

Lease Agreement

This Lease Agreement, made and entered into this the 1<sup>st</sup> day of December, 1999, by and between APPALACHIAN REALTY COMPANY, a Kentucky corporation, having a mailing address of 401 Tori Drive, Hazard, Kentucky 41701 ("LESSOR") and ENVIRO-POWER, LLC, a Kentucky limited liability company, having a mailing address of 1500 N. Big Run Road, Ashland, Kentucky 41102 ("LESSEE").

WITNESSETH:

WHEREAS, the Lessor is the owner of certain real property constituting approximately seventeen thousand (17,000) acres located near Rowdy, Knott County, Kentucky, and hereinafter referred to as the "Property", all as more particularly described on a topographical map labeled Exhibit "A" which is attached hereto and incorporated herein by reference, as a material part of this Agreement;

WHEREAS, the Parties have agreed to the Lessor's granting to the Lessee a lease of the surface estate, and all attendant rights thereto, with the exception of a tract of approximately five (5) acres delineated in blue on Exhibit "A" upon which is located a coal preparation plant is excepted from this Agreement between the Parties, of approximately four thousand (4000) acres more accurately depicted on Exhibit "A" and shaded yellow, with the balance of the Lessor's thirteen thousand (13,000) surrounding, contiguous acres being depicted in green on Exhibit "A"; and

WHEREAS, the Parties have agreed as a further inducement to the Lessee's accepting a lease of the four thousand (4,000) acre surface tract, the additional unlimited right to withdraw any and all water from beneath the Lessor's adjoining lands (described in green), and the right of

ingress and egress to construct roads and utility lines at locations agreeable to the Parties for the transmission of water, electricity, natural gas, oil, and coal and ash over, across and beneath all of the Lessor's property, so long as the location for all of these improvements and structures are selected so as to be compatible with, and subservient to the Lessor's mineral estate and the coal mining rights attendant thereto;

NOW, THEREFORE, for and in consideration of the recitals, the terms, covenants and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 AGREEMENT OF LEASE. The Lessee agrees to lease the Property from the Lessor, and the Lessor agrees to lease the Property to the Lessee, upon the terms and conditions set forth herein.

2.0 LEASE TERM. The Lease term shall be for a total of one thousand one hundred eighty-eight (1188) months, beginning on or about December 1, 1999 and terminating on December 1, 2098.

The Lessor grants to the Lessee the option to renew this Lease Agreement for one additional ninety-nine (99) year term upon written notice from the Lessee to the Lessor of its intent to exercise said option; said written notice shall be delivered to the Lessor not later than ninety (90) days prior to December 1, 2098, the termination date of the original Lease Term as set forth hereinabove.

3.0 RENT. The Lessee shall pay to the Lessor an advance rental of One Million Two Hundred Thousand Dollars (\$1,200,000) payable over a period of the initial eighteen (18) months of this Agreement, in accord with the following schedule:

- a. February 15, 2000: Twenty Five Thousand Dollars  
(\$25,000.00)
- b. June 1, 2000: Twenty Five Thousand Dollars  
(\$25,000.00)
- c. September 1, 2000: Twenty Five Thousand Dollars  
(\$25,000.00)
- d. December 1, 2000: Twenty Five Thousand Dollars  
(\$25,000.00)
- e. on or before June 1, 2001: One Million One Hundred Thousand Dollars  
(\$1,100,000)

a rental reflecting a payment of Three Hundred Dollars (\$300.00) per acre for the boundary of approximately four thousand (4,000) acres of surface described in Exhibit "A", constituting the Property which is the subject of this Lease Agreement.

4.0 USE OF PREMISES. The Lessee shall have the exclusive right to use and occupy the Property for any and all lawful purposes, the absolute and unfettered right of lateral and subjacent support, and the right to withdraw groundwater from beneath the Property in unlimited amounts deemed necessary and appropriate by the Lessee to meet the Lessee's needs for the use of the surface of the Property.

5.0 REPAIRS. The Lessee shall, at its own expense, keep and maintain all roads, improvements, utility easements, and any other fixtures in a reasonably good state of repair at all times during the term of this Lease, and upon termination of this Lease, at whatever time and for whatever reason, the Lessee shall surrender and deliver the Property in as good condition as same is now in, ordinary obsolescence and acts of God excepted.

