  - g. No dividends have been paid by Fleming-Mason.
6. A detailed income statement, based on a twelve-month period ending September 30, 2007, is attached as Exhibit 4 and its Balance Sheet is attached as Exhibit 5 of this application.
7. The use to be made of the proceeds from this line of credit is to obtain loan funds quickly for any temporary shortfalls of cash, while awaiting permanent financing.
8. At this time, it is not anticipated that any property is to be acquired, constructed, improved, or extended with the proceeds from this loan.
9. At this time, it is not proposed to discharge or refund any obligations with the proceeds from this loan.
10. The approval of the loan from the National Rural Utilities Cooperative Finance Corporation is attached as Exhibit 6.
11. The Resolution of the Board of Directors approving this loan is attached as Exhibit 7.

12. Fleming-Mason is seeking approval of the \$10,000,000 perpetual line of credit. Fleming-Mason currently has a line of credit, number 5102, with National Rural Utilities Cooperative Finance Corporation, with a maximum amount of \$7,000,000.

Fleming-Mason is seeking approval of the \$10,000,000 line or credit as perpetual, would not expire, and would automatically renew each year.

13. The terms and conditions of the proposed \$10,000,000 perpetual line of credit are shown in Exhibit 8.

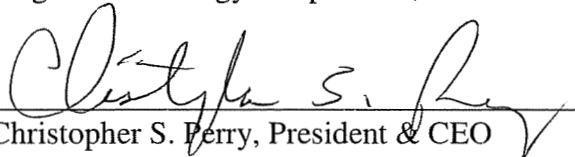
14. A copy of the Revolving Line of Credit Agreement is shown in Exhibit 9.

WHEREFORE, Fleming-Mason requests that the Public Service Commission of the Commonwealth of Kentucky issue an Order authorizing and granting Fleming-Mason Energy Cooperative, Inc. approval for a perpetual line of credit not to exceed \$10,000,000 at any one time from the National Rural Utilities Cooperative Finance Corporation and all other relief to which the Applicant may be entitled.

This 20<sup>th</sup> day of November, 2007.

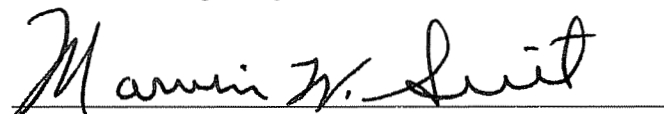
Respectfully submitted,

Fleming-Mason Energy Cooperative, Inc.

By   
Christopher S. Perry, President & CEO

COUNSEL:

Marvin W. Suit  
207 Court Square  
Flemingsburg, KY 41041



Marvin W. Suit  
Attorney for Fleming-Mason Energy Cooperative, Inc.

I, Christopher S. Perry, after first being duly sworn, deposes and says: That he is the President and Chief Executive Officer of Fleming-Mason Energy Cooperative, Inc., a rural electric cooperative corporation, duly organized and doing business under the Rural Electric Cooperative Corporation Act of the Commonwealth of Kentucky; That he has read the foregoing Application and knows the contents thereof; That the same is true of his own knowledge except as to such matters as are therein stated on information or belief, and as to those matters he believes same to be true.

This 20<sup>th</sup> day of November, 2007.

FLEMING-MASON ENERGY COOPERATIVE, INC

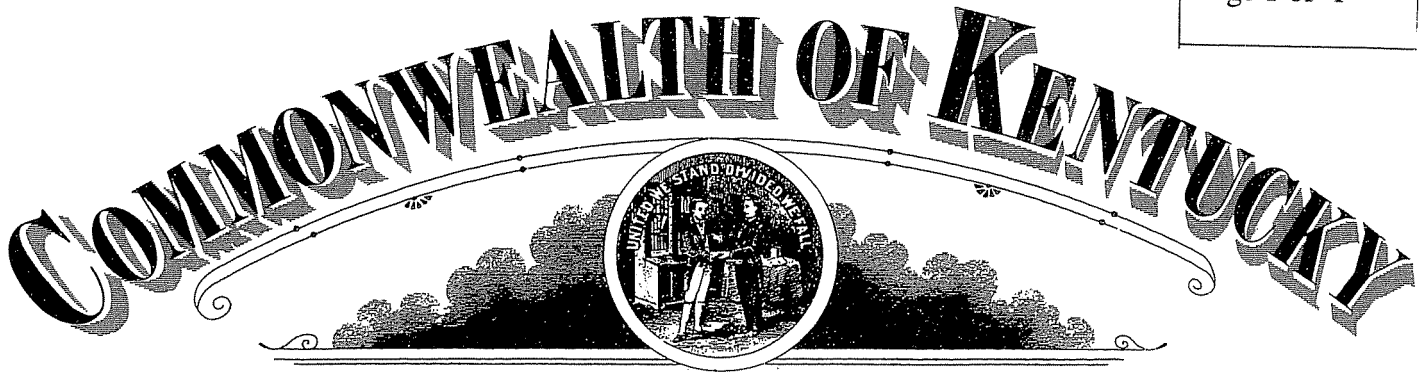
By: Christopher S. Perry  
Christopher S. Perry, President & CEO

Subscribed and sworn to before me by Christopher S. Perry, President & Chief Executive Officer of Fleming-Mason Energy Cooperative, Inc. this 20<sup>th</sup> day of November, 2007.

Joni K. Haeberlrigg  
Notary Public, Kentucky, State-at-Large

My Commission Expires: June 20, 2010





**John Y. Brown III**  
**Secretary of State**

**Certificate of Existence**

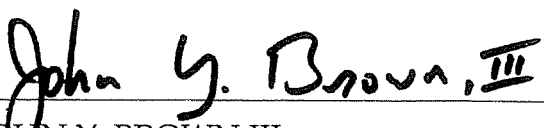
I, JOHN Y. BROWN III, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

**FLEMING-MASON ENERGY COOPERATIVE, INC.**

is a nonprofit corporation duly organized and existing under KRS Chapter 273, whose date of incorporation is March 12, 1938 and whose period of duration is perpetual.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that articles of dissolution have not been filed; and that the most recent annual report required by KRS 273.3671 has been delivered to the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 8<sup>th</sup> day of October, 2001.

  
\_\_\_\_\_  
JOHN Y. BROWN III

Secretary of State  
Commonwealth of Kentucky





FLEMING-MASON ENERGY COOPERATIVE, INC.  
SCHEDULE OF OUTSTANDING DEBT  
September 30, 2007

LONG TERM DEBT RUS/FFB					
Note No.	Interest Rate	Issue Date	Original Balance	Balance Long Term Debt 9/30/2007	Interest Paid Year-to-Date 9/30/2007
0B270	2%	9/7/1972	179,000	0	55
0B272	2%	9/7/1972	179,000	0	55
1B280	5%	7/3/1974	175,000	18,407	875
1B282	5%	7/3/1974	175,000	18,407	875
1B290	5%	4/3/1975	175,000	25,853	1,148
1B292	5%	4/3/1975	175,000	25,853	1,148
1B300	5%	7/19/1977	355,500	93,947	3,849
1B302	5%	7/19/1977	355,500	93,947	3,849
1B310	5%	6/8/1978	355,000	110,986	4,472
1B312	5%	6/8/1978	355,000	110,986	4,472
1B320	5%	10/1/1979	898,500	331,635	13,176
1B322	5%	10/1/1979	898,500	331,635	13,176
1B330	5%	11/12/1981	812,000	366,335	14,348
1B331	5%	11/12/1981	500	229.45	9
1B333	5%	11/12/1981	812,500	372,839	14,626
1B340	5%	2/8/1989	915,000	628,823	23,902
1B343	5%	2/8/1989	915,000	646,133	24,558
1B350	5%	10/1/1992	983,000	766,891	32,359
1B355	5%	10/1/1992	983,000	766,891	29,024
1B360	5%	2/3/1994	1,500,000	1,214,245	45,902
1B362	5%	2/3/1994	512,500	425,939	16,101
1B366	5%	2/3/1994	2,012,500	1,677,346	63,800
1B370	4.58%	9/1/2005	2,000,000	1,970,803	67,897
1B371	4.72%	3/20/2006	4,000,000	3,943,511	139,987
AB372	4.95%	10/24/2006	3,000,000	2,965,219	110,365
AB373	4.87%	1/22/2007	2,000,000	1,982,562	66,724
AB374	5.28%	7/12/2007	2,000,000	1,995,946	22,699
			26,364,000	20,885,369	719,450
H0010	Variable	10/2/2000	2,600,000	2,262,221	86,569
H0015	Variable	1/24/2001	1,400,000	1,218,119	46,614
H0020	Variable	4/2/2001	1,500,000	1,305,128	49,944
H0025	Variable	4/27/2001	2,200,000	1,914,187	73,251
H0030	Variable	5/14/2001	1,400,000	1,218,119	46,614
H0035	Variable	1/29/2002	3,000,000	2,639,456	101,005
H0040	Variable	1/3/2003	2,900,000	2,615,723	100,097
H0045	Variable	12/22/2003	3,000,000	2,763,798	105,763
F0050	Variable	9/15/2004	2,437,000	2,294,992	87,823
			20,437,000	18,231,743	697,682

LONG TERM DEBT CFC					
Note No.	Interest Rate	Date	Original Balance	Balance Long Term Debt	Interest Paid Year-to-Date 9/30/2007
9001	7.00%	9/7/1972	89,000	1,684	260
9003	7.00%	7/3/1974	150,000	18,876	1,252
9005	5.75%	4/3/1975	150,000	25,915	1,293
9009	5.80%	7/19/1977	305,000	99,785	4,629
9010	5.85%	6/8/1978	304,000	115,408	5,312
9013	5.90%	10/1/1979	811,000	327,994	15,013
9016	5.95%	11/12/1981	733,000	367,435	16,716
9017	5.75%	2/8/1989	800,000	561,873	24,139
9018	5.80%	10/1/1992	860,204	710,227	30,625
9019-001	5.80%	2/3/1994	1,000,000	849,762	36,595
9019-002	5.85%	2/3/1994	725,000	620,778	26,967
			5,927,204	3,699,737	162,803



RUS PROJECT DESIGNATION:

KENTUCKY 52-AT44 FLEMING

RESTATED MORTGAGE  
AND  
SECURITY AGREEMENT

made by and among

FLEMING-MASON ENERGY COOPERATIVE, INC.  
1449 Elizaville Road  
Flemingsburg, Kentucky 41041,

Mortgagor, and

UNITED STATES OF AMERICA  
Rural Utilities Service  
Washington, D.C. 20250-1500,


Mortgagee, and

NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION  
2201 Cooperative Way  
Herndon, Virginia 20171-3025,

Mortgagee

Dated as of September 1, 2004

THIS INSTRUMENT GRANTS A SECURITY INTEREST IN A TRANSMITTING UTILITY.  
THE DEBTOR AS MORTGAGOR IS A TRANSMITTING UTILITY.  
THIS INSTRUMENT CONTAINS PROVISIONS THAT COVER REAL AND PERSONAL PROPERTY, FIXTURES, AFTER-ACQUIRED PROPERTY, PROCEEDS, FUTURE ADVANCES AND FUTURE OBLIGATIONS.  
NOTICE - THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF UP TO \$100,000,000.00.  
INDEBTEDNESS SECURED HEREUNDER, INCLUDING FUTURE INDEBTEDNESS, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER MORTGAGES AND LIENS FILED OR RECORDED SUBSEQUENT HERETO.  
THIS INSTRUMENT WAS PREPARED BY TERENCE M. BRADY, ASSISTANT GENERAL COUNSEL, USDA, AS ATTORNEY FOR UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICE, WASHINGTON, D.C. 20250-1500.

  
MORTGAGOR'S ORGANIZATIONAL IDENTIFICATION NUMBER IS 0017666.

No. 15

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RESTATED MORTGAGE AND SECURITY AGREEMENT, dated as of September 1, 2004 (hereinafter sometimes called this "Mortgage"), is made by and among FLEMING-MASON ENERGY COOPERATIVE, INC. (hereinafter called the "Mortgagor"), a corporation existing under the laws of the Commonwealth of Kentucky, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the "Government") and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION (hereinafter called "CFC"), a corporation existing under the laws of the District of Columbia, and is intended to confer rights and benefits on both the Government and CFC, as well as any and all other lenders pursuant to Article II of this Mortgage that enter into a supplemental mortgage in accordance with Section 2.04 of Article II hereof (the Government and CFC and any such other lenders being herein sometimes collectively referred to as the "Mortgagees").

### RECITALS

WHEREAS, the Mortgagor, the Government and CFC are parties to that certain Restated Mortgage and Security Agreement dated as of November 1, 1999, as supplemented, amended or restated (the "Original Mortgage" identified in Schedule "A" of this Mortgage) originally entered into among the Mortgagor, the Government acting by and through the Administrator of the Rural Electrification Administration, the predecessor of RUS, and CFC;

WHEREAS, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor from time to time in one or more series, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same;

WHEREAS, the Mortgagor desires to enter into this Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity;

WHEREAS, this Mortgage restates and consolidates the Original Mortgage while preserving the priority of the Lien under the Original Mortgage securing the payment of Mortgagor's outstanding obligations secured under the Original Mortgage, which indebtedness is described more particularly by listing the Original Notes in Schedule "A" hereto; and

WHEREAS, all acts necessary to make this Mortgage a valid and binding legal instrument for the security of such notes and obligations, subject to the terms of this Mortgage, have been in all respects duly authorized;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH: That to secure the payment of the principal of (and premium, if any) and interest on the Original Notes and all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained, the purchase or guarantee of Notes by the guarantors or holders thereof, and other good and valuable consideration, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge, and grant a continuing security interest and lien in for the purposes hereinafter expressed, unto the Mortgagees all property, assets, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein OR ANY OTHER KIND OR NATURE, except any Excepted Property, now owned or hereafter acquired or arising by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

### GRANTING CLAUSE FIRST

- A. all of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule;
- B. all of the Mortgagor's interest in fixtures, easements, permits, licenses and rights-of-way comprising real

property, and all other interests in real property, comprising any portion of the Utility System (as herein defined) located in the Counties listed in Schedule "B" hereto;

- C. all right, title and interest of the Mortgagor in and to those contracts of the Mortgagor
- (i) relating to the ownership, operation or maintenance of any generation, transmission or distribution facility owned, whether solely or jointly, by the Mortgagor,
  - (ii) for the purchase of electric power and energy by the Mortgagor and having an original term in excess of 3 years,
  - (iii) for the sale of electric power and energy by the Mortgagor and having an original term in excess of 3 years, and
  - (iv) for the transmission of electric power and energy by or on behalf of the Mortgagor and having an original term in excess of 3 years, including in respect of any of the foregoing, any amendments, supplements and replacements thereto;
- D. all the property, rights, privileges, allowances and franchises particularly described in the annexed Schedule "B" are hereby made a part of, and deemed to be described in, this Granting Clause as fully as if set forth in this Granting Clause at length; and

ALSO ALL OTHER PROPERTY, real estate, lands, easements, servitudes, licenses, permits, allowances, consents, franchises, privileges, rights of way and other rights in or relating to real estate or the occupancy of the same; all power sites, storage rights, water rights, water locations, water appropriations, ditches, flumes, reservoirs, reservoir sites, canals, raceways, waterways, dams, dam sites, aqueducts, and all other rights or means for appropriating, conveying, storing and supplying water; all rights of way and roads; all plants for the generation of electric and other forms of energy (whether now known or hereafter developed) by steam, water, sunlight, chemical processes and/or (without limitation) all other sources of power (whether now known or hereafter developed); all power houses, gas plants, street lighting systems, standards and other equipment incidental thereto; all telephone, radio, television and other communications, image and data transmission systems, air conditioning systems and equipment incidental thereto, water wheels, waterworks, water systems, steam and hot water plants, substations, lines, service and supply systems, bridges, culverts, tracks, ice or refrigeration plants and equipment, offices, buildings and other structures and the equipment thereto, all machinery, engines, boilers, dynamos, turbines, electric, gas and other machines, prime movers, regulators, meters, transformers, generators (including, but not limited to, engine-driven generators and turbo generator units), motors, electrical, gas and mechanical appliances, conduits, cables, water, steam, gas or other pipes, gas mains and pipes, service pipes, fittings, valves and connections, pole and transmission lines, towers, overhead conductors and devices, underground conduits, underground conductors and devices, wires, cables, tools, implements, apparatus, storage battery equipment, and all other equipment, fixtures and personalty; all municipal and other franchises, consents, certificates or permits; all emissions allowances; all lines for the transmission and distribution of electric current and other forms of energy, gas, steam, water or communications, images and data for any purpose including towers, poles, wires, cables, pipes, conduits, ducts and all apparatus for use in connection therewith, and (except as hereinbefore or hereinafter expressly excepted) all the right, title and interest of the Mortgagor in and to all other property of any kind or nature appertaining to and/or used and/or occupied and/or employed in connection with any property hereinbefore described, but in all circumstances excluding Excepted Property;

#### GRANTING CLAUSE SECOND

With the exception of Excepted Property, all right, title and interest of the Mortgagor in, to and under all personal property and fixtures of every kind and nature including without limitation all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts, chattel paper, electronic chattel paper, deposit accounts (including, but not limited to, money held in a trust account

pursuant hereto or to a loan agreement), letter-of-credit rights, investment property (including certificated and uncertificated securities, security entitlements and securities accounts), software, general intangibles (including, but not limited to, payment intangibles), supporting obligations, any other contract rights or rights to the payment of money, insurance claims, and proceeds (as such terms are presently or hereinafter defined in the applicable UCC; provided, however that the term "instrument" shall be such term as defined in Article 9 of the applicable UCC rather than Article 3);

#### **GRANTING CLAUSE THIRD**

With the exception of Excepted Property, all right, title and interest of the Mortgagor in, to and under any and all agreements, leases or contracts heretofore or hereafter executed by and between the Mortgagor and any person, firm or corporation relating to the Mortgaged Property (including contracts for the lease, occupancy or sale of the Mortgaged Property, or any portion thereof);

#### **GRANTING CLAUSE FOURTH**

With the exception of Excepted Property, all right title and interest of the Mortgagor in, to and under any and all books, records and correspondence relating to the Mortgaged Property, including, but not limited to all records, ledgers, leases and computer and automatic machinery software and programs, including without limitation, programs, databases, disc or tape files and automatic machinery print outs, runs and other computer prepared information indicating, summarizing, evidencing or otherwise necessary or helpful in the collection of or realization on the Mortgaged Property;

#### **GRANTING CLAUSE FIFTH**

All other property, real, personal or mixed, of whatever kind and description and wheresoever situated, including without limitation goods, accounts, money held in a trust account pursuant hereto or to a loan agreement, and general intangibles now owned or which may be hereafter acquired by the Mortgagor, but excluding Excepted Property, now owned or which may be hereafter acquired by the Mortgagor, it being the intention hereof that all property, rights, privileges, allowances and franchises now owned by the Mortgagor or acquired by the Mortgagor after the date hereof (other than Excepted Property) shall be as fully embraced within and subjected to the lien hereof as if such property were specifically described herein;

#### **GRANTING CLAUSE SIXTH**

Also any Excepted Property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof by the Mortgagor or by anyone in its behalf; and any Mortgagee is hereby authorized to receive the same at any time as additional security hereunder for the benefit of all the Mortgagees. Such subjection to the lien hereof of any Excepted Property as additional security may be made subject to any reservations, limitations or conditions which shall be set forth in a written instrument executed by the Mortgagor or the person so acting in its behalf or by such Mortgagee respecting the use and disposition of such property or the proceeds thereof;

#### **GRANTING CLAUSE SEVENTH**

Together with (subject to the rights of the Mortgagor set forth in Section 5.01) all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders and all the tolls, earnings, rents, issues, profits, revenues and other income, products and proceeds of the property subjected or required to be subjected to the lien of this Mortgage, and all other property of any nature appertaining to any of the plants, systems, business or operations of the Mortgagor, whether or not affixed to the realty, used in the operation of any of the premises or plants or the Utility System, or otherwise, which are now owned or acquired by the Mortgagor, and all the estate, right, title and interest of every nature whatsoever, at law as well as in equity, of the Mortgagor in and to the same and every part thereof (other than Excepted Property with respect to any of the foregoing).

### EXCEPTED PROPERTY

There is, however, expressly excepted and excluded from the lien and operation of this Mortgage the following described property of the Mortgagor, now owned or hereafter acquired (herein sometimes referred to as "Excepted Property"):

- A. all shares of stock, securities or other interests of the Mortgagor in the National Rural Utilities Cooperative Finance Corporation and CoBank, ACB and its predecessors in interest other than any stock, securities or other interests that are specifically described in Subclause D of Granting Clause First as being subjected to the lien hereof;
- B. all rolling stock (except mobile substations), automobiles, buses, trucks, truck cranes, tractors, trailers and similar vehicles and movable equipment which are titled and/or registered in any state of the United States of America, and all tools, accessories and supplies used in connection with any of the foregoing;
- C. all vessels, boats, ships, barges and other marine equipment, all airplanes, airplane engines and other flight equipment, and all tools, accessories and supplies used in connection with any of the foregoing;
- D. all office furniture, equipment and supplies that is not data processing, accounting or other computer equipment or software;
- E. all leasehold interests for office purposes;
- F. all leasehold interests of the Mortgagor under leases for an original term (including any period for which the Mortgagor shall have a right of renewal) of less than five (5) years;
- G. all timber and crops (both growing and harvested) and all coal, ore, gas, oil and other minerals (both in place or severed);
- H. the last day of the term of each leasehold estate (oral or written) and any agreement therefor, now or hereafter enjoyed by the Mortgagor and whether falling within a general or specific description of property herein: PROVIDED, HOWEVER, that the Mortgagor covenants and agrees that it will hold each such last day in trust for the use and benefit of all of the Mortgagees and Noteholders and that it will dispose of each such last day from time to time in accordance with such written order as the Mortgagee in its discretion may give;
- I. all permits, licenses, franchises, contracts, agreements, contract rights and other rights not specifically subjected or required to be subjected to the lien hereof by the express provisions of this Mortgage, whether now owned or hereafter acquired by the Mortgagor, which by their terms or by reason of applicable law would become void or voidable if mortgaged or pledged hereunder by the Mortgagor, or which cannot be granted, conveyed, mortgaged, transferred or assigned by this Mortgage without the consent of other parties whose consent has been withheld, or without subjecting any Mortgagee to a liability not otherwise contemplated by the provisions of this Mortgage, or which otherwise may not be, hereby lawfully and effectively granted, conveyed, mortgaged, transferred and assigned by the Mortgagor; and
- J. the property identified in Schedule "C" hereto.

PROVIDED, HOWEVER, that (i) if, upon the occurrence of an Event of Default, any Mortgagee, or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Mortgaged Property, all the Excepted Property described or referred to in the foregoing Subdivisions A through H, inclusive, then owned or thereafter acquired by the Mortgagor shall immediately, and, in the case of any Excepted Property described or referred to in Subdivisions I through J, inclusive, upon demand of any Mortgagee or such receiver, become subject to the lien hereof to the extent permitted by law, and any Mortgagee or such receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and (ii)



whenever all Events of Default shall have been cured and the possession of all or substantially all of the Mortgaged Property shall have been restored to the Mortgagor, such Excepted Property shall again be excepted and excluded from the lien hereof to the extent and otherwise as hereinabove set forth.

However, pursuant to Granting Clause Sixth, the Mortgagor may subject to the lien of this Mortgage any Excepted Property, whereupon the same shall cease to be Excepted Property;

## HABENDUM

TO HAVE AND TO HOLD all said property, rights, privileges and franchises of every kind and description, real, personal or mixed, hereby and hereafter (by supplemental mortgage or otherwise) granted, bargained, sold, aliened, remised, released, conveyed, assigned, transferred, mortgaged, encumbered, hypothecated, pledged, set over, confirmed, or subjected to a continuing security interest and lien as aforesaid, together with all the appurtenances thereto appertaining (said properties, rights, privileges and franchises, including any cash and securities hereafter deposited with any Mortgagee (other than any such cash, if any, which is specifically stated herein not to be deemed part of the Mortgaged Property), being herein collectively called the "Mortgaged Property") unto the Mortgagees and the respective assigns of the Mortgagees forever, to secure equally and ratably the payment of the principal of (and premium, if any) and interest on the Notes, according to their terms, without preference, priority or distinction as to interest or principal (except as otherwise specifically provided herein) or as to lien or otherwise of any Note over any other Note by reason of the priority in time of the execution, delivery or maturity thereof or of the assignment or negotiation thereof, or otherwise, and to secure the due performance of all of the covenants, agreements and provisions herein and in the Loan Agreements contained, and for the uses and purposes and upon the terms, conditions, provisos and agreements hereinafter expressed and declared.

SUBJECT, HOWEVER, to Permitted Encumbrances (as defined in Section 1.01).

## ARTICLE I

### DEFINITIONS & OTHER PROVISIONS OF GENERAL APPLICATION

#### Section 1.01. Definitions.

In addition to the terms defined elsewhere in this Mortgage, the terms defined in this Article I shall have the meanings specified herein and under the UCC, unless the context clearly requires otherwise. The terms defined herein include the plural as well as the singular and the singular as well as the plural.

**Accounting Requirements** shall mean the requirements of any system of accounts prescribed by RUS so long as the Government is the holder, insurer or guarantor of any Notes, or, in the absence thereof, the requirements of generally accepted accounting principles applicable to businesses similar to that of the Mortgagor.

**Additional Notes** shall mean any Government Notes issued by the Mortgagor to the Government or guaranteed or insured as to payment by the Government and any Notes issued by the Mortgagor to any other lender, in either case pursuant to Article II of this Mortgage, including any refunding, renewal, or substitute Notes or Government Notes which may from time to time be executed and delivered by the Mortgagor pursuant to the terms of Article II.

**Board** shall mean either the Board of Directors or the Board of Trustees, as the case may be, of the Mortgagor.

**Business Day** shall mean any day that the Government is open for business.

**Debt Service Coverage Ratio ("DSC")** shall mean the ratio determined as follows: for each calendar year add

- (i) Patronage Capital or Margins of the Mortgagor,
- (ii) Interest Expense on Total Long Term Debt of the Mortgagor (as computed in accordance with the principles set forth in the definition of TIER) and
- (iii) Depreciation and Amortization Expense of the Mortgagor, and divide the total so obtained by an amount equal to the sum of all payments of principal and interest required to be made on account of Total Long-Term Debt during such calendar year increasing said sum by any addition to interest expense on account of Restricted Rentals as computed with respect to the Times Interest Earned Ratio herein.

**Depreciation and Amortization Expense** shall mean an amount constituting the depreciation and amortization of the Mortgagor as computed pursuant to Accounting Requirements.

**Electric System** shall mean, and shall be broadly construed to encompass and include, all of the Mortgagor's interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear or other fuel of any kind or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Mortgagor's generating plants, now existing or hereafter acquired by lease, contract, purchase or otherwise or constructed by the Mortgagor, including any interest or participation of the Mortgagor in any such facilities or any rights to the output or capacity thereof, together with all additions, betterments, extensions and improvements to such Electric System or any part thereof hereafter made and together with all lands, easements and rights-of-way of the Mortgagor and all other works, property or structures of the Mortgagor and contract rights and other tangible and intangible assets of the Mortgagor used or useful in connection with or related to such Electric System, including without limitation a contract right or other contractual arrangement referred to in Granting Clause First, Subclause C, but excluding any Excepted Property.

**Environmental Law and Environmental Laws** shall mean all federal, state, and local laws, regulations, and requirements related to protection of human health or the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.), and any amendments and implementing regulations of such acts.

**Equity** shall mean the total margins and equities computed pursuant to Accounting Requirements, but excluding any Regulatory Created Assets.

**Event of Default** shall have the meaning specified in Section 4.01 hereof.

**Excepted Property** shall have the meaning stated in the Granting Clauses.

**Government** shall mean the United States of America acting by and through the Administrator of RUS or REA and shall include its successors and assigns.

**Government Notes** shall mean the Original Notes, and any Additional Notes, issued by the Mortgagor to the Government, or guaranteed or insured as to payment by the Government.

**Independent** shall mean when used with respect to any specified person or entity means such a person or entity who (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in the Mortgagor or in any affiliate of the Mortgagor and (3) is not connected with the Mortgagor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

**Interest Expense** shall mean an amount constituting the interest expense of the Mortgagor as computed pursuant to Accounting Requirements.

**Lien** shall mean any statutory or common law or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set off, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the UCC.

**Loan Agreement** shall mean any agreement executed by and between the Mortgagor and the Government or any other lender in connection with the execution and delivery of any Notes secured hereby.

**Long-Term Debt** shall mean any amount included in Total Long-Term Debt pursuant to Accounting Requirements.

**Long-Term Lease** shall mean a lease having an unexpired term (taking into account terms of renewal at the option of the lessor, whether or not such lease has previously been renewed) of more than 12 months.

**Margins** shall mean the sum of amounts recorded as operating margins and non-operating margins as computed in accordance with Accounting Requirements.

**Maximum Debt Limit**, if any, shall mean the amount more particularly described in Schedule "A" hereof.

**Mortgage** shall mean this Restated Mortgage and Security Agreement, including any amendments or supplements thereto from time to time.

**Mortgaged Property** shall have the meaning specified as stated in the Habendum to the Granting Clauses.

**Mortgagee or Mortgagees** shall mean the parties identified in the first paragraph of this instrument as the Mortgagees, as well as any and all other entities that become a Mortgagee pursuant to Article II of this Mortgage by entering into a supplemental mortgage in accordance with Section 2.04 of Article II hereof. The term also includes in all cases the successors and assigns of any Mortgagee.

**Net Utility Plant** shall mean the amount constituting the total utility plant of the Mortgagor less depreciation computed in accordance with Accounting Requirements.

**Note or Notes** shall mean one or more of the Government Notes, and any other Notes which may, from time to time, be secured under this Mortgage.

**Noteholder or Noteholders** shall mean one or more of the holders of Notes secured by this Mortgage; PROVIDED, however, that in the case of any Notes that have been guaranteed or insured as to payment by the Government, as to such Notes, Noteholder or Noteholders shall mean the Government, exclusively, regardless of whether such Notes are in the possession of the

Government.

**Original Mortgage** means the instrument(s) identified as such in Schedule "A" hereof.

**Original Notes** shall mean the Notes listed on Schedule "A" hereto as such, such Notes being instruments evidencing outstanding indebtedness of the Mortgagor (i) to the Government (including indebtedness which has been issued by the Mortgagor to a third party and guaranteed or insured as to payment by the Government) and (ii) to each other Mortgagee on the date of this Mortgage.

**Outstanding Notes** shall mean as of the date of determination, (i) all Notes theretofore issued, executed and delivered to any Mortgagee and (ii) any Notes guaranteed or insured as to payment by the Government, except (a) Notes referred to in clause (i) or (ii) for which the principal and interest have been fully paid and which have been canceled by the Noteholder, and (b) Notes the payment for which has been provided for pursuant to Section 5.03.

**Permitted Debt** shall have the meaning specified in Section 3.08.

**Permitted Encumbrances** shall mean:

- (1) as to the property specifically described in Granting Clause First, the restrictions, exceptions, reservations, conditions, limitations, interests and other matters which are set forth or referred to in such descriptions and each of which fits one or more of the clauses of this definition, PROVIDED, such matters do not in the aggregate materially detract from the value of the Mortgaged Property taken as a whole and do not materially impair the use of such property for the purposes for which it is held by the Mortgagor;
- (2) liens for taxes, assessments and other governmental charges which are not delinquent;
- (3) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;
- (4) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business for charges which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;
- (5) liens in respect of judgments or awards with respect to which the Mortgagor shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Mortgagor shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;
- (6) easements and similar rights granted by the Mortgagor over or in respect of any Mortgaged Property, PROVIDED that in the opinion of the Board or a duly authorized officer of the Mortgagor such grant will not impair the usefulness of such property in the conduct of the Mortgagor's business and will not be prejudicial to the interests of the Mortgagees, and similar rights granted by any predecessor in title of the Mortgagor;
- (7) easements, leases, reservations or other rights of others in any property of the Mortgagor for streets, roads, bridges, pipes, pipe lines, railroads, electric transmission and distribution lines, telegraph and telephone lines, the removal of oil, gas, coal or other minerals and other similar

purposes, flood rights, river control and development rights, sewage and drainage rights, restrictions against pollution and zoning laws and minor defects and irregularities in the record evidence of title, PROVIDED that such easements, leases, reservations, rights, restrictions, laws, defects and irregularities do not materially affect the marketability of title to such property and do not in the aggregate materially impair the use of the Mortgaged Property taken as a whole for the purposes for which it is held by the Mortgagor;

- (8) liens upon lands over which easements or rights of way are acquired by the Mortgagor for any of the purposes specified in Clause (7) of this definition, securing indebtedness neither created, assumed nor guaranteed by the Mortgagor nor on account of which it customarily pays interest, which liens do not materially impair the use of such easements or rights of way for the purposes for which they are held by the Mortgagor;
- (9) leases existing at the date of this instrument affecting property owned by the Mortgagor at said date which have been previously disclosed to the Mortgagees in writing and leases for a term of not more than two years (including any extensions or renewals) affecting property acquired by the Mortgagor after said date;
- (10) terminable or short term leases or permits for occupancy, which leases or permits expressly grant to the Mortgagor the right to terminate them at any time on not more than six months' notice and which occupancy does not interfere with the operation of the business of the Mortgagor;
- (11) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;
- (12) liens or privileges of any employees of the Mortgagor for salary or wages earned but not yet payable;
- (13) the burdens of any law or governmental regulation or permit requiring the Mortgagor to maintain certain facilities or perform certain acts as a condition of its occupancy of or interference with any public lands or any river or stream or navigable waters;
- (14) any irregularities in or deficiencies of title to any rights-of-way for pipe lines, telephone lines, telegraph lines, power lines or appurtenances thereto, or other improvements thereon, and to any real estate used or to be used primarily for right-of-way purposes, PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor shall have obtained from the apparent owner of the lands or estates therein covered by any such right-of-way a sufficient right, by the terms of the instrument granting such right-of-way, to the use thereof for the construction, operation or maintenance of the lines, appurtenances or improvements for which the same are used or are to be used, or PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor has power under eminent domain, or similar statutes, to remove such irregularities or deficiencies;
- (15) rights reserved to, or vested in, any municipality or governmental or other public authority to control or regulate any property of the Mortgagor, or to use such property in any manner, which rights do not materially impair the use of such property, for the purposes for which it is held by the Mortgagor;
- (16) any obligations or duties, affecting the property of the Mortgagor, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;
- (17) any right which any municipal or governmental authority may have by virtue of any franchise,

license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Mortgagor upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Mortgagor; PROVIDED, HOWEVER, that nothing in this clause 17 is intended to waive any claim or rights that the Government may otherwise have under Federal laws;

- (18) as to properties of other operating electric companies acquired after the date of this Mortgage by the Mortgagor as permitted by Section 3.10 hereof, reservations and other matters as to which such properties may be subject as more fully set forth in such Section;
- (19) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Mortgagor to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause 19 is intended to waive any claim or rights that the Government may otherwise have under Federal laws;
- (20) liens arising out of any defeased mortgage or indenture of the Mortgagor;
- (21) the undivided interest of other owners, and liens on such undivided interests, in property owned jointly with the Mortgagor as well as the rights of such owners to such property pursuant to the ownership contracts;
- (22) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or the performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;
- (23) purchase money mortgages permitted by Section 3.08;
- (24) the Original Mortgage;
- (25) this Mortgage.