6.0 TAXES AND INSURANCE. The Lessee shall be responsible for property taxes on the surface Property and any improvements thereon, and any and all taxes levied by any governmental authority associated or resulting from the Lessor's use of the surface estate or water

withdrawal, while the Lessor shall retain liability for all taxes levied upon the mineral estate lying beneath the Property.

7.0 DEFAULT.

7.1 DEFAULTS OR BREACHES BY LESSOR. In the event that the Lessor, its successors or assigns, should fail to keep or perform any of the covenants, stipulations, conditions, or provisions of this Lease on its part to be made or performed, for a period of ninety (90) days after written notice from the Lessee to the Lessor, its successors or assigns, specifying the nature of such default or breach, as specified in the notice, and within the stated ninety (90) day period, then in such event the Lessee may escrow rental payments until such breach has been cured.

7.2 DEFAULTS OR BREACHES BY LESSEE. In the event that the Lessee shall fail to keep or perform any of the covenants, stipulations, conditions, or provisions of this Lease for a period of ninety (90) days after written notice from the Lessor to the Lessee specifying the nature of such default or breach, and in the event the Lessee shall fail to take steps to remedy the default or breach, as specified in the notice within the ninety (90) day period, the Lessor may then declare a breach. In the event the Lessor is required to take action as a result of default by the Lessee, all attorney's fees and costs incurred by the Lessor in conjunction therewith will be paid by the Lessee.

8.0 RIGHT OF ENTRY. Between the date hereof and occupancy, the Lessor hereby grants the Lessee and/or the Lessee's employees, engineers, geologists, inspectors, representatives and surveyors and other agents the right to enter the Property for the purposes of performing surveys, inspecting, testing, conducting surface or sub-surface soil, geologic and other tests, and making such other reasonable observations as the Lessee shall deem appropriate.

9.0 LESSOR'S REPRESENTATIONS AND WARRANTIES. The Lessor hereby

represents and warrants to the Lessee as follows:

9.1 That the Lessor is, and shall be as of the execution of this Lease, the true and lawful owner of the Property designated in Exhibit A, with full right and authority to Lease and convey the surface estate and water withdrawal rights described in this Agreement;

9.2 That the Lessor has full legal right and authority to enter into and execute this Lease;

9.3 That the Lessor is a duly organized and validly existing Kentucky corporation which has full power and authority to enter into this Lease and perform in accord with the terms of this Agreement.

10. LESSEE'S REPRESENTATIONS AND WARRANTIES. The Lessee hereby represents and warrants to the Lessor as follows:

10.1 That the Lessee has full legal right and authority to enter into and execute this Lease;

10.2 That the Lessee is a duly organized and validly existing Kentucky limited liability company which has full power and authority to enter into this Lease and perform hereunder.

11. ASSIGNMENT/SUBLET. The Parties agree that the Lessee may assign or sublet its right, title and interest in and to this Lease to any entity or person without the consent of the Lessor.

12. TIME IS OF THE ESSENCE TO THE PARTIES IN THIS LEASE

AGREEMENT.

13. SHORT-FORM. It is further agreed by and between the Parties hereto that a memorandum of this Lease may be prepared and recorded in the Knott County, Kentucky Court Clerk's Office denoting the existence of this Agreement and the geographical boundaries of the Lease.

14. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

15. ENTIRE AGREEMENT. It is expressly understood and agreed by the Parties hereto that this Lease Agreement sets forth the entire agreement, and that the Parties are not, and shall not, be bound by any stipulations, representations, agreements or promises otherwise not included in this written Lease Agreement. This Lease Agreement shall not, and may not, be modified orally and any amendment to this Lease Agreement shall be in writing and executed by the Parties to be effective.