**Property Additions** shall mean Utility System property as to which the Mortgagor shall provide Title Evidence and which shall be (or, if retired, shall have been) subject to the lien of this Mortgage, which shall be properly chargeable to the Mortgagor's utility plant accounts under Accounting Requirements (including property constructed or acquired to replace retired property credited to such accounts) and which shall be:

- (1) acquired (including acquisition by merger, consolidation, conveyance or transfer) or constructed by the Mortgagor after the date hereof, including property in the process of construction, insofar as not reflected on the books of the Mortgagor with respect to periods on or prior to the date hereof, and
- (2) used or useful in the utility business of the Mortgagor conducted with the properties described in the Granting Clauses of this Mortgage, even though separate from and not physically connected with such properties.

"Property Additions" shall also include:

- (3) easements and rights-of-way that are useful for the conduct of the utility business of the Mortgagor, and
- (4) property located or constructed on, over or under public highways, rivers or other public property if the Mortgagor has the lawful right under permits, licenses or franchises granted by a governmental body having jurisdiction in the premises or by the law of the State in which such property is located to maintain and operate such property for an unlimited, indeterminate or indefinite period or for the period, if any, specified in such permit, license or franchise or law and to remove such property at the expiration of the period covered by such permit, license or franchise or law, or if the terms of such permit, license, franchise or law require any public authority having the right to take over such property to pay fair consideration therefor.

"Property Additions" shall NOT include:

- (a) good will, going concern value, contracts, agreements, franchises, licenses or permits, whether acquired as such, separate and distinct from the property operated in connection therewith, or acquired as an incident thereto, or
- (b) any shares of stock or indebtedness or certificates or evidences of interest therein or other securities, or
- (c) any plant or system or other property in which the Mortgagor shall acquire only a leasehold interest, or any betterments, extensions, improvements or additions (other than movable physical personal property which the Mortgagor has the right to remove), of, upon or to any plant or system or other property in which the Mortgagor shall own only a leasehold interest unless (i) the term of the leasehold interest in the property to which such betterment, extension, improvement or addition relates shall extend for at least 75% of the useful life of such betterment, extension, improvement or addition and (ii) the lessor shall have agreed to give the Mortgagee reasonable notice and opportunity to cure any default by the Mortgagor under such lease and not to disturb any Mortgagee's possession of such leasehold estate in the event any Mortgagee succeeds to the Mortgagor's interest in such lease upon any Mortgagee's exercise of any remedies under this Mortgage so long as there is no default in the performance of the tenant's covenants contained therein, or
- (d) any property of the Mortgagor subject to the Permitted Encumbrance described in clause (23) of the definition thereof.

**Prudent Utility Practice** shall mean any of the practices, methods and acts which, in the exercise of reasonable judgment, in light of the facts, including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result consistent with cost-effectiveness, reliability, safety and expedition. It is recognized that Prudent Utility Practice is not intended to be limited to optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with cost-effectiveness, reliability, safety and expedition.

**REA** shall mean the Rural Electrification Administration of the United States Department of

Agriculture, the predecessor of RUS.

**Regulatory Created Assets** shall mean the sum of any amounts properly recordable as unrecovered plant and regulatory study costs or as other regulatory assets, pursuant to Accounting Requirements.

**Restricted Rentals** shall mean all rentals required to be paid under finance leases and charged to income, exclusive of any amounts paid under any such lease (whether or not designated therein as rental or additional rental) for maintenance or repairs, insurance, taxes, assessments, water rates or similar charges. For the purpose of this definition the term "finance lease" shall mean any lease having a rental term (including the term for which such lease may be renewed or extended at the option of the lessee) in excess of 3 years and covering property having an initial cost in excess of \$250,000 other than aircraft, ships, barges, automobiles, trucks, trailers, rolling stock and vehicles; office, garage and warehouse space; office equipment and computers.

**RUS** shall mean the Rural Utilities Service, an agency of the United States Department of Agriculture, or if at any time after the execution of this Mortgage RUS is not existing and performing the duties of administering a program of rural electrification as currently assigned to it, then the entity performing such duties at such time.

**Security Interest** shall mean any assignment, transfer, mortgage, hypothecation or pledge.

**Subordinated Indebtedness** shall mean secured indebtedness of the Mortgagor, payment of which shall be subordinated to the prior payment of the Notes in accordance with the provisions of Section 3.08 hereof by subordination agreement in form and substance satisfactory to each Mortgagee which approval will not be unreasonably withheld.

**Supplemental Mortgage** shall mean an instrument of the type described in Section 2.04.

**Times Interest Earned Ratio ("TIER")** shall mean the ratio determined as follows: for each calendar year: add (i) patronage capital or margins of the Mortgagor and (ii) Interest Expense on Total Long-Term Debt of the Mortgagor and divide the total so obtained by Interest Expense on Total Long-Term Debt of the Mortgagor, provided, however, that in computing Interest Expense on Total Long-Term Debt, there shall be added, to the extent not otherwise included, an amount equal to 33-1/3% of the excess of Restricted Rentals paid by the Mortgagor over 2% of the Mortgagor's Equity.

**Title Evidence** shall mean with respect to any real property:

- (1) an opinion of counsel to the effect that the Mortgagor has title, whether fairly deducible of record or based upon prescriptive rights (or, as to personal property, based on such evidence as counsel shall determine to be sufficient), as in the opinion of counsel is satisfactory for the use thereof in connection with the operations of the Mortgagor, and counsel in giving such opinion may disregard any irregularity or deficiency in the record evidence of title which, in the opinion of such counsel, can be cured by proceedings within the power of the Mortgagor or does not substantially impair the usefulness of such property for the purpose of the Mortgagor and may base such opinion upon counsel's own investigation or upon affidavits, certificates, abstracts of title, statements or investigations made by persons in whom such counsel has confidence or upon examination of a certificate or guaranty of title or policy of title insurance in which counsel has confidence; or



- (2) a mortgagee's policy of title insurance in the amount of the cost to the Mortgagor of the land included in Property Additions, as such cost is determined by the Mortgagor in accordance with the Accounting Requirements, issued in favor of the Mortgagees by an entity authorized to insure title in the states where the subject property is located, showing the Mortgagor as the owner of the subject property and insuring the lien of this Mortgage; and with respect to any personal property a certificate of the general manager or other duly authorized officer that the Mortgagor lawfully owns and is possessed of such property.

**Total Assets** shall mean an amount constituting total assets of the Mortgagor as computed pursuant to Accounting Requirements, but excluding any Regulatory Created Assets.

**Total Long-Term Debt** shall mean the total outstanding long-term debt of the Mortgagor as computed pursuant to Accounting Requirements.

**Total Utility Plant** shall mean the total of all property properly recorded in the utility plant accounts of the Mortgagor, pursuant to Accounting Requirements.

**Uniform Commercial Code or UCC** shall mean the UCC of the state referred to in Section 1.04, and if Mortgaged Property is located in a state other than that state, then as to such Mortgaged Property UCC refers to the UCC in effect in the state where such property is located.

**Utility System** shall mean the Electric System and all of the Mortgagor's interest in community infrastructure located substantially within its electric service territory, namely water and waste systems, solid waste disposal facilities, telecommunications and other electronic communications systems, and natural gas distribution systems.

**Section 1.02. General Rules of Construction:**

- a. Accounting terms not defined in Section 1.01 are used in this Mortgage in their ordinary sense and any computations relating to such terms shall be computed in accordance with the Accounting Requirements.
- b. Any reference to "directors" or "board of directors" shall be deemed to mean "trustees" or "board of trustees," as the case may be.

**Section 1.03. Special Rules of Construction if RUS is a Mortgagee:**

During any period that RUS is a Mortgagee, the following additional provisions shall apply:

- a. In the case of any Notes that have been guaranteed or insured as to payment by RUS, as to such Notes RUS shall be considered to be the Noteholder, exclusively, regardless of whether such Notes are in the possession of RUS.
- b. In the case of any prior approval rights conferred upon RUS by Federal statutes, including (without limitation) Section 7 of the Rural Electrification Act of 1936, as amended, with respect to the sale or disposition of property, rights, or franchises of the Mortgagor, all such statutory rights are reserved except to the extent that they are expressly modified or waived in this Mortgage.

**Section 1.04. Governing Law:**

This Mortgage shall be construed in and governed by Federal law to the extent applicable, and otherwise by the laws of the state listed on Schedule "A" hereto.

**Section 1.05 Notices:**

All demands, notices, reports, approvals, designations, or directions required or permitted to be given hereunder shall be in writing and shall be deemed to be properly given if sent by registered or certified mail, postage prepaid, or delivered by hand, or sent by facsimile transmission, receipt confirmed, addressed to the proper party or parties at the addresses listed on Schedule "A" hereto, and as to any other person, firm, corporation or governmental body or agency having an interest herein by reason of being a Mortgagee, at the last address designated by such person, firm, corporation, governmental body or agency to the Mortgagor and the other Mortgagees. Any such party may from time to time designate to each other a new address to which demands, notices, reports, approvals, designations or directions may be addressed, and from and after any such designation the address designated shall be deemed to be the address of such party in lieu of the address given above.

**ARTICLE II**

**ADDITIONAL NOTES**

**Section 2.01. Additional Notes:**

- (a) Without the prior consent of any Mortgagee or any Noteholder, the Mortgagor may issue Additional Notes to the Government or to another lender or lenders for the purpose of acquiring, procuring or constructing new or replacement Eligible Property Additions and such Additional Notes will thereupon be secured equally and ratably with the Notes if each of the following requirements are satisfied:
- (1) As evidenced by a certificate of an Independent certified public accountant sent to each Mortgagee on or before the first advance of proceeds from such Additional Notes:
    - (i) The Mortgagor shall have achieved for each of the two calendar years immediately preceding the issuance of such Additional Notes, a TIER of not less than 1.25 and a DSC of not less than 1.25;
    - (ii) After taking into account the effect of such Additional Notes on the Total Long Term Debt of the Mortgagor, the ratio of the Mortgagor's Net Utility Plant to its Total Long Term Debt shall be greater than or equal to 1.0 on a pro forma basis;
    - (iii) After taking into account the effect of such Additional Notes on the Total Assets of such Mortgagor, the Mortgagor shall have Equity greater than or equal to 27 percent of Total Assets on a pro forma basis; and
    - (iv) The sum of the aggregate principal amount of such Additional Notes (if any) that are not related to the Electric System if added to the

aggregate outstanding principal amount of all the existing Notes (if any) that are not related to the Electric System will not exceed 30% of the Mortgagor's Equity on a pro forma basis.

- (2) No Event of Default has occurred and is continuing hereunder, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing.
  - (3) The Eligible Property Additions being constructed, acquired, procured or replaced are part of the Mortgagor's Utility System.
  - (4) The Mortgagor's general manager or other duly authorized officer shall send to each of the Mortgagees a certificate in substantially the form attached hereto as Exhibit A on or before the date of the first advance of proceeds from such Additional Notes.
- (b) For purposes of this section:
- (1) "Eligible Property Additions" shall mean Property Additions acquired or whose construction was completed not more than 5 years prior to the issuance of the Additional Notes and Property Additions acquired or whose construction is started and/or completed not more than 4 years after issuance of the Additional Notes, but shall exclude any Property Additions financed by any other debt secured under the Mortgage at the time additional Notes are issued;
  - (2) Notes are considered to be "issued" on, and the date of "issuance" shall be, the date on which they are executed by the Mortgagor; and
  - (3) For purposes of calculating the pro forma ratios in subparagraphs (a)(1)(ii) and (iii), the values for Total Long Term Debt and Total Assets before debt issuance and the values for Equity and Net Utility Plant shall be the most recently available end-of-month figures preceding the issuance of the Additional Notes, but in no case for a month ending more than 180 days preceding such issuance.

**Section 2.02. Refunding or Refinancing Notes:**

The Mortgagor shall also have the right without the consent of any Mortgagee or any Noteholder to issue Additional Notes for the purpose of refunding or refinancing any Notes so long as the total amount of outstanding indebtedness evidenced by such Additional Note or Notes is not greater than 105% of the then outstanding principal balance of the Note or Notes being refunded or refinanced. PROVIDED, HOWEVER, that the Mortgagor may not exercise its rights under this Section if an Event of Default has occurred and is continuing, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing. On or before the first advance of proceeds from Additional Notes issued under this section, the Mortgagor shall notify each Mortgagee of the refunding or refinancing. Additional Notes issued pursuant to this Section 2.02 will thereupon be secured equally and ratably with the Notes.

**Section 2.03. Other Additional Notes:**

With the prior written consent of each Mortgagee, the Mortgagor may issue Additional Notes to the Government or any lender or lenders, which Notes will thereupon be secured equally and ratably with Notes without regard to whether any of the requirements of Sections 2.01 or 2.02 are satisfied.

**Section 2.04. Additional Lenders Entitled to the Benefit of This Mortgage:**

Without the prior consent of any Mortgagee or any Noteholder, each new lender designated as a payee in any Additional Notes issued by the Mortgagor pursuant to Section 2.01 or 2.02 of this Mortgage shall become a Mortgagee hereunder upon the execution and delivery by the Mortgagor and such lender of a supplemental mortgage hereto designating such lender as a Mortgagee hereunder. Such new lender shall be entitled to the benefits of this Mortgage without further act or deed. Each Mortgagee and each person or entity that becomes a lender pursuant to Section 2.01 or 2.02 of this Mortgage shall, upon the request of the Mortgagor to do so, execute and deliver a supplement to this Mortgage in substantially the form set forth in Section 2.05 to evidence the addition of such new lender as an additional Mortgagee entitled to the benefits of this Mortgage. The failure of any existing Mortgagee to enter into such supplemental mortgage shall not deprive the new lender of its rights under this Mortgage; provided that such additional indebtedness otherwise conforms in all respects with the requirements for issuing Additional Notes under this Mortgage.

**Section 2.05. Form of Supplemental Mortgage:**

- (a) The form of supplemental mortgage referred to in Section 2.04 is attached to this Mortgage as Exhibit B and hereby incorporated by reference as if set forth in full at this point.
- (b) In the event that the Mortgagor subsequently issues Additional Notes pursuant to Sections 2.01 or 2.02 to any existing Mortgagee and that Mortgagee desires further assurance that such Additional Notes will be secured by the lien of the Mortgage, an instrument substantially in the form of the supplemental mortgage attached as Exhibit B may be used.
- (c) In the event that the Mortgagor issues Additional Notes pursuant to Section 2.03 to either an existing Mortgagee or a new lender, in either case with the prior written consent of each Mortgagee, then an instrument substantially in the form of the supplemental mortgage attached as Exhibit B may also be used.

**ARTICLE III**

**PARTICULAR COVENANTS OF THE MORTGAGOR**

**Section 3.01. Payment of Debt Service on Notes:**

The Mortgagor will duly and punctually pay the principal, premium, if any, and interest on the Notes in accordance with the terms of the Notes, the Loan Agreements, this Mortgage and any Supplemental Mortgage authorizing such Notes.

**Section 3.02. Warranty of Title:**

- (a) At the time of the execution and delivery of this instrument, the Mortgagor has good and marketable title in fee simple to the real property specifically described in Granting Clause First as owned in fee and good and marketable title to the interests in real property specifically described in Granting Clause First, subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to grant, bargain, sell, alien, remise, release, convey, assign, transfer, encumber, mortgage, pledge, set over and confirm said real property and interests in real property in the manner and form aforesaid.
- (b) At the time of the execution and delivery of this instrument, the Mortgagor lawfully owns and is possessed of the personal property specifically described in Granting Clauses First through Seventh, subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to mortgage, assign, transfer, deliver, pledge and grant a continuing security interest in said property and, including any proceeds thereof, in the manner and form aforesaid.
- (c) The Mortgagor hereby does and will forever warrant and defend the title to the property specifically described in Granting Clause First against the claims and demands of all persons whomsoever, except Permitted Encumbrances.

**Section 3.03. After-Acquired Property; Further Assurances; Recording:**

- (a) All property of every kind, other than Excepted Property, acquired by the Mortgagor after the date hereof, shall, immediately upon the acquisition thereof by the Mortgagor, and without any further mortgage, conveyance or assignment, become subject to the lien of this Mortgage; SUBJECT, HOWEVER, to Permitted Encumbrances and the exceptions, if any, to which all of the Mortgagees consent. Nevertheless, the Mortgagor will do, execute, acknowledge and deliver all and every such further acts, conveyances, mortgages, financing statements and assurances as any Mortgagee shall require for accomplishing the purposes of this Mortgage, including, but not limited to, at the request of any Mortgagee, taking such actions and executing and delivering such documents as are necessary under the Uniform Commercial Code or other applicable law to perfect or establish the Mortgagees' first priority security interests in any Mortgaged Property to the extent that such perfection or priority cannot be accomplished by the filing of a financing statement.
- (b) The Mortgagor will cause this Mortgage and all Supplemental Mortgages and other instruments of further assurance, including all financing statements covering security interests in personal property, to be promptly recorded, registered and filed, and will execute and file such financing statements and cause to be issued and filed such continuation statements, all in such manner and in such places as may be required by law fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder to all property comprising the Mortgaged Property. The Mortgagor will furnish to each Mortgagee:
  - (1) promptly after the execution and delivery of this instrument and of each Supplemental Mortgage or other instrument of further assurance, an Opinion of Counsel stating that, in the opinion of such Counsel, this instrument and all such Supplemental Mortgages and other instruments of further assurance have been properly recorded, registered and filed to the extent necessary to make effective the lien intended to be created by this Mortgage, and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary fully to

preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to make the lien effective; and

- (2) during the month of January in each year following the first anniversary of the date of this Mortgage, an Opinion of Counsel, dated on or about the date of delivery, either stating that, in the opinion of such Counsel, such action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of this instrument and of all Supplemental Mortgages, financing statements, continuation statements or other instruments of further assurances as is necessary to maintain the lien of this Mortgage (including the lien on any property acquired by the Mortgagor after the execution and delivery of this instrument and owned by the Mortgagor at the end of preceding calendar year) and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary to fully preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to maintain such lien.

**Section 3.04. Environmental Requirements and Indemnity:**

- (a) The Mortgagor shall, with respect to all facilities which may be part of the Mortgaged Property, comply with all Environmental Laws.
- (b) The Mortgagor shall defend, indemnify, and hold harmless each Mortgagee, its successors and assigns, from and against any and all liabilities, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), causes of actions, administrative proceedings, suits, claims, demands, or judgments of any nature arising out of or in connection with any matter related to the Mortgage Property and any Environmental Law, including but not limited to:
  - (1) the past, present, or future presence of any hazardous substance, contaminant, pollutant, or hazardous waste on or related to the Mortgaged Property;
  - (2) any failure at any time by the undersigned to comply with the terms of any order related to the Mortgaged Property and issued by any Federal, state, or municipal department or agency (other than RUS) exercising its authority to enforce any Environmental Law; and
  - (3) any lien or claim imposed under any Environmental Law related to clause (1).
- (c) Within 10 (ten) business days after receiving knowledge of any liability, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), cause of action, administrative proceeding, suit, claim, demand, judgment, lien, reportable event including but not limited to the release of a hazardous substance, or potential or actual violation or non-compliance arising out of or in connection with the Mortgaged Property and any Environmental Law, the Mortgagor shall provide each Mortgagee with written notice of such matter. With respect to any matter upon which it has provided such notice, the Mortgagor shall immediately take any and all appropriate actions to remedy, cure, defend, or otherwise affirmatively respond to the matter.

**Section 3.05. Payment of Taxes:**

The Mortgagor will pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Mortgaged Property or any part thereof or upon any income therefrom, and also (to the extent that such payment will not be contrary to any applicable laws) all taxes, assessments and other governmental charges lawfully levied, assessed or imposed upon the lien or interest of the Noteholders or of the Mortgagees in the Mortgaged Property, so that (to the extent aforesaid) the lien of this Mortgage shall at all times be wholly preserved at the cost of the Mortgagor and without expense to the Mortgagees or the Noteholders; PROVIDED, HOWEVER, that the Mortgagor shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and the Mortgagor shall have established and shall maintain adequate reserves on its books for the payment of the same.

**Section 3.06. Authority to Execute and Deliver Notes, Loan Agreements and Mortgage; All Action Taken; Enforceable Obligations:**

The Mortgagor is authorized under its articles of incorporation and bylaws (or code of regulations) and all applicable laws and by corporate action to execute and deliver the Notes, any Additional Notes, the Loan Agreements and this Mortgage. The Notes, the Loan Agreements and this Mortgage are, and any Additional Notes and Loan Agreements when executed and delivered will be, the valid and enforceable obligations of the Mortgagor in accordance with their respective terms.

**Section 3.07. Restrictions on Further Encumbrances on Property:**

Except to secure Additional Notes, the Mortgagor will not, without the prior written consent of each Mortgagee, create or incur or suffer or permit to be created or incurred or to exist any Lien, charge, assignment, pledge or mortgage on any of the Mortgaged Property inferior to, prior to, or on a parity with the Lien of this Mortgage except for the Permitted Encumbrances. Subject to the provisions of Section 3.08, or unless approved by each of the Mortgagees, the Mortgagor will purchase all materials, equipment and replacements to be incorporated in or used in connection with the Mortgaged Property outright and not subject to any conditional sales agreement, chattel mortgage, bailment, lease or other agreement reserving to the seller any right, title or Lien.

**Section 3.08. Restrictions On Additional Permitted Debt:**

The Mortgagor shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Debt) other than the following: ("Permitted Debt")

- (1) Additional Notes issued in compliance with Article II hereof;
- (2) Purchase money indebtedness in non-Utility System property, in an amount not exceeding 10% of Net Utility Plant;
- (3) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;
- (4) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;

- (5) Unsecured indebtedness for borrowed money;
- (6) Debt represented by dividends declared but not paid; and
- (7) Subordinated Indebtedness approved by each Mortgagee.

PROVIDED, However, that the Mortgagor may incur Permitted Debt without the consent of the Mortgagee only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder.

PROVIDED, FURTHER, by executing this Mortgage any consent of RUS that the Mortgagor would otherwise be required to obtain under this Section is hereby deemed to be given or waived by RUS by operation of law to the extent, but only to the extent, that to impose such a requirement of RUS consent would clearly violate existing Federal laws or government regulations.

**Section 3.09. Preservation of Corporate Existence and Franchises:**

The Mortgagor will, so long as any Outstanding Notes exist, take or cause to be taken all such action as from time to time may be necessary to preserve its corporate existence and to preserve and renew all franchises, rights of way, easements, permits, and licenses now or hereafter to be granted or upon it conferred the loss of which would have a material adverse affect on the Mortgagor's financial condition or business. The Mortgagor will comply with all laws, ordinances, regulations, orders, decrees and other legal requirements applicable to it or its property the violation of which could have a material adverse affect on the Mortgagor's financial condition or business.

**Section 3.10. Limitations on Consolidations and Mergers:**

The Mortgagor shall not, without the prior written approval of each Mortgagee, consolidate or merge with any other corporation or convey or transfer the Mortgaged Property substantially as an entirety unless:

- (1) such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security hereof and the rights and powers of the Mortgagees hereunder;
- (2) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall execute and deliver to the Mortgagees a mortgage supplemental hereto in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the Outstanding Notes and the performance and observance of every covenant and condition of this Mortgage;
- (3) immediately after giving effect to such transaction, no default hereunder shall have occurred and be continuing;
- (4) the Mortgagor shall have delivered to the Mortgagees a certificate of its general manager or other officer, in form and substance satisfactory to each of the Mortgagees, which shall state that such consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this subsection and that all conditions precedent herein provided for relating to such transaction have been complied with;



- (5) the Mortgagor shall have delivered to the Mortgagees an opinion of counsel in form and substance satisfactory to each of the Mortgagees; and
- (6) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall be an entity -
  - (A) having Equity equal to at least 27% of its Total Assets on a pro forma basis after giving effect to such transaction,
  - (B) having a pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years, and
  - (C) having Net Utility Plant equal to or greater than 1.0 times its Total Long-Term Debt on a pro forma basis. Upon any consolidation or merger or any conveyance or transfer of the Mortgaged Property substantially as an entirety in accordance with this subsection, the successor entity formed by such consolidation or with which the Mortgagor is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Mortgagor under this Mortgage with the same effect as if such successor entity had been named as the Mortgagor herein.

**Section 3.11. Limitations on Transfers of Property:**

The Mortgagor may not, except as provided in Section 3.10 above, without the prior written approval of each Mortgagee, sell, lease or transfer any Mortgaged Property to any other person or entity (including any subsidiary or affiliate of the Mortgagor), unless

- (1) there exists no Event of Default or occurrence which with the passing of time and the giving of notice would be an Event of Default,
- (2) fair market value is obtained for such property,
- (3) the aggregate value of assets so sold, leased or transferred in any 12-month period is less than 10% of Net Utility Plant, and
- (4) the proceeds of such sale, lease or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately
  - (i) applied as a prepayment of all Notes equally and ratably,
  - (ii) in the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the Mortgagor's utility business, not necessarily of the same kind as the property disposed of, which shall forthwith become subject to the Lien of the Mortgage, or
  - (iii) applied to the acquisition or construction of utility plant.

**Section 3.12. Maintenance of Mortgaged Property:**

- (a) So long as the Mortgagor holds title to the Mortgaged Property, the Mortgagor will at all times maintain and preserve the Mortgaged Property which is used or useful in the

Mortgagor's business and each and every part and parcel thereof in good repair, working order and condition, ordinary wear and tear and acts of God excepted, and in compliance with Prudent Utility Practice and in compliance with all applicable laws, regulations and orders, and will from time to time make all needed and proper repairs, renewals and replacements, and useful and proper alterations, additions, betterments and improvements, and will, subject to contingencies beyond its reasonable control, at all times use all reasonable diligence to furnish the consumers served by it through the Mortgaged Property, or any part thereof, with an adequate supply of electric power and energy. If any substantial part of the Mortgaged Property is leased by the Mortgagor to any other party, the lease agreement between the Mortgagor and the lessee shall obligate the lessee to comply with the provisions of subsections (a) and (b) of this Section in respect of the leased facilities and to permit the Mortgagor to operate the leased facilities in the event of any failure by the lessee to so comply.

- (b) If in the sole judgement of any Mortgagee, the Mortgaged Property is not being maintained and repaired in accordance with paragraph (a) of this section, such Mortgagee may send to the Mortgagor a written report of needed improvements and the Mortgagor will upon receipt of such written report promptly undertake to accomplish such improvements.
- (c) The Mortgagor further agrees that upon reasonable written request of any Mortgagee, which request together with the requests of any other Mortgagees shall be made no more frequently than once every three years, the Mortgagor will supply promptly to each Mortgagee a certification (hereinafter called the "Engineer's Certification"), in form satisfactory to the requestor, prepared by a professional engineer, who shall be satisfactory to the Mortgagees, as to the condition of the Mortgaged Property. If in the sole judgment of any Mortgagee the Engineer's Certification discloses the need for improvements to the condition of the Mortgaged Property or any other operations of the Mortgagor, such Mortgagee may send to the Mortgagor a written report of such improvements and the Mortgagor will upon receipt of such written report promptly undertake to accomplish such of these improvements as are required by such Mortgagee.

**Section 3.13. Insurance; Restoration of Damaged Mortgaged Property:**

- (a) The Mortgagor will take out, as the respective risks are incurred, and maintain the classes and amounts of insurance in conformance with generally accepted utility industry standards for such classes and amounts of coverages of utilities of the size and character of the Mortgagor and consistent with Prudent Utility Practice.
- (b) The foregoing insurance coverage shall be obtained by means of bond and policy forms approved by regulatory authorities having jurisdiction, and, with respect to insurance upon any part of the Mortgaged Property, shall provide that the insurance shall be payable to the Mortgagees as their interests may appear by means of the standard mortgagee clause without contribution. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice to each Mortgagee of cancellation.
- (c) In the event of damage to or the destruction or loss of any portion of the Mortgaged Property which is used or useful in the Mortgagor's business and which shall be covered by insurance, unless each Mortgagee shall otherwise agree, the Mortgagor shall replace or restore such damaged, destroyed or lost portion so that such Mortgaged Property shall be in substantially the same condition as it was in prior to such damage, destruction or loss,

and shall apply the proceeds of the insurance for that purpose. The Mortgagor shall replace the lost portion of such Mortgaged Property or shall commence such restoration promptly after such damage, destruction or loss shall have occurred and shall complete such replacement or restoration as expeditiously as practicable, and shall pay or cause to be paid out of the proceeds of such insurance all costs and expenses in connection therewith.

- (d) Sums recovered under any policy or fidelity bond by the Mortgagor for a loss of funds advanced under the Notes or recovered by any Mortgagee or any Noteholder for any loss under such policy or bond shall, unless applied as provided in the preceding paragraph, be used to finance construction of utility plant secured or to be secured by this Mortgage, or unless otherwise directed by the Mortgagees, be applied to the prepayment of the Notes pro rata according to the unpaid principal amounts thereof (such prepayments to be applied to such Notes and installments thereof as may be designated by the respective Mortgagee at the time of any such prepayment), or be used to construct or acquire utility plant which will become part of the Mortgaged Property. At the request of any Mortgagee, the Mortgagor shall exercise such rights and remedies which they may have under such policy or fidelity bond and which may be designated by such Mortgagee, and the Mortgagor hereby irrevocably appoints each Mortgagee as its agent to exercise such rights and remedies under such policy or bond as such Mortgagee may choose, and the Mortgagor shall pay all costs and reasonable expenses incurred by the Mortgagee in connection with such exercise.

**Section 3.14. Mortgagee Right to Expend Money to Protect Mortgaged Property:**

The Mortgagor agrees that any Mortgagee from time to time hereunder may, in its sole discretion, after having given 5 Business Days prior written notice to the Mortgagor, but shall not be obligated to, advance funds on behalf of the Mortgagor, in order to insure the Mortgagor's compliance with any covenant, warranty, representation or agreement of the Mortgagor made in or pursuant to this Mortgage or any of the Loan Agreements, to preserve or protect any right or interest of the Mortgagees in the Mortgaged Property or under or pursuant to this Mortgage or any of the Loan Agreements, including without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Mortgaged Property or other property or assets of the Mortgagor; provided, however, that the making of any such advance by or through any Mortgagee shall not constitute a waiver by any Mortgagee of any Event of Default with respect to which such advance is made nor relieve the Mortgagor of any such Event of Default. The Mortgagor shall pay to a Mortgagee upon demand all such advances made by such Mortgagee with interest thereon at a rate equal to that on the Note having the highest interest rate but in no event shall such rate be in excess of the maximum rate permitted by applicable law. All such advances shall be included in the obligations and secured by the security interest granted hereunder.

**Section 3.15. Time Extensions for Payment of Notes:**

Any Mortgagee may, at any time or times in succession without notice to or the consent of the Mortgagor, or any other Mortgagee, and upon such terms as such Mortgagee may prescribe, grant to any person, firm or corporation who shall have become obligated to pay all or any part of the principal of (and premium, if any) or interest on any Note held by or indebtedness owed to such Mortgagee or who may be affected by the lien hereby created, an extension of the time for the payment of such principal, (and premium, if any) or interest, and after any such extension the Mortgagor will remain liable for the payment of such Note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

**Section 3.16. Application of Proceeds from Condemnation:**

- (a) In the event that the Mortgaged Property or any part thereof, shall be taken under the power of eminent domain, all proceeds and avails therefrom may be used to finance construction of utility plant secured or to be secured by this Mortgage. Any proceeds not so used shall forthwith be applied by the Mortgagor: first, to the ratable payment of any indebtedness secured by this Mortgage other than principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes, to such installments thereof as may be designated by the respective Mortgagee at the time of any such payment; and fourth, the balance shall be paid to whomsoever shall be entitled thereto.
- (b) If any part of the Mortgaged Property shall be taken by eminent domain, each Mortgagee shall release the property so taken from the Mortgaged Property and shall be fully protected in so doing upon being furnished with:
  - (1) A certificate of a duly authorized officer of the Mortgagor requesting such release, describing the property to be released and stating that such property has been taken by eminent domain and that all conditions precedent herein provided or relating to such release have been complied with; and
  - (2) an opinion of counsel to the effect that such property has been lawfully taken by exercise of the right of eminent domain, that the award for such property so taken has become final and that all conditions precedent herein provided for relating to such release have been complied with.