16. NOTICES. All notices or elections provided for in this Agreement shall be in writing, and shall be deemed delivered for all purposes when deposited with the United States Postal Office and mailed by registered or certified mail, return receipt requested, to a party hereto at the address set forth below:

If to the Lessor:                      Appalachian Realty Company  
    1021 Tori Drive  
    Hazard, Kentucky 41701

With a Copy to:                        Lavina Conley  
    1021 Tori Drive  
    Hazard, Kentucky 41701

If to the Lessee:

Enviro-Power, LLC  
1500 N. Big Run Road  
Ashland, Kentucky 41102

With a Copy to:

Hon. Stephen C. Cawood  
McBrayer, McGinnis, Leslie & Kirkland, PLLC  
163 W. Short Street, Suite 300  
Lexington, Kentucky 40507

IN WITNESS WHEREOF, the Parties hereby have set forth their signatures, on this the  
1<sup>st</sup> day of December, 1999.

LESSOR:

APPALACHIAN REALTY COMPANY

BY:

Beri M...

ITS:

Vice President

LESSEE:

ENVIRO-POWER, L.L.C.

BY:

David E. Sargent

ITS:

President

COMMONWEALTH OF KENTUCKY  
COUNTY OF Boyd

The foregoing Lease Agreement was acknowledged before me this 1<sup>st</sup> day of December, 1999, by Bernie Mason on behalf of APPALACHIAN REALTY COMPANY, a Kentucky corporation, for and on behalf of said corporation as the Lessor.

Crystal Johnson  
NOTARY PUBLIC, STATE AT LARGE, KY

My Commission Expires: 6-10-02

COMMONWEALTH OF KENTUCKY  
COUNTY OF Boyd

The foregoing Lease Agreement was acknowledged before me this 1<sup>st</sup> day of December, 1999, by Harold E. Seeger on behalf of ENVIRO-POWER, LLC, a Kentucky limited liability company, for and on behalf of said limited liability company as the Lessee.

Crystal Johnson  
NOTARY PUBLIC, STATE AT LARGE, KY

My Commission Expires: 6-10-02



The foregoing instrument was  
prepared by the undersigned:

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HON. STEPHEN C. CAWOOD  
McBRAYER, McGINNIS,  
LESLIE & KIRKLAND, PLLC  
163 West Short Street, Suite 300  
Lexington, Kentucky 40507  
(606) 231-8780

sec/misc/enviro power lease 0215-0

EXHIBIT "A"

PROPERTY

## ASSIGNMENT OF LEASE

This Assignment of Lease (this "Assignment"), dated Jan 2, 2000, is between ENVIROPOWER, LLC, a Kentucky limited liability company ("Assignor") and KENTUCKY MOUNTAIN POWER, LLC, a Kentucky limited liability company ("Assignee").

### RECITALS

A. Assignor is a party to that Lease Agreement (the "Lease Agreement"), dated December 1, 1999, between Assignor and Appalachian Realty Company, a Kentucky corporation.

B. Assignor wishes to assign, and Assignee wishes to assume, all rights and obligations under the Lease Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Assignor hereby assigns, transfers and sets over unto Assignee all of its right, title, interest, duties and obligations in, to and under the Lease Agreement. Assignor assigns, transfers and sets over its interest without recourse, "as is," "where is" and "with all faults." Assignee agrees that assignee has inspected the property that is the subject of the Lease Agreement and understands that Assignor makes no warranty, either express or implied, concerning such property, except for representations and warranties contained in this Assignment.
2. Assumption. Assignee hereby assumes all the right, title, interest, duties and obligations of Assignor in, to and under the Lease Agreement. Assignee hereby agrees to be bound by all of the terms and conditions of the Lease Agreement and to assume all of the duties and obligations of Assignor provided in the Lease Agreement.
3. Entire Agreement. This Assignment embodies and reflects the entire agreement between Assignor and Assignee with respect to the subject matter herein. This Assignment supersedes all prior agreements and understandings between Assignor and Assignee with respect to the subject matter herein. No amendment to this Assignment shall be effective unless in writing and signed by the party against whom enforcement is sought.
4. Governing Law. This Assignment is to be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.
5. Headings. The headings of this Assignment are for reference purposes only and shall not affect in any way the meaning or interpretation of this Assignment.
6. Counterparts. This Assignment may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be valid and effective.

7. Severability. If any term, section or provision of this Assignment shall be found to be invalid or unenforceable for any reason whatsoever, such invalidity or unenforceability shall not affect the validity or enforceability of any other term, section or provision of this Assignment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Assignment, effective as of the date first set forth above.