**Section 3.17. Compliance with Loan Agreements; Notice of Amendments to and Defaults under Loan Agreements:**

The Mortgagor will observe and perform all of the material covenants, agreements, terms and conditions contained in any Loan Agreement entered into in connection with the issuance of any of the Notes, as from time to time amended. The Mortgagor will send promptly to each Mortgagee notice of any default by the Mortgagor under any Loan Agreement and notice of any amendment to any Loan Agreement. Upon request of any Mortgagee, the Mortgagor will furnish to such Mortgagee single copies of such Loan Agreements and amendments thereto as such Mortgagee may request.

**Section 3.18. Rights of Way, etc., Necessary in Business:**

The Mortgagor will use its best efforts to obtain all such rights of way, easements from landowners and releases from lienors as shall be necessary or advisable in the conduct of its business, and, if requested by any Mortgagee, deliver to such Mortgagee evidence satisfactory to such Mortgagee of the obtaining of such rights of way, easements or releases.

**Section 3.19. Limitations on Providing Free Electric Services:**

The Mortgagor will not furnish or supply or cause to be furnished or supplied any electric power, energy or capacity free of charge to any person, firm or corporation, public or private, and the Mortgagor will enforce the payment of any and all amounts owing to the Mortgagor by reason of the ownership and operation of the Utility System by discontinuing such use, output, capacity, or service, or by filing suit therefor within 90 days after any such accounts are due, or by both such discontinuance and by filing suit.

**Section 3.20. Keeping Books; Inspection by Mortgagee:**

The Mortgagor will keep proper books, records and accounts, in which full and correct entries shall be made of all dealings or transactions of or in relation to the Notes and the Utility System, properties, business and affairs of the Mortgagor in accordance with the Accounting Requirements. The Mortgagor will at any and all times, upon the written request of any Mortgagee and at the expense of the Mortgagor, permit such Mortgagee by its representatives to inspect the Utility System and properties, books of account, records, reports and other papers of the Mortgagor and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such inspection, and the Mortgagor will furnish to each Mortgagee any and all such information as such Mortgagee may request, with respect to the performance by the Mortgagor of its covenants under this Mortgage, the Notes and the Loan Agreements.

**Section 3.21. Maximum Debt Limit:**

The Notes at any one time secured by this Mortgage shall not in the aggregate principal amount exceed the Maximum Debt Limit.

**Section 3.22. Authorization to File Financing Statements:**

The Mortgagor hereby irrevocably authorizes the Mortgagee at any time and from time to time to file in any jurisdiction any initial financing statements and amendments thereto that:

- (a) Indicate the Mortgaged Property (i) as all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Mortgaged Property falls within the scope of Article 9 of the applicable UCC, or (ii) as being of an equal or lesser scope or with greater detail, and
- (b) Contain any other information required by the applicable UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including, but not limited to (i) whether the Mortgagor is an organization, the type of organization and any organizational identification number issued to the Mortgagor, and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Mortgaged Property relates. The Mortgagor agrees to furnish any such information to the Mortgagee promptly upon request. The Mortgagor also ratifies its authorization for the Mortgagee to have filed in any UCC jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.

**ARTICLE IV**

**EVENTS OF DEFAULT AND REMEDIES**

**Section 4.01. Events of Default:**

Each of the following shall be an "Event of Default" under this Mortgage:

- (a) default shall be made in the payment of any installment of or on account of interest on or principal of (or premium, if any associated with) any Note or Notes for more than five (5) Business Days after the same shall be required to be made;
- (b) default shall be made in the due observance or performance of any other of the covenants,

conditions or agreements on the part of the Mortgagor, in any of the Notes, Loan Agreements or in this Mortgage, and such default shall continue for a period of thirty (30) days after written notice specifying such default and requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder shall have been given to the Mortgagor by any Mortgagee; PROVIDED, HOWEVER that in the case of a default on the terms of a Note or Loan Agreement of a particular Mortgagee, the "Notice of Default" required under this paragraph may only be given by that Mortgagee;

- (c) the Mortgagor shall file a petition in bankruptcy or be adjudicated a bankrupt or insolvent, or shall make an assignment for the benefit of its creditors, or shall consent to the appointment of a receiver of itself or of its property, or shall institute proceedings for its reorganization or proceedings instituted by others for its reorganization shall not be dismissed within sixty (60) days after the institution thereof;
- (d) a receiver or liquidator of the Mortgagor or of any substantial portion of its property shall be appointed and the order appointing such receiver or liquidator shall not be vacated within sixty (60) days after the entry thereof;
- (e) the Mortgagor shall forfeit or otherwise be deprived of its corporate charter or franchises, permits, easements, or licenses required to carry on any material portion of its business;
- (f) a final judgment for an amount of more than \$25,000 shall be entered against the Mortgagor and shall remain unsatisfied or without a stay in respect thereof for a period of sixty (60) days; or,
- (g) any material representation or warranty made by the Mortgagor herein, in the Loan Agreements or in any certificate or financial statement delivered hereunder or thereunder shall prove to be false or misleading in any material respect at the time made.

**Section 4.02. Acceleration of Maturity; Rescission and Annulment:**

- (a) If an Event of Default described in Section 4.01(a) has occurred and is continuing, any Mortgagee upon which such default has occurred may declare the principal of all its Notes secured hereunder to be due and payable immediately by a notice in writing to the Mortgagor and to the other Mortgagees (failure to provide said notice to any other Mortgagee shall not affect the validity of any acceleration of the Note or Notes by such Mortgagee), and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding.
- (b) If any other Event of Default shall have occurred and be continuing, any Mortgagee may declare the principal of all its Notes secured hereunder to be due and payable immediately by a notice in writing to the Mortgagor and to the other Mortgagees (failure to provide said notice to any other Mortgagee shall not affect the validity of any acceleration of the Note or Notes by such Mortgagee), and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding.
- (c) Upon receipt of actual knowledge of or any notice of acceleration by any Mortgagee, any other Mortgagee may declare the principal of all of its Notes to be due and payable

immediately by a notice in writing to the Mortgagor and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes or Loan Agreements to the contrary notwithstanding.

- (d) If after the unpaid principal of (and premium, if any) and accrued interest on any of the Notes shall have been so declared to be due and payable, all payments in respect of principal and interest which shall have become due and payable by the terms of such Note or Notes (other than amounts due as a result of the acceleration of the Notes) shall be paid to the respective Mortgagees, and (i) all other defaults under the Loan Agreements, the Notes and this Mortgage shall have been made good or cured to the satisfaction of the Mortgagees representing at least 80% of the aggregate unpaid principal balance of all of the Notes then outstanding, (ii) proceedings to foreclose the lien of this Mortgage have not been commenced, and (iii) all reasonable expenses paid or incurred by the Mortgagees in connection with the acceleration shall have been paid to the respective Mortgagees, then in every such case such Mortgagees representing at least 80% of the aggregate unpaid principal balance of all of the Notes then outstanding may by written notice to the Mortgagor, for purposes of this Mortgage, annul such declaration and waive such default and the consequences thereof, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

**Section 4.03. Remedies of Mortgagees:**

If one or more of the Events of Default shall occur and be continuing, any Mortgagee personally or by attorney, in its or their discretion, may, in so far as not prohibited by law:

- (a) take immediate possession of the Mortgaged Property, collect and receive all credits, outstanding accounts and bills receivable of the Mortgagor and all rents, income, revenues, proceeds and profits pertaining to or arising from the Mortgaged Property, or any part thereof, whether then past due or accruing thereafter, and issue binding receipts therefor; and manage, control and operate the Mortgaged Property as fully as the Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs or replacements deemed necessary or advisable by such Mortgagee in possession;
- (b) proceed to protect and enforce the rights of all of the Mortgagees by suits or actions in equity or at law in any court or courts of competent jurisdiction, whether for specific performance of any covenant or any agreement contained herein or in aid of the execution of any power herein granted or for the foreclosure hereof or hereunder or for the sale of the Mortgaged Property, or any part thereof, or to collect the debts hereby secured or for the enforcement of such other or additional appropriate legal or equitable remedies as may be deemed necessary or advisable to protect and enforce the rights and remedies herein granted or conferred, and in the event of the institution of any such action or suit the Mortgagee instituting such action or suit shall have the right to have appointed a receiver of the Mortgaged Property and of all proceeds, rents, income, revenues and profits pertaining thereto or arising therefrom, whether then past due or accruing after the appointment of such receiver, derived, received or had from the time of the commencement of such suit or action, and such receiver shall have all the usual powers and duties of receivers in like and similar cases, to the fullest extent permitted by law, and if application shall be made for the appointment of a receiver the Mortgagor hereby expressly consents that the court to which such application shall be made may make said appointment; and

- (c) sell or cause to be sold all and singular the Mortgaged Property or any part thereof, and all right, title, interest, claim and demand of the Mortgagor therein or thereto, at public auction at such place in any county (or its equivalent locality) in which the property to be sold, or any part thereof, is located, at such time and upon such terms as may be specified in a notice of sale, which shall state the time when and the place where the sale is to be held, shall contain a brief general description of the property to be sold, and shall be given by mailing a copy thereof to the Mortgagor at least fifteen (15) days prior to the date fixed for such sale and by publishing the same once in each week for two successive calendar weeks prior to the date of such sale in a newspaper of general circulation published in said locality or, if no such newspaper is published in such locality, in a newspaper of general circulation in such locality, the first such publication to be not less than fifteen (15) days nor more than thirty (30) days prior to the date fixed for such sale. Any sale to be made under this subparagraph (c) of this Section 4.03 may be adjourned from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication the sale may be had at the time and place to which the same shall be adjourned; provided, however, that in the event another or different notice of sale or another or different manner of conducting the same shall be required by law the notice of sale shall be given or the sale be conducted, as the case may be, in accordance with the applicable provisions of law. The expense incurred by any Mortgagee (including, but not limited to, receiver's fees, counsel fees, cost of advertisement and agents' compensation) in the exercise of any of the remedies provided in this Mortgage shall be secured by this Mortgage.
- (d) In the event that a Mortgagee proceeds to enforce remedies under this Section, any other Mortgagee may join in such proceedings. In the event that the Mortgagees are not in agreement with the method or manner of enforcement chosen by any other Mortgagee, the Mortgagees representing a majority of the aggregate unpaid principal balance on the then outstanding Notes may direct the method and manner in which remedial action will proceed.

**Section 4.04. Application of Proceeds from Remedial Actions:**

Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied first, to the ratable payment of indebtedness hereby secured other than the principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and which shall be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes; and the balance, if any, shall be paid to whomsoever shall be entitled thereto.

**Section 4.05. Remedies Cumulative; No Election:**

Every right or remedy herein conferred upon or reserved to the Mortgagees or to the Noteholders shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law, or in equity, or by statute. The pursuit of any right or remedy shall not be construed as an election.

**Section 4.06. Waiver of Appraisal Rights; Marshaling of Assets Not Required:**

The Mortgagor, for itself and all who may claim through or under it, covenants that it will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated, in order to prevent, delay or hinder



the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat, and the Mortgagor, for itself and all who may claim through or under it, hereby waives the benefit of all such laws unless such waiver shall be forbidden by law. Under no circumstances shall there be any marshaling of assets upon any foreclosure or to other enforcement of this Mortgage.

**Section 4.07. Notice of Default:**

The Mortgagor covenants that it will give immediate written notice to each Mortgagee of the occurrence of any Event of Default or in the event that any right or remedy described in Sections 4.02 and 4.03 hereof is exercised or enforced or any action is taken to exercise or enforce any such right or remedy.

**ARTICLE V**

**POSSESSION UNTIL DEFAULT-DEFEASANCE CLAUSE**

**Section 5.01. Possession Until Default:**

Until some one or more of the Events of Default shall have happened, the Mortgagor shall be suffered and permitted to retain actual possession of the Mortgaged Property, and to manage, operate and use the same and any part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the rents, revenues, issues, earnings, income, proceeds, products and profits thereof or therefrom, subject to the provisions of this Mortgage.

**Section 5.02. Defeasance:**

If the Mortgagor shall pay or cause to be paid the whole amount of the principal of (and premium, if any) and interest on the Notes at the times and in the manner therein provided, and shall also pay or cause to be paid all other sums payable by the Mortgagor hereunder or under any Loan Agreement and shall keep and perform, all covenants herein required to be kept and performed by it, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Mortgagor and the estate, right, title and interest of the Mortgagee so paid shall thereupon cease, determine and become void and such Mortgagee, in such case, on written demand of the Mortgagor but at the Mortgagor's cost and expense, shall enter satisfaction of the Mortgage upon the record. In any event, each Mortgagee, upon payment in full to such Mortgagee by the Mortgagor of all principal of (and premium, if any) and interest on any Note held by such Mortgagee and the payment and discharge by the Mortgagor of all charges due to such Mortgagee hereunder or under any Loan Agreement, shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

**Section 5.03. Special Defeasance:**

Other than any Notes excluded by the foregoing Sections 5.01 and 5.02 and Notes which have become due and payable, the Mortgagor may cause the Lien of this Mortgage to be defeased with respect to any Note for which it has deposited or caused to be deposited in trust solely for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Note for principal (and premium, if any) and interest to the date of maturity thereof; PROVIDED, HOWEVER, that depository serving as trustee for such trust must first be accepted as such by the Mortgagee whose Notes are being defeased under this section. In such event, such a Note will no longer be considered to be an Outstanding Note for purposes of this Mortgage and the Mortgagee

shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

## ARTICLE VI

### MISCELLANEOUS

#### **Section 6.01. Property Deemed Real Property:**

It is hereby declared to be the intention of the Mortgagor that any electric generating plant or plants and facilities and all electric transmission and distribution lines, or other Electric System or Utility System facilities, embraced in the Mortgaged Property, including (without limitation) all rights of way and easements granted or given to the Mortgagor or obtained by it to use real property in connection with the construction, operation or maintenance of such plant, lines, facilities or systems, and all other property physically attached to any of the foregoing, shall be deemed to be real property.

#### **Section 6.02. Mortgage to Bind and Benefit Successors and Assigns:**

All of the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the Mortgagor shall bind its successors and assigns, whether so specified or not, and all titles, rights and remedies hereby granted to or conferred upon the Mortgagees shall pass to and inure to the benefit of the successors and assigns of the Mortgagees and shall be deemed to be granted or conferred for the ratable benefit and security of all who shall from time to time be a Mortgagee. The Mortgagor hereby agrees to execute such consents, acknowledgments and other instruments as may be reasonably requested by any Mortgagee in connection with the assignment, transfer, mortgage, hypothecation or pledge of the rights or interests of such Mortgagee hereunder or under the Notes or in and to any of the Mortgaged Property.

#### **Section 6.03. Headings:**

The descriptive headings of the various articles and sections of this Mortgage and also the table of contents were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

#### **Section 6.04. Severability Clause:**

In case any provision of this Mortgage or in the Notes or in the Loan Agreements shall be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions thereof shall not in any way be affected or impaired, nor, nor shall any invalidity or unenforceability as to any Mortgagee hereunder affect or impair the rights hereunder of any other Mortgagee.

#### **Section 6.05. Mortgage Deemed Security Agreement:**

To the extent that any of the property described or referred to in this Mortgage is governed by the provisions of the UCC this Mortgage is hereby deemed a "security agreement" under the UCC, and, if so elected by any Mortgagee, a "financing statement" under the UCC for said security agreement. The mailing addresses of the Mortgagor as debtor, and the Mortgagees as secured parties are as set forth in Schedule "A" hereof. If any Mortgagee so directs the Mortgagor to do so, the Mortgagor shall file as a financing statement under the UCC for said security agreement and for the benefit of all of the Mortgagees, an instrument other than this Mortgage. In such case, the instrument to be filed shall be in a form customarily accepted by the filing office as a financing

statement. PROCEEDS OF COLLATERAL ARE COVERED HEREBY. The Mortgagor is an organization of the type and organized in the jurisdiction set forth on the first page hereof. The cover page hereof accurately sets forth the Mortgagor's organizational identification number or accurately states that the Mortgagor has none.

**Section 6.06. Indemnification by Mortgagor of Mortgagees:**

The Mortgagor agrees to indemnify and save harmless each Mortgagee against any liability or damages which any of them may incur or sustain in the exercise and performance of their rightful powers and duties hereunder. For such reimbursement and indemnity, each Mortgagee shall be secured under this Mortgage in the same manner as the Notes and all such reimbursements for expense or damage shall be paid to the Mortgagee incurring or suffering the same with interest at the rate specified in Section 3.14 hereof. The Mortgagor's obligation to indemnify the Mortgagees under this section and under Section 3.04 shall survive the satisfaction of the Notes, the reconveyance or foreclosure of this Mortgage, the acceptance of a deed in lieu of foreclosure, or any transfer or abandonment of the Mortgaged Property.