ASSIGNOR:

ENVIROPOWER, LLC

By:

Name:

Title:

*Arthur R. Thomas*  
ARTHUR R. THOMAS  
VICE PRESIDENT

ASSIGNEE:

KENTUCKY MOUNTAIN POWER, LLC

By:

Name:

Title:

*Harold E. Sergent*  
HAROLD E. SERGENT  
PRESIDENT

ACKNOWLEDGMENT

Commonwealth of Kentucky )  
 ) ss  
County of Fayette )

The foregoing was acknowledged before me on January 2, 2000, by Aethan R. Thomas, as Vice President of EnviroPower, LLC, a Kentucky limited liability company, for and on behalf of said corporation.

Rhonda G. Kenney  
Notary Public, State at Large

My Commission Expires: 5/7/04

ACKNOWLEDGMENT




Commonwealth of Kentucky )  
 ) ss  
County of Fayette )

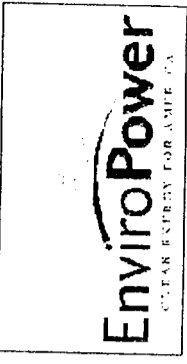
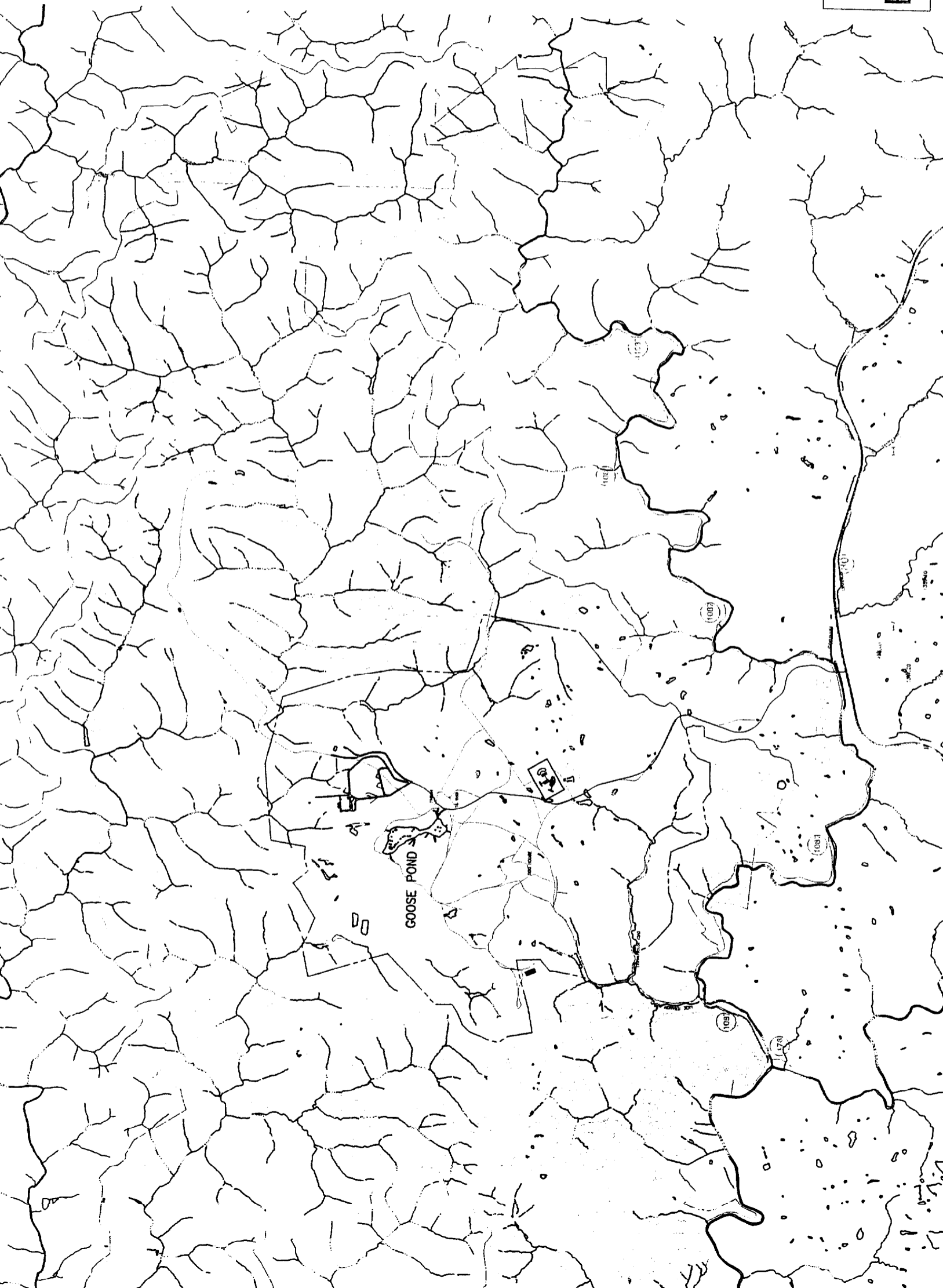
The foregoing was acknowledged before me on January 2, 2000, by Harold E. Sargent, as President of Kentucky Mountain Power, LLC, a Kentucky limited liability company, for and on behalf of said corporation.