IN WITNESS WHEREOF, FLEMING-MASON ENERGY COOPERATIVE, INC., as Mortgagor, has caused this Restated Mortgage and Security Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its officers thereunto duly authorized, UNITED STATES OF AMERICA, as Mortgagee and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION, as Mortgagee, have each caused this Restated Mortgage and Security Agreement to be signed in their respective names by duly authorized persons, all as of this day and year first above written.

FLEMING-MASON ENERGY COOPERATIVE, INC.

by J. E. Smith, Jr., Chairman  
J. E. Smith, Jr.

(Seal)

Attest: Lonnie C. Vice  
Secretary - Lonnie C. Vice

Executed by the Mortgagor  
in the presence of:

Marvin W. Smith  
John M. Hyeley  
Witnesses

UNITED STATES OF AMERICA

by

Assistant Administrator  
Electric Program  
of the  
Rural Utilities Service

Executed by United States of America,  
Mortgagee, in the presence of:

Sara Wetklow

Witnesses

Jamie Davenport

NATIONAL RURAL UTILITIES COOPERATIVE  
FINANCE CORPORATION

by

AMY S. LUONGO

Assistant Secretary-Treasurer

(SEAL)

Attest:

ELAINE M. MACDONALD

Assistant Secretary-Treasurer

Executed by the above-named, Mortgagee, in the  
presence of:

DAVID W. OLAH

Witnesses

ELIZABETH C. MIKSCHÉ

COMMONWEALTH OF KENTUCKY )  
 ) SS  
COUNTY OF Fleming )

I, Joni K. Hurst, a Notary Public in and for the County and Commonwealth aforesaid, do hereby certify that J.E. Smith, Jr, personally known to me to be the Chairman of Fleming-Mason Energy Cooperative, Inc., a corporation of the Commonwealth of Kentucky, and to me known to be the identical person whose name is as Chairman of said corporation, subscribed to the foregoing instrument, appeared before me this day in person and produced the foregoing instrument to me in the County aforesaid and acknowledged that as such Chairman he signed the foregoing instrument pursuant to authority given by the board of directors of said corporation as his free and voluntary act and deed and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth and that the seal affixed to the foregoing instrument is the corporate seal of said corporation.

Given under my hand this 7<sup>th</sup> day of October, 2004.

Joni K. Hurst  
\_\_\_\_\_  
Notary Public  
in and for Fleming County, Kentucky

(Notarial Seal)

My Commission expires: June 20, 2006

DISTRICT OF COLUMBIA ) SS

On this 25 day of August, 2009, personally appeared before me  
**BLAINE D. STOCKTON**, who, being duly sworn, did say that he is the Assistant  
Administrator - Electric Program of the Rural Utilities Service, an agency of the United States of America, and  
acknowledged to me that, acting under a delegation of authority duly given and evidenced by law and presently in  
effect, he executed said instrument as the act and deed of the United States of America for the uses and purposes  
therein mentioned.

IN TESTIMONY WHEREOF I have heretofore set my hand and official seal the day and year last above  
written.



Notary Public

(Notarial Seal) William A. Frost  
Notary Public, District of Columbia  
My Commission Expires 04/14/2006

My commission expires: \_\_\_\_\_.

COMMONWEALTH OF VIRGINIA

)  
) SS

COUNTY OF FAIRFAX

On this 31st day of August, 2007, before me appeared  
AMY S. LUONGO

, to me personally known, who, being by me  
duly sworn, did say that he is the ASSISTANT SECRETARY-TREASURER of the National Rural Utilities  
Cooperative Finance Corporation, and that the seal affixed to the foregoing 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 ASSISTANT SECRETARY-TREASURER acknowledged said instrument to be the free act and  
deed of said corporation.

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



Notary Public

(Notarial Seal)

My commission expires:

3/31/07

**SCHEDULE A: Part One**

1. The Maximum Debt Limit referred to in Section 1.01 is \$100,000,000.00
2. The state referred to in Section 1.04 is Kentucky.
3. The addresses of the parties referred to in Sections 1.05 and 6.05 are as follows:

As to the Mortgagor:

Fleming-Mason Energy Cooperative, Inc.  
1449 Elizaville Road  
Flemingsburg, Kentucky 41041

As to the Mortgagees:

Rural Utilities Service  
United States Department of Agriculture  
Washington, DC 20250-1500

National Rural Utilities  
Cooperative Finance Corporation  
2201 Cooperative Way  
Herndon, Virginia 20171-3025

4. The Original Mortgage as referred to in the first WHEREAS clause above is more particularly described as follows:

<u>Instrument Title</u>	<u>Instrument Date</u>
Restated Mortgage and Security Agreement	November 1, 1999



5. The outstanding secured obligations of the Mortgagor referred to in the fourth WHEREAS clause above are evidenced by the Original Notes described below:

**ORIGINAL NOTES issued to the Government<sup>1</sup>**

<u>Loan Designation</u>	<u>Face Amount</u>	<u>Date</u>	<u>Final Maturity</u>	<u>% Rate<sup>2</sup></u>
AC	\$830,000.00	16 Apr 1970	16 Apr 2005	2.00
AD2	\$358,000.00	7 Sep 1972	7 Sep 2007	2.00
AF6	\$350,000.00	3 Jul 1974	3 Jul 2009	5.00
AG6	\$350,000.00	3 Apr 1975	3 Apr 2010	5.00
AH6	\$711,000.00	19 Jul 1977	19 Jul 2012	5.00
AK6	\$710,000.00	8 Jun 1978	8 Jun 2013	5.00
AL6	\$1,797,000.00	1 Oct 1979	1 Oct 2014	5.00
AM6	\$1,625,000.00	12 Nov 1981	12 Nov 2016	5.00
AN6	\$1,830,000.00	8 Feb 1989	8 Feb 2024	5.00
AP6	\$1,966,000.00	1 Oct 1992	1 Oct 2027	5.00
AR6	\$4,025,000.00	3 Feb 1994	3 Feb 2029	5.00
AS8 <sup>3</sup>	\$20,437,000.00	1 Nov 1999	31 Dec 2033	V
AT44	\$16,535,000.00	1 Sep 2004	1 Sep 2039	V

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<sup>1</sup>"Government" as used in this listing refers to the United States of America acting through the Administrator of the Rural Utilities Service (RUS) or its predecessor agency, the Rural Electrification Administration (REA). Any Notes which are payable to a third party and which either RUS or REA has guaranteed as to payment are also described in this listing as being issued to the Government. Such guaranteed Notes are typically issued to the Federal Financing Bank (FFB), an instrumentality of the United States Department of Treasury, and held by RUS, but may also be issued to non-governmental entities.

<sup>2</sup>V=variable interest rate calculated by RUS pursuant to title 7 of the Code of Federal Regulations or by the Secretary of Treasury. CFC=an interest rate which may be fixed or variable from time to time as provided in the CFC Loan Agreement pertaining to a loan which has been made by CFC and guaranteed by RUS. CoBank=an interest rate which may be fixed or variable from time to time as provided in the CoBank Loan Agreement pertaining to a loan which has been made by CoBank and guaranteed by RUS.

<sup>3</sup>In addition to this note which the Mortgagor has issued to FFB, the Mortgagor has also issued a corresponding promissory note to RUS designated as the certain "Reimbursement Note" bearing even date therewith. Such Reimbursement Note is payable to the Government on demand and evidences the Mortgagor's obligation immediately to repay RUS, any payment which RUS may make pursuant to the RUS guarantee of such FFB note, together with interest, expenses and penalties (all as described in such Reimbursement Note). Such Reimbursement Note is an "ORIGINAL NOTE issued to the Government" for purposes of this Part One of Schedule A and this Mortgage and is entitled to all of the benefits and security of this Mortgage.

**SCHEDULE A: Part Two**

The outstanding secured obligations of the Mortgagor referred to in the fourth WHEREAS clause above are evidenced by the Original Notes described below:

**ORIGINAL NOTES issued to CFC**

<u>CFC Loan Designation</u>	<u>Face Amount of Note</u>	<u>Note Date</u>	<u>Maturity Date</u>
KY052-C-9001	\$89,000.00	09/07/1972	12/07/2007
KY052-C-9003	\$150,000.00	07/03/1974	07/03/2009
KY052-C-9005	\$150,000.00	04/03/1975	04/03/2010
KY052-C-9009	\$305,000.00	07/19/1977	07/19/2012
KY052-C-9010	\$304,000.00	06/08/1978	06/08/2013
KY052-C-9013	\$811,000.00	10/01/1979	10/01/2014
KY052-C-9016	\$733,000.00	11/12/1981	11/12/2016
KY052-C-9017	\$800,000.00	02/08/1989	02/08/2024
KY052-C-9018	\$860,204.00	10/01/1992	10/01/2027
KY052-C-9019	\$1,778,351.00	02/03/1994	02/03/2029

## **SCHEDULE B**

### **Property Schedule**

The fee and leasehold interests in real property referred to in Subclause A of Granting Clause First are described on the attached pages designated 1 through 1 of this Schedule B.

The recording jurisdictions referred to in Subclause B of Granting Clause First are: the Counties of Bath, Bracken, Fleming, Lewis, Mason, Nicholas, Robertson and Rowan in the Commonwealth of Kentucky.

The contracts referred to in Subclause C of Granting Clause First include without limitation the Wholesale Power Contract, dated as of October 1, 1964, between the Mortgagor and East Kentucky Power Cooperative, Inc., as amended.

1. A certain tract of land described in a certain deed, dated April 22, 1958, by Emma B. Landrigan and Russell Landrigan, her husband, as grantors to the Fleming-Mason Rural Electric Cooperative Corporation, as grantee and recorded in the Fleming County Court Clerk's Office, in the State of Kentucky, in Deed Book 115, on page 309.
  
2. A certain tract of land described in a certain deed, dated October 6, 1956, by George Faulkner, receiver of the Fleming Circuit Court as grantor to the Fleming-Mason Rural Electric Cooperative Corporation, as grantee, and recorded in the Fleming County Court Clerk's Office, in the State of Kentucky, in receiver's Deed Book 4, on page 424.

**SCHEDULE C**  
**Excepted Property**

None.



**FLEMING-MASON ENERGY COOPERATIVE, INC.**  
**STATEMENT OF OPERATIONS**  
**FOR THE 12 MONTHS ENDED SEPTEMBER 30, 2007**

Operating Revenue & Patronage Capital		\$	63,160,674.91
Cost of Purchased Power	\$		53,054,130.00
Distribution Expense - Operations			1,256,552.00
Distribution Expense - Maintenance			2,482,467.66
Customer Accounts Expense			1,595,679.07
Customer Service & Informational Expense			117,543.93
Administrative and General Expense			<u>1,227,179.81</u>
Total Operation & Maintenance Expense			59,733,552.47
Depreciation & Amortization Expense			2,499,987.46
Tax Expense - Other			55,797.15
Interest on Long-Term Debt			2,070,159.43
Interest Expense - Other			298,225.43
Other Deductions			<u>50,272.81</u>
Total Cost of Electric Service			<u>64,707,994.75</u>
Patronage Capital & Operating Margins			(1,547,319.84)
Non-Operating Margins - Interest			49,153.65
Non-Operating Margins - Other			(174,161.52)
Other Capital Credits & Patronage Dividends			<u>97,400.48</u>
Patronage Capital or Margins		\$	<u><u>(1,574,927.23)</u></u>





<b>USDA - RUS FINANCIAL AND STATISTICAL REPORT</b>			BORROWER DESIGNATION  KY 052		
INSTRUCTIONS: See RUS Bulletin 1717B - 2			PERIOD ENDED  September-07		
<b>PART B. DATA ON TRANSMISSION AND DISTRIBUTION PLANT</b>					
ITEM	YEAR-TO-DATE		ITEM	YEAR-TO-DATE	
	LAST YEAR	THIS YEAR		LAST YEAR	THIS YEAR
	(a)	(b)		(a)	(b)
1. New Services Connected	511	447	5. Miles Transmission		
2. Services Retired	38	29	6. Miles Distribution-Overhead	3,339	3,353
3. Total Services in Place	25,183	25,344	7. Miles Distribution-Underground	104	119
4. Idle Services <i>(Exclude Seasonals)</i>	1,810	1,546	8. Total Miles Energized <i>(5+6+7)</i>	3,443	3,472
<b>PART C. BALANCE SHEET</b>					
<b>ASSETS AND OTHER DEBITS</b>			<b>LIABILITIES AND OTHER CREDITS</b>		
1. Total Utility Plant in Service	74,967,753		29. Memberships	231,350	
2. Construction Work in Progress	934,921		30. Patronage Capital	23,171,713	
3. Total Utility Plant ( 1 + 2 )	75,902,674		31. Operating Margins - Prior Years		
4. Accum. Provision for Depreciation and Amort.	18,889,930		32. Operating Margins - Current Year	(1,281,537)	
5. Net Utility Plant ( 3 - 4 )	57,012,745		33. Non-Operating Margins	5,503	
6. Non-Utility Property (Net)			34. Other Margins and Equities	(2,198,688)	
7. Investments in Subsidiary Companies	220,311		35. Total Margins & Equities (29 thru 34)	19,928,340	
8. Invest. In Assoc Org-Patronage Capital	12,405,271		36. Long-Term Debt - RUS (Net)	20,885,369	
9. Invest. In Assoc Org-Other-General Funds			(Payments - Unapplied \$ _____)		
10. Invest. In Assoc Org-Other-Nongen Funds	842,126		37. Long-Term Debt - RUS - Econ. Devel. (Net)		
11. Invest. In Economic Development Projects			38. Long-Term Debt - FFB - RUS Guaranteed	18,231,743	
12. Other Investments	81,037		39. Long-Term Debt - Other - RUS Guaranteed		
13. Special Funds			40. Long-Term Debt Other (Net)	3,699,737	
14. Total Other Property & Investments (6 thru 13)	13,548,744		41. Total Long-Term Debt (36 thru 40)	42,816,849	
15. Cash - General Funds	334,427		42. Obligations Under Capital Leases - Noncurrent	169,252	
16. Cash - Construction Funds - Trustee			43. Accumulated Operating Provisions	1,994,853	
17. Special Deposits			44. Total Other Noncurrent Liabilities (42 + 43)	2,164,105	
18. Temporary Investments			45. Notes Payable	5,949,477	
19. Notes Receivable (Net)			46. Accounts Payable	5,489,796	
20. Accounts Receivable-Sales of Energy (Net)	5,732,535		47. Consumers Deposits	626,209	
21. Accounts Receivable - Other (Net)	725,728		48. Current Maturities Long-Term Debt		
22. Materials and Supplies - Electric & Other	546,658		49. Current Maturities Long-Term Debt		
23. Prepayments	144,565		- Economic Development		
24. Other Current and Accrued Assets	292,565		50. Current Maturities Capital Leases		
25. Total Current and Accrued Assets (15 thru 24)	7,776,477		51. Other Current and Accrued Liabilities	1,422,479	
26. Regulatory Assets			52. Total Current & Accrued Liabilities (45 thru 51)	13,487,960	
27. Other Deferred Debits	94,532		53. Regulatory Liabilities		
28. Total Assets & Other Debits (5+14+25thru27)	78,432,498		54. Other Deferred Credits	35,244	
			55. Total Liabilities and Other Credits		
			(35 + 41 + 44 + 52 thru 54)		
				78,432,498	
<b>PART D. NOTES TO FINANCIAL STATEMENTS</b>					
THIS SPACE IS PROVIDED FOR IMPORTANT DISCLOSURE NOTES TO THE FINANCIAL STATEMENTS CONTAINED IN THIS REPORT. (A SEPARATE SHEET MAY BE USED IF ADDITIONAL SPACE IS NEEDED.)					



**Joni Hazelrigg**

**From:** Elaine MacDonald [Elaine.MacDonald@nrucfc.coop]  
**Sent:** Wednesday, October 24, 2007 6:02 PM  
**To:** jhazelrigg@fmenergy.net  
**Cc:** Natalie Adlung; Hilda Gonzalez  
**Subject:** Fw: KY052-P-5103 - Documents for new \$10 million line of credit



KY052-P-5103



KY052-P-5103



KY052-P-5103



KY052-P-5103

Resolutions.pdf (... OCAGMT.pdf (96 K.)pinion.DOC (26 K.)Instructions.DOC ...

Hi Joni:

Here are the documents for the new perpetual line of credit. Take a look, and please don't hesitate to give me a call at 800-424-2954, ext. 6801 if you have any questions.

Thanks!

Elaine

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We are pleased to inform you that National Rural Utilities Cooperative Finance Corporation (CFC) has approved a new credit facility for your company. The CFC documents for the facility are enclosed for execution.

As a condition of CFC's credit commitment, all of the attached documents must be executed by your cooperative and received by CFC within 90 days of the date of this correspondence. CFC's credit commitment is dependent upon the execution of the CFC documents by your cooperative and their receipt and acceptance by CFC. CFC will notify you after its receipt of the documents regarding the status of this facility.

Please note that the attached documents have been transmitted only to your cooperative. If you would like us to send a copy to your attorney or if you have any other questions, please contact me or the legal department contact listed in the enclosed instructions.