Rhonda G. Kenney  
Notary Public, State at Large

My Commission Expires: 5/7/04



-  PREP PLANT
-  APPALACHIAN REALTY
-  ENVIROPOWER (LEASE)



### **Plant Site Legal Description**

Lying and being in Knott County, Kentucky, on the waters of Long Fork and Dan's Fork of Buckhorn Creek, a tributary of Troublesome Creek and being more particularly described as follows:

Unless stated otherwise, any monument referred to herein as a "capped iron pin" is a set ½ inch diameter rebar, eighteen inches in length, with a red plastic cap stamped PLS #3079. All bearing stated herein are referred to the NAD83 State Plane Coordinate System.

The subject property of the description below is a part of and is completely surrounded by other property owned by Grantor (DB 119, Pg 719 and DB 108, Pg 108), such deed being recorded in the records of the Knott County Court Clerk in Hindman, Kentucky. Appalachian Realty Company, by corporate name change effective as of June 30, 1998, is the successor to Cyprus Southern Realty Corporation, and Cyprus Southern Realty Corporation, by corporate name change effective as of June 11, 1987, is the successor to Southern Realty Resources, Inc., where title originates with (i) a deed from Franklin Real Estate Company dated April 14, 1977, recorded in Deed Book 119, at Page 719, and (ii) a deed from Goodloe Brothers, a partnership, dated July 29, 1977, recorded in Deed Book 108, Page 108, which deeds appear of record in the aforesaid Clerk's Office.

Beginning an at iron pin with plastic cap stamped PLS #3079 set this survey in the watershed of the Right Fork of Dan's Fork, said pin is located at Nad83 State Plane Coordinate N:2048527.45 E:2405431.80 and is referenced S 43°36'17" E, 3131.43 feet to a PK Nail in a large rock at Nad83 State Plane Coordinate N:2048527.45 E:2405431.80, thence running down the hollow N 16°40'09" W, 622.92 feet to a capped iron pin, thence crossing the point into the watershed of the Left Fork of Dan's Fork N 72°41'15"E, 788.61 feet to a capped iron pin, thence running up the Left Fork of Dan's Fork S 15°20'18"E, 1015.63 feet, thence leaving the watershed of Dan's Fork and running up the hill and across the point into the watershed of Hurricane Branch S 84°12'55" E, 2093.22 feet to a capped iron pin, thence running around the hill S 24°19'01"W, 1232.22 feet to a capped iron pin near the head of a small unnamed hollow in the watershed of Hurricane Branch, thence crossing the point and running S



32°43'46" E, 573.25 feet to a capped iron pin in a small hollow in the watershed of Hurricane Branch, thence leaving the watershed of Hurricane Branch and running across the ridge S 39°44'27" W, 2093.79 feet to a capped iron pin set on a fill area in the watershed of Long Fork, thence N 69°03'47" W, 919.98 feet to a capped iron pin set on a fill area in the watershed of Long Fork, thence N 22°09'06" W, 2780.34 feet to a capped iron pin, thence N 37°42'37" E, 847.27 feet to the Point of Beginning, containing 195.05 acres more or less.