Please review the enclosed instructions for information on the number of copies of each document to be printed, executed and returned to CFC.

Any changes made to the documents to be executed by your Cooperative (i.e., the Loan Agreement, Note, Security Agreement, etc.) without the prior written consent of CFC shall invalidate all documents.

We at CFC appreciate the opportunity to do business with you and look forward to serving your financial needs in the future.

Please mail your executed documents to: Legal Administrative Assistant  
NRUCFC  
2201 Cooperative Way  
Herndon, Virginia 20171

There are 4 attachments to this correspondence.

(See attached file: KY052-P-5103 Resolutions.pdf) (See attached file: KY052-P-5103 LOCAGMT.pdf)

Thank you,



**CERTIFICATE OF RESOLUTIONS AND INCUMBENCY**

I, Lonnie C. Vice, do hereby certify that (i) I am the Secretary of Fleming-Mason Energy Cooperative, Inc. (hereinafter called the "Cooperative"); (ii) the following are true and correct copies of resolutions duly adopted by the board of directors of the Cooperative at a meeting held on Nov. 1, 2007; (iii) the meeting was duly and regularly called and held in accordance with the articles and bylaws of the Cooperative; (iv) the Cooperative is duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and there is no pending or contemplated proceeding for the merger, consolidation, sale of assets or business or dissolution of the Cooperative; (v) forms of the CFC loan documents were submitted to the meeting and were authorized by the board of directors to be executed; (vi) none of the following resolutions has been rescinded or modified as of this date; and (vii) the persons authorized below have been duly elected or appointed to their respective positions and occupied such positions on the date of actual execution of the CFC loan documents:

RESOLVED, that the Cooperative establish a line of credit and authorize borrowing from National Rural Utilities Cooperative Finance Corporation ("CFC") in an amount which shall not at any one time exceed \$10,000,000.00 (the "Line of Credit Amount"), for a term of twelve (12) months, which period shall automatically renew for successive twelve (12) month periods, subject to the provisions of the Revolving Line of Credit Agreement substantially in the form submitted to this meeting (the "Line of Credit Agreement"); and,

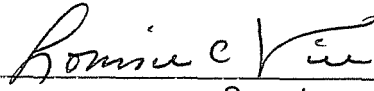
RESOLVED, that the individuals listed below are hereby authorized to execute and to deliver to CFC the Line of Credit Agreement.

RESOLVED, that each of the following individuals is hereby authorized in the name and on behalf of the Cooperative to execute and to deliver all such other documents and instruments as may be necessary or appropriate, to make all payments, to execute any future amendments to said Line of Credit Agreement as such individual may deem appropriate within the Line of Credit Amount so authorized and to do all such other acts as in the opinion of such authorized individual acting may be necessary or appropriate in order to carry out the purposes and intent of the foregoing resolutions:

<u>Office or Title</u>	<u>Name (typed or printed)</u>
<u>President</u>	<u>Christopher S. Perry</u>
_____	_____
_____	_____
_____	_____

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Cooperative  
this

1<sup>st</sup> day of November, 2007

  
\_\_\_\_\_  
Secretary

(SEAL)



**CFC TERM SHEET FOR  
FLEMING-MASON ENERGY COOP., INC.  
("FLEMING-MASON")**

**LOAN TYPE:** Perpetual Line of Credit.

**LOAN PURPOSE:** General corporate/working capital.

**LOAN AMOUNT:** \$10 million CFC line of credit (to replace \$7 million CFC line of credit)

A portion of the \$10 million line will be stop ordered until Fleming-Mason qualifies for the full \$10 million under RUS' Unsecured Indebtedness provision.

**LOAN SECURITY:** Unsecured.

**LOAN TERM:** Perpetual. Annually Renewing.

**AMORTIZATION:** Interest only with an annual pay down provision. Interest is billed quarterly. Borrower is required to meet a five-day rest provision once during each twelve-month period that the agreement is in effect (described in section 3.03 of the Revolving Line of Credit Agreement).

**INTEREST RATES:** Standard CFC line of credit rate. CFC typically sets line of credit rate at the beginning of each month.

**EQUITY PURCHASE:** N/A for lines of credit.

**FEES:** There are no fees associated with the line of credit.

**PATRONAGE CAPITAL:** The cooperative shall receive patronage capital in accordance with CFC's policies in effect at the time of retirement. Currently, CFC retires 70 percent of a current year's allocation within 90 days after the close of its fiscal year. The remaining 30 percent is retired 15 years thereafter. If a loan is used to purchase LCTCs, that loan is not eligible to earn patronage capital.

**SUPPORTING DATA (application materials):**

- Audited Financial Statements for the three proceeding years, if not already submitted.
- Interim financial statement for the most recent year-to-date period, if not already submitted.
- Any other information that CFC may require at the time of loan application, as required for due diligence.



**CFC TERM SHEET FOR  
FLEMING-MASON ENERGY COOP., INC.  
("FLEMING-MASON")**

**CONDITIONS  
PRECEDENT TO  
CLOSING:**

Including, but not limited to:

- Receipt and review of application materials and final loan approval by CFC.
- Completion of mutually agreeable loan documentation to include terms, covenants, representations, warranties, defaults and remedies, and other supporting documentation typical for this type of financing.
- Receipt of applicable commission approval.

***NOT A COMMITMENT TO LEND - FOR DISCUSSION PURPOSES ONLY***



## REVOLVING LINE OF CREDIT AGREEMENT

**REVOLVING LINE OF CREDIT AGREEMENT** (this "Agreement"), dated as of November 1, 2007, between FLEMING-MASON ENERGY COOPERATIVE, INC. ("Borrower"), a corporation organized and existing under the laws of the State of Kentucky, and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION ("CFC"), a cooperative association organized and existing under the laws of the District of Columbia.

### RECITALS

**WHEREAS**, the Borrower has applied to CFC for a line of credit for the purposes set forth in Schedule 1 hereto, and CFC is willing to extend such a line of credit to the Borrower on the terms and conditions stated herein.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree and bind themselves as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.01** For purposes of this Agreement, the following capitalized terms shall have the following meanings (such definitions to be equally applicable to the singular and the plural form thereof).

**"Advance"** shall mean each advance of funds by CFC to Borrower pursuant to the terms and conditions of this Agreement.

**"Business Day"** shall mean any day that both CFC and the depository institution CFC utilizes for funds transfers hereunder are open for business.

**"CFC Commitment"** shall have the meaning as defined in Schedule 1 hereto.

**"CFC Line of Credit Rate"** shall mean the rate published by CFC from time to time, by electronic or other means, for similarly classified lines of credit, but if not published, then the rate determined for such lines of credit by CFC from time to time.

**"Default Rate"** shall mean a rate per annum equal to the interest rate in effect for an Advance plus three hundred basis points.

**"Effective Date"** shall mean the date designated as such by CFC on the signature page hereof.

**"Event of Default"** shall have the meaning as described in Article VI hereof.

**"GAAP"** shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

**“Governmental Authority”** shall mean the government of the United States of America, any other nation or government, any state or other political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

**“Initial Unsecured Indebtedness Certificate”** shall mean the Unsecured Indebtedness Certificate submitted by Borrower prior to the initial Advance hereunder.

**“Lien”** shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set off, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the Uniform Commercial Code.

**“Line of Credit”** shall mean the line of credit extended by CFC to the Borrower, pursuant to this Agreement, in an aggregate principal amount outstanding at any time not to exceed the CFC Commitment.

**“Loan Documents”** shall mean this Agreement and all other documents or instruments executed, delivered or executed and delivered by the Borrower and evidencing, securing, governing or otherwise pertaining to the Line of Credit.

**“Maturity Date”** shall mean the date set forth in Schedule 1 hereto.

**“Obligations”** shall mean any and all liabilities, obligations or indebtedness owing by the Borrower to CFC, of any kind or description, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

**“Payment Date”** shall mean the last day of March, June, September and December.

**“Person”** shall mean natural persons, cooperatives, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, associations, companies, trusts or other organizations, irrespective of whether they are legal entities, and Governmental Authorities.

**“RUS”** shall mean the Rural Utilities Service, an agency of the United States Department of Agriculture, or if at any time after the execution of this Agreement RUS is not existing and performing the duties of administering a program of rural electrification as currently assigned to it, then the entity performing such duties at such time.

**“Unsecured Indebtedness Certificate”** shall mean a certification substantially in the form of Exhibit A hereto, setting forth the amount of unsecured indebtedness for borrowed money the Borrower may incur without the prior written consent of RUS and the calculations relating thereto.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**Section 2.01** The Borrower represents and warrants to CFC that as of the date of this Agreement:

**A. Good Standing.** The Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, is duly qualified to do business and is in good standing in those states in which it is required to be qualified to conduct its business.

**B. Authority; Validity.** The Borrower has the power and authority to enter into this Agreement; to make the borrowing hereunder; to execute and deliver all documents and instruments required hereunder and to incur and perform the obligations provided for herein, all of which have been duly authorized by all necessary and proper action; and no consent or approval of any Person, including, as applicable and without limitation, members of the Borrower, which has not been obtained is required as a condition to the validity or enforceability hereof or thereof.

This Agreement is, and when fully executed and delivered will be, legal, valid and binding upon the Borrower and enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity.

**C. No Conflicting Agreements.** The execution and delivery of the Loan Documents and performance by the Borrower of the obligations thereunder, and the transactions contemplated hereby or thereby, will not: (i) violate any provision of law, any order, rule or regulation of any court or other agency of government, any award of any arbitrator, the articles of incorporation or by-laws of the Borrower, or any indenture, contract, agreement, mortgage, deed of trust or other instrument to which the Borrower is a party or by which it or any of its property is bound; or (ii) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument, or result in the creation or imposition of any Lien upon any of the property or assets of the Borrower.

The Borrower is not in default in any material respect under any agreement or instrument to which it is a party or by which it is bound and no event or condition exists which constitutes a default, or with the giving of notice or lapse of time, or both, would constitute a default under any such agreement or instrument.

**D. Taxes.** The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed and has paid or caused to be paid all federal, state and local taxes, assessments, and governmental charges and levies thereon, including interest and penalties to the extent that such taxes, assessments, and governmental charges and levies have become due, except for such taxes, assessments, and governmental charges and levies which the Borrower is contesting in good faith by appropriate proceedings for which adequate reserves have been set aside.

**E. Licenses and Permits.** The Borrower has duly obtained and now holds all licenses, permits, certifications, approvals and the like necessary to own and operate its

property and business that are required by Governmental Authorities and each remains valid and in full force and effect.

**F. Litigation.** There are no outstanding judgments, suits, claims, actions or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its properties which, if adversely determined, either individually or collectively, would have a material adverse effect upon the business, operations, prospects, assets, liabilities or financial condition of the Borrower. The Borrower is not, to the Borrower's knowledge, in default or violation with respect to any judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority which would have a material adverse effect upon the business, operations, prospects, assets, liabilities or financial condition of the Borrower.

**G. Financial Statements.** The balance sheet of the Borrower as at the date identified in Schedule 1 hereto, the statement of operations of the Borrower for the period ending on said date, and the interim financial statements of the Borrower, all heretofore furnished to CFC, are complete and correct. Said balance sheet fairly presents the financial condition of the Borrower as at said date and said statement of operations fairly reflects its operations for the period ending on said date. The Borrower has no contingent obligations or extraordinary forward or long-term commitments except as specifically stated in said balance sheet or herein. There has been no material adverse change in the financial condition or operations of the Borrower from that set forth in said financial statements except changes disclosed in writing to CFC prior to the date hereof.

**H. Required Approvals.** No license, consent or approval of any Governmental Authority is required to enable the Borrower to enter into this Agreement, or to perform any of its Obligations provided for in such documents, including without limitation (and if applicable), that of any state public utilities commission, any state public service commission, and the Federal Energy Regulatory Commission, except as disclosed in Schedule 1 hereto, all of which Borrower has obtained prior to the date hereof.

**I. Compliance With Laws.** The Borrower is in compliance, in all material respects, with all applicable requirements of law and all applicable rules and regulations of each Governmental Authority.

**J. Disclosure.** To the Borrower's knowledge, information and belief, neither this Agreement nor any document, certificate or financial statement furnished to CFC by or on behalf of the Borrower in connection herewith (all such documents, certificates and financial statements, taken as a whole) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein not misleading.

### ARTICLE III

#### CREDIT TERMS

**Section 3.01 Advances.** CFC agrees to advance funds to the Borrower pursuant to the terms and conditions hereof, provided, however, that the principal amount at any time outstanding under this Agreement shall not exceed the CFC Commitment. The Borrower may borrow, repay and reborrow funds at any time or from time up to, but not including, the Maturity Date, at which

time all principal amounts outstanding, and accrued, but unpaid interest thereon, shall be due and payable in full.

**Section 3.02 Payment and Interest Rate.** The Line of Credit shall be payable and bear interest as follows:

**A. Interest Rate and Payment.** The Borrower unconditionally promises and agrees to pay, as and when due, interest on all amounts advanced hereunder from the date of each Advance and to repay all amounts advanced hereunder with interest on the Maturity Date, if not sooner paid. Interest shall be due and payable on each Payment Date. CFC shall send a payment notice to the Borrower at least five days prior to the due date of any interest payment, provided, however, that CFC's failure to send a payment notice shall not constitute a waiver by CFC or be deemed to relieve the Borrower of its obligation to make payments as and when due as provided for herein. All amounts shall be payable at CFC's main office at 2201 Cooperative Way, Herndon, Virginia 20171-3025 or at such other location as designated by CFC from time to time. The interest rate on all Advances will be equal to the CFC Line of Credit Rate in effect from time to time, which shall not exceed the Prevailing Bank Prime Rate (as defined herein), plus one percent per annum. Interest will be computed on the basis of a 365 day year for the actual number of days that any Advance is outstanding. The effective date of an interest rate adjustment will be determined from time to time by CFC, provided that no such adjustment may be effective on a date other than the first or sixteenth day of any month, and any such adjustment shall remain in effect until any subsequent change in the interest rate occurs.

The "Prevailing Bank Prime Rate" is that bank prime rate published in the "Money Rates" column of the eastern edition of *The Wall Street Journal* on the publication day immediately preceding the day on which an adjustment in the interest rate hereof shall become effective. If *The Wall Street Journal* shall cease publishing the Prevailing Bank Prime Rate, the Prevailing Bank Prime Rate shall be determined by CFC by reference to another publication reporting bank prime rates in a similar manner.

**B. Application of Payments.** Each payment shall be applied to the Obligations, first to any fees, costs, expenses or charges other than interest or principal then due on the Borrower's indebtedness to CFC, second to interest accrued and the balance to principal.

**Section 3.03 Paydown Requirement.** For each 12-month period while this Agreement is in effect, Borrower shall, for a period of at least five consecutive business days, pay down the entire outstanding principal balance on this line of credit ("Paydown"). Borrower shall make the initial Paydown within 360 days of the first Advance hereunder, and shall make each subsequent Paydown within 360 days of the date of the first Advance following each Paydown.

**Section 3.04 Limitations on Advances.**

**A.** While an Advance is outstanding, CFC reserves the right to limit further Advances if the sum of (a) all Advances outstanding, (b) the amount of any further Advance requested, and (c) the total amount of Borrower's other unsecured outstanding debt, would exceed the CFC Commitment. CFC may in its sole discretion decline to make any Advance during any period when the Borrower is in default hereunder.

**B.** Advances hereunder shall further be limited by CFC to the amount of unsecured indebtedness for borrowed money the Borrower may incur without the prior written consent of RUS as set forth in the Initial Unsecured Indebtedness Certificate or, if subsequently submitted

pursuant to Section 3.05 hereof, the most recently submitted Unsecured Indebtedness Certificate, in each case, rounded down to the nearest dollar.

**Section 3.05 Unsecured Indebtedness Certificates.** At any time after the initial Advance hereunder, the Borrower may submit a current Unsecured Indebtedness Certificate

**Section 3.06 Mandatory Prepayment.** If there is a change in the Borrower's corporate structure (including without limitation by merger, consolidation, conversion or acquisition), then upon the effective date of such change, (a) the Borrower shall no longer have the ability to request, and CFC shall have no obligation to make, Advances hereunder and (b) the Borrower shall prepay the outstanding principal balance of all Obligations, together with any accrued but unpaid interest thereon, any unpaid costs or expenses provided for herein, and a prepayment premium prescribed by CFC pursuant to its policies of general application in effect from time to time, and upon prepayment thereof, this Agreement shall automatically terminate without further action by either Borrower or CFC.

Notwithstanding the foregoing, Borrower shall retain the ability to request, and CFC shall retain the obligation to make, Advances hereunder and no prepayment shall be required under this Section 3.05 if, after giving effect to such change, Borrower, or its successor in interest, is engaged in the furnishing of electric utility services to its members and patrons for their use as ultimate consumers and is organized as a cooperative, nonprofit corporation, public utility district, municipality, or other public governmental body.

**Section 3.07 Reserved.**

**Section 3.08 Default Rate.** If Borrower defaults on its obligation to make a payment due hereunder by the applicable Payment Date, and such default continues for thirty days thereafter, then beginning on the thirty-first day after the Payment Date and for so long as such default continues, Advances shall bear interest at the Default Rate.

## ARTICLE IV

### CONDITIONS OF LENDING

**Section 4.01** The obligation of CFC to make any Advance hereunder is subject to satisfaction of the following conditions in form and substance satisfactory to CFC:

**A. Legal Matters.** All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for CFC.

**B. Documents.** CFC shall have been furnished with (i) the executed Loan Documents, (ii) certified copies of all such organizational documents and proceedings of the Borrower authorizing the transactions hereby contemplated as CFC shall require, (iii) an opinion of counsel for the Borrower addressing such legal matters as CFC shall reasonably require, and (iv) all other such documents as CFC may reasonably request.

**C. Government Approvals.** The Borrower shall have furnished to CFC true and correct copies of all certificates, authorizations, consents, permits and licenses from Governmental Authorities necessary for the execution or delivery of the Loan Documents or performance by the Borrower of the obligations thereunder.



**D. Representations and Warranties.** The representations and warranties contained in Article II shall be true on the date of the making of each Advance hereunder with the same effect as though such representations and warranties had been made on such date; no Event of Default and no event which, with the lapse of time or the notice and lapse of time would become such an Event of Default, shall have occurred and be continuing or will have occurred after giving effect to each Advance on the books of the Borrower; there shall have occurred no material adverse change in the business or condition, financial or otherwise, of the Borrower; and nothing shall have occurred which in the opinion of CFC materially and adversely affects the Borrower's ability to perform its obligations hereunder.

**E. Requisitions.** Borrower will requisition each Advance by submitting its requisition to CFC in form and substance satisfactory to CFC no later than 12:00 noon local time at CFC's offices in Herndon, Virginia on the Business Day prior to the Business Day Borrower seeks to have funds advanced.

CFC may require the Borrower to submit such additional information as it may reasonably require prior to funding the Advance request.

**F. Special Conditions.** CFC shall be fully satisfied that the Borrower has complied with all special conditions identified in Schedule 1 hereto.

## ARTICLE V

### COVENANTS

**Section 5.01** The Borrower covenants and agrees with CFC that until payment in full of the Line of Credit and performance of all obligations of the Borrower hereunder:

**A. Use of Proceeds.** The Borrower shall use the proceeds of this Line of Credit solely for the purposes identified on Schedule 1 hereto.

**B. Notice.** The Borrower shall promptly notify CFC in writing of:

- (i) any material adverse change in the business, operations, prospects, assets, liabilities or financial condition of the Borrower or its subsidiaries;
- (ii) the institution or threat of any litigation or administrative proceeding of any nature involving the Borrower or any subsidiary which could materially affect the business, operations, prospects, assets, liabilities or financial condition of the Borrower or any subsidiary;
- (iii) the occurrence of an Event of Default hereunder, or any event that, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

**C. Default Notices.** Upon receipt of any notices with respect to a default by the Borrower or any subsidiary under the terms of any evidence of any indebtedness with parties other than CFC or of any loan agreement, mortgage or other agreement relating thereto, the Borrower shall, and shall cause each subsidiary to, deliver copies of such notice to CFC.

**D. Financial Books; Financial Reports; Right of Inspection.** The Borrower will at all times keep, and safely preserve, proper books, records and accounts in which full and true entries will be made of all of the dealings, business and affairs of the Borrower, in accordance with GAAP. The Borrower will cause to be prepared and furnished to CFC within one hundred twenty (120) days of the end of each of the Borrower's fiscal years during the term hereof, a full and complete consolidated and consolidating report of its financial condition and of its operations as of the end of such fiscal year, audited and certified by independent certified public accountants nationally recognized or otherwise satisfactory to CFC and accompanied by a report of such audit in form and substance satisfactory to CFC, including without limitation a consolidated and consolidating balance sheet and the related consolidated and consolidating statements of income and cash flow. CFC, through its representatives, shall at all times during reasonable business hours and upon prior notice have access to, and the right to inspect and make copies of, any or all books, records and accounts, and any or all invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Borrower or in anyway pertaining to its property or business.

**E. Compliance With Laws.** The Borrower and each subsidiary shall remain in compliance, in all material respects, with all applicable requirements of law and applicable rules and regulations of each Governmental Authority.

**F. Taxes.** The Borrower shall pay, or cause to be paid all taxes, assessments or governmental charges lawfully levied or imposed on or against it and its properties prior to the time they become delinquent, except for any taxes, assessments or charges that are being contested in good faith and with respect to which adequate reserves as determined in good faith by Borrower have been established and are being maintained.

**G. Special Covenants.** The Borrower will comply with any special covenants identified in Schedule 1 hereto.

## ARTICLE VI

### EVENTS OF DEFAULT

**Section 6.01** The following shall be "Events of Default" under this Agreement:

**A. Representations and Warranties.** Any representation or warranty made by the Borrower herein, or in any of the other Loan Documents, or in any certificate or financial statement furnished to CFC hereunder or under any of the other Loan Documents shall prove to be false or misleading in any material respect.

**B. Payment.** The Borrower shall fail to pay (whether upon stated maturity, by acceleration, or otherwise) any principal, interest, premium (if any) or other amount payable under the Line of Credit within five (5) Business Days after the due date thereof.

**C. Other Covenants.**

**(i) No Grace Period.** Failure of the Borrower to observe or perform any covenant or agreement contained in Sections 5.01.A, 5.01.C, 5.01.D, or 5.01.G, of this Agreement.

(ii) **Thirty Day Grace Period.** Failure of the Borrower to observe or perform any other covenant or agreement contained in this Agreement or any of the other Loan Documents, which shall remain unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Borrower by CFC.

**D. Legal Existence, Permits and Licenses.** The Borrower shall forfeit or otherwise be deprived of (i) its authority to conduct business in the jurisdiction in which it is organized or in any other jurisdiction where such authority is required in order for the Borrower to conduct its business in such jurisdiction or (ii) permits, easements, consents or licenses required to carry on any material portion of its business.

**E. Other CFC Obligations.** The Borrower shall be in breach or default of any Obligation, which breach or default continues uncured beyond the expiration of any applicable grace period.

**F. Other Obligations.** The Borrower shall (i) fail to make any payment of any principal, premium or any other amount due or interest on any indebtedness with parties other than CFC which shall remain unpaid beyond the expiration of any applicable grace period, or (ii) be in breach or default with respect to any other term of any evidence of any other indebtedness with parties other than CFC or of any loan agreement, mortgage or other agreement relating thereto which breach or default continues uncured beyond the expiration of any applicable grace period, if the effect of such failure, default or breach is to cause the holder or holders of that indebtedness to cause that indebtedness to become or be declared due prior to its stated maturity (upon the giving or receiving of notice, lapse of time, both or otherwise).

**G. Involuntary Bankruptcy.** An involuntary case or other proceeding shall be commenced against the Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and such involuntary case or other proceeding shall continue without dismissal or stay for a period of sixty (60) days; or an order for relief shall be entered against the Borrower under the federal bankruptcy laws or applicable state law as now or hereafter in effect.

**H. Insolvency.** The Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to, or be generally unable to, pay its debts as they become due, or shall take any action to authorize any of the foregoing.

**I. Dissolution or Liquidation.** Other than as provided in subsection H. above, the dissolution or liquidation of the Borrower, or failure by the Borrower promptly to forestall or remove any execution, garnishment or attachment of such consequence as will impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within sixty (60) days.

**J. Material Adverse Change.** Any material adverse change in the business or condition, financial or otherwise, of the Borrower or any subsidiary.

**K. Monetary Judgment.** The Borrower shall suffer any money judgment not covered by insurance, writ or warrant of attachment or similar process involving an amount in excess of \$100,000 and shall not discharge, vacate, bond or stay the same within a period of sixty (60) days.

**L. Nonmonetary Judgment.** One or more nonmonetary judgments or orders (including, without limitation, injunctions, writs or warrants of attachment, garnishment, execution, distraint, replevin or similar process) shall be rendered against the Borrower that, either individually or in the aggregate, could reasonably be expected to have a material adverse effect upon the business, operations, prospects, assets, liabilities or financial condition of the Borrower.

## ARTICLE VII

### REMEDIES

**Section 7.01** If any of the Events of Default listed in Section 6 hereof shall occur after the date of this Agreement and shall not have been remedied within the applicable grace periods specified therein, then CFC may:

- (a) Cease making Advances hereunder;
- (b) Declare all unpaid principal outstanding on the Line of Credit, all accrued and unpaid interest thereon, and all other Obligations to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived;
- (c) Exercise rights of setoff or recoupment and apply any and all amounts held, or hereby held, by CFC or owed to the Borrower or for the credit or account of the Borrower against any and all of the Obligations of the Borrower now or hereafter existing hereunder or under the Line of Credit, including, but not limited to, patronage capital allocations and retirements, money due to Borrower from equity certificates purchased from CFC, and any membership or other fees that would otherwise be returned to Borrower. The rights of CFC under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which CFC may have. The Borrower waives all rights of setoff, deduction, recoupment or counterclaim;
- (d) Pursue all rights and remedies available to CFC, including, but not limited to, a suit for specific performance, injunctive relief or damages;
- (e) Pursue any other rights and remedies available to CFC at law or in equity.

Nothing herein shall limit the right of CFC to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default. Each right, power and remedy of CFC shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

**ARTICLE VIII**

**MISCELLANEOUS**

**Section 8.01 Notices.** All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. All such communications shall be deemed to have been duly given (a) when personally delivered including, without limitation, by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by telecopy, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above in each case given or addressed as provided for herein. The Address for Notices of each of the respective parties is as follows:

National Rural Utilities Cooperative Finance  
Corporation  
2201 Cooperative Way  
Herndon, Virginia 20171-3025  
Attention: Senior Vice President – Member Services  
Fax # 703-709-6776

The Borrower:

The address set forth in  
Schedule 1 hereto

**Section 8.02 Expenses.** Borrower shall reimburse CFC for any reasonable costs and out-of-pocket expenses paid or incurred by CFC (including, without limitation, reasonable fees and expenses of outside attorneys, paralegals and consultants) for all actions CFC takes, (a) to enforce the payment of any Obligation or in preparation for such enforcement, (b) to restructure any of the Obligations, (c) to review, approve or grant any consents or waivers hereunder, (d) to prepare, negotiate, execute, deliver, review, amend or modify this Agreement, and (e) to prepare, negotiate, execute, deliver, review, amend or modify any other agreements, documents and instruments deemed necessary or appropriate by CFC in connection with any of the foregoing.

The amount of all such expenses identified in this Section 8.02 shall be payable upon demand, and if not paid, shall accrue interest at the Default Rate.

**Section 8.03 Late Payments.** If payment of any amount due hereunder is not received at CFC's office in Herndon, Virginia or such other location as CFC may designate to the Borrower, within five (5) Business Days after the due date thereof, the Borrower will pay to CFC, in addition to all other amounts due under the terms of the Loan Documents, any late payment charge as may be fixed by CFC from time to time pursuant to its policies of general application as in effect from time to time.

**Section 8.04. Non-Business Day Payments.** If any payment to be made by the Borrower hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

**Section 8.05 Filing Fees.** To the extent permitted by law, the Borrower agrees to pay all expenses of CFC (including the reasonable fees and expenses of its counsel) in connection with the filing, registration, recordation or perfection of any instruments as may be required by CFC in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to execution, filing, registration, recordation or perfection of any document or instrument in connection herewith. The Borrower agrees to save harmless and indemnify CFC from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by CFC in connection with this Agreement. The provisions of this subsection shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder.

**Section 8.06 CFC Accounts.** Borrower agrees that the records of, and all computations by, CFC (in whatever media they are recorded or maintained) as to the amount of principal, interest and fees due on the Line of Credit shall be conclusive in the absence of manifest error.

**Section 8.07 Waiver; Modification.** No failure on the part of CFC to exercise, and no delay in exercising, any right or power hereunder or under the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise by CFC of any right hereunder, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. No modification or waiver of any provision of this Agreement or the other Loan Documents and no consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be in writing by the party granting such modification, waiver or consent, and then such modification, waiver or consent shall be effective only in the specific instance and for the purpose for which given.

**SECTION 8.08 GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.**

(A) THE PERFORMANCE AND CONSTRUCTION OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF VIRGINIA.

(B) THE BORROWER HEREBY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE UNITED STATES COURTS LOCATED IN VIRGINIA AND OF ANY STATE COURT SO LOCATED FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTIONS THAT IT MAY NOW OR HEREAFTER HAVE TO THE ESTABLISHING OF THE VENUE OF ANY SUCH PROCEEDINGS BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(C) THE BORROWER AND CFC EACH HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**SECTION 8.09 INDEMNIFICATION.** THE BORROWER HEREBY INDEMNIFIES AND AGREES TO HOLD HARMLESS, AND DEFEND CFC AND ITS MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS AND REPRESENTATIVES (EACH AN "INDEMNITEE") FOR, FROM, AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COSTS AND EXPENSES OF LITIGATION AND REASONABLE ATTORNEYS' FEES) ARISING FROM ANY CLAIM OR DEMAND IN RESPECT OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS DESCRIBED IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ARISING AT ANY TIME, WHETHER BEFORE OR AFTER PAYMENT AND PERFORMANCE OF ALL OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS IN FULL, EXCEPTING ANY SUCH MATTERS ARISING SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CFC OR ANY INDEMNITEE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN SECTION 8.11 HEREOF, THE OBLIGATIONS IMPOSED UPON THE BORROWER BY THIS SECTION SHALL SURVIVE THE REPAYMENT OF THE LINE OF CREDIT AND THE TERMINATION OF THIS AGREEMENT.

**Section 8.10 Complete Agreement.** This Agreement, together with the schedules to this Agreement and the other Loan Documents, and the other agreements and matters referred to herein or by their terms referring hereto, is intended by the parties as a final expression of their agreement and is intended as a complete statement of the terms and conditions of their agreement. In the event of any conflict in the terms and provisions of this Agreement and any other Loan Documents, the terms and provisions of this Agreement shall control.

**Section 8.11 Survival; Successors and Assigns.** All covenants, agreements, representations and warranties of the Borrower which are contained in this Agreement shall survive the execution and delivery to CFC of the Loan Documents and the making of the Advances hereunder and shall continue in full force and effect until all of the obligations under the Loan Documents have been paid in full. All covenants, agreements, representations and warranties of the Borrower which are contained in this Agreement shall inure to the benefit of the successors and assigns of CFC. The Borrower shall not have the right to assign its rights or obligations under this Agreement.

**Section 8.12 Use of Terms.** The use of the singular herein shall also refer to the plural, and vice versa.

**Section 8.13 Headings.** The headings and sub-headings contained in this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

**Section 8.14 Severability.** If any term, provision or condition, or any part thereof, of this Agreement or the other Loan Documents shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement and the other Loan Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

**Section 8.15 Binding Effect.** This Agreement shall become effective when it shall have been executed by both Borrower and CFC and thereafter shall be binding upon and inure to the benefit of Borrower and CFC and their respective successors and assigns.

**Section 8.16 Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.


**Section 8.17 Schedule 1.** Schedule 1 attached hereto is an integral part of this Agreement.

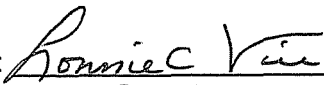


**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

FLEMING-MASON ENERGY COOPERATIVE,  
INC.

(SEAL)

By:   
Title: President & CEO

Attest:   
Secretary

NATIONAL RURAL UTILITIES COOPERATIVE  
FINANCE CORPORATION

(SEAL)

By: \_\_\_\_\_  
Assistant Secretary-Treasurer

Attest: \_\_\_\_\_  
Assistant Secretary-Treasurer

**Effective Date:** \_\_\_\_\_ (to be filled in by CFC)

**Loan Number: KY052-P-5103**

## SCHEDULE 1

1. The purpose of this Line of Credit is to provide funds for the Borrower's general corporate use, consistent with the Borrower's articles of incorporation, bylaws and applicable federal, state and local laws and regulations.
2. The aggregate CFC Commitment shall mean \$10,000,000.00.
3. Maturity Date shall mean the date twelve (12) months from the Effective Date. This Agreement shall thereafter automatically renew for subsequent periods of twelve (12) months each. Either party may terminate this Agreement at the end of any period by providing written notice to the other party at least ninety (90) days prior to the expiration of such period.
4. The date of the Borrower's balance sheet referred to in Section 2.01.G. is December 31, 2005 and 2006.
5. The Governmental Authority referred to in Section 2.01.H. is: Kentucky Public Service Commission.
6. The special conditions referred to in Section 4.01.F. are as follows: Prior to, and as a condition of, the initial Advance hereunder, Borrower shall provide CFC with the Unsecured Indebtedness Certificate.
7. The special covenants referred to in Section 5.01.I. are as follows:
8. The address for notices to the Borrower referred to in Section 8.01 is P. O. Drawer 328, Flemingsburg, Kentucky 41041, Attention: President/CEO, Fax: (606) 845-1008.