## **9.0 Summary of Efforts to Locate Near an Existing Generating Facility**

The KMP site was chosen for its proximity to the load and the fuel source rather than existing generation. However, the plant was located at the end of a lightly loaded radial 138 KV line. This provides for full utilization of a previously under utilized utility asset.

By locating this plant near the fuel source, KMP is achieving the thirty year old regional goal of shipping “coal by wire.”

## 10.1 FEDERAL PERMITS

ITEM	PERMIT OR APPROVAL	RESPONSIBLE AGENCY	REGULATED ACTIVITY	PERMIT STATUS
1	Nationwide Permit	U S. Army Corps of Engineers	Placement of fill in minor wetlands, construction of intake/discharge structures, or other specified types of projects	Issued 06/21/2001
2	Determination of Obstruction Hazard	Federal Aviation Administration	Construction of tall structures	Issued 10/11/2000
3	Phase II Acid Rain Permit	U S EPA/Kentucky Division of Air Quality	Operation of power plant in compliance with Acid Rain Regulations	Issued 05/04/2001
4	Exempt Wholesale Generator (EWG) Certification	Federal Energy Regulatory Commission	Sale of wholesale electricity	Issued 05/16/2001

## 10.2. STATE PERMITS

ITEM	PERMIT OR APPROVAL	RESPONSIBLE AGENCY	REGULATED ACTIVITY	PERMIT STATUS
1	New Source Review (prevention of Significant Deterioration) Permit & Title V Permit	Kentucky Division of Air Quality	Construction & operation of a major source of air pollution	Issued 05/04/2001
2	National Pollutant Discharge Elimination System (NPDES) Permit	Kentucky Division of Water	Discharge of process wastewaters or cooling water into surface waters	Issued 10/17/2001
3	NPDES General Storm Water Operating Permit	Kentucky Division of Water	Discharge of storm water runoff during operation of the facility	Issued 08/03/2001
4	NPDES General Storm Water Permit for Construction (Notice of Intent)	Kentucky Division of Water	Discharge of storm water runoff during construction	Issued 10/30/2000
5	Water Withdrawal Permit	Kentucky Division of Water	Withdrawal of water for industrial use	Issued 03/30/2001
6	Wastewater Facility Construction Permit	Kentucky Division of Water	Construction of wastewater treatment facility	To be completed by U S Filter – post closing
7	Section 401 Water Quality Certification	Kentucky Division of Water	Required for issuance of U S. Army Corps of Engineers permit (Federal Permit 1)	Issued 06/21/2001
8	Mining and Reclamation Permit	Kentucky Division of Surface Mining Reclamation and Enforcement	Construction & operation of coal mine facilities – or – modification of existing permits	Pending – To be issued at financial close upon posting reclamation bond
9	Coal Combustion Waste Disposal Permit	Kentucky Division of Waste Management	Disposal of coal combustion wastes at coal mine sites – or – construction of a solid waste landfill	Issued 06/29/2001
10	Determination of Obstruction Hazard	Kentucky Airport Zoning Commission	Construction of tall structures	Issued 01/11/2001

### 10.3 LOCAL PERMITS

ITEM	PERMIT OR APPROVAL	RESPONSIBLE AGENCY	REGULATED ACTIVITY	PERMIT STATUS
	No local permits needed			



May 31, 2002

Mr James E. Bickford  
Secretary  
Natural Resources and Environmental  
Protection Cabinet  
: Frankfort, Kentucky 40601

Re: Kentucky State Board on Electric Generation  
and Transmission Siting  
Case No. 2002-00149  
Kentucky Mountain Power, LLC

Dear General Bickford.

Attached, as set forth in SB 257, is the Cumulative Environmental Assessment for the proposed Kentucky Mountain Power coal fired power plant in Knott County. Your Cabinet has already issued all of the appropriate permits for this project.

Please review and provide your evaluation to the Kentucky State Board on Electric Generation and Transmission Siting. If you have any question, please contact Randy Bird at (606) 434-0329.

Sincerely,

Frank L. Rotondi  
President and CEO

Attachment  
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