

Grayson Rural Electric Cooperative Corporation

109 Bagby Park • Grayson, KY 41143-1292
Telephone 606-474-5136 • 1-800-562-3532 • Fax 606-474-5862

June 22, 2012

East Kentucky Power Cooperative
4775 Lexington Road
P.O. Box 707
Winchester, KY 40392-0707

**NOTICE PURSUANT TO AMENDMENT NO. 3 TO WHOLESALE POWER
CONTRACT BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND
GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION**

TO: ANTHONY "TONY" CAMPBELL
President and CEO of East Kentucky Power Cooperative
FROM: Grayson Rural Electric Cooperative Corporation

Please take notice that Grayson Rural Electric (GRECC) hereby gives notice to East Kentucky Power Cooperative, Inc., (EKP) pursuant to Amendment No. 3 to the Wholesale Power Contract between EKP and GRECC dated November 21, 2003.

Notice is given that GRECC intends to receive electric power from Magnum Drilling of Ohio, Inc. at the level of GRECC's rolling average coincident peak demand for the previous three (3) twelve month periods (2009-2011) of 71.4 MW and 15% of this rolling average, i.e., 10.7 MW which does not exceed 5% of the rolling average coincident peak demand of EKP.

It is anticipated that Magnum Drilling of Ohio, Inc., pursuant to a letter of understanding between that entity and GRECC, would make proper application to and contract with, EKP to wheel power to GRECC through the Skaggs' Switching Station and then wheel over EKP's transmission lines to Grayson's facilities.

Anthony "Tony" Campbell
Page 2
June 22, 2012

Contractually, costs for metering equipment, equipment upgrades, costs associated with any FERC related issues, and bonding requirements would be borne by Magnum Drilling of Ohio, Inc.

It is anticipated that this purchase will result in an annual decrease to the members of GRECC of a sum of money in excess of \$800,000.00 per year based upon on a reduction in the wholesale power costs. It is anticipated that this initial time period for this contract would be an approximate five (5) year period.

Further contractual arrangements as specifically set forth will be provided if requested by EKP.

If you have any questions do not hesitate to contact me.

**GRAYSON RURAL ELECTRIC
COOPERATIVE CORPORATION**

BY:


CAROL ANN FRALEY, PRESIDENT & CEO


ROGER TRENT, CHAIRMAN OF THE BOARD

Grayson Rural Electric Cooperative Corporation

109 Bagby Park • Grayson, KY 41143-1292
Telephone 606-474-5136 • 1-800-562-3532 • Fax 606-474-5862

August 7, 2012

Mr. Anthony Campbell
East Kentucky Power Cooperative
P. O. Box 707
Winchester, KY 40392-0707

Dear Tony:

During our last phone conversation, I understood that you or Chairman Hawkins would call me to discuss Grayson's response to the July 16th Power Point that EKPC presented to the Strategic Issues Committee.

At end of the Strategic Issues Committee meeting, Grayson was told that we could present our response to that presentation at the August 13th Committee meeting. Since I have not heard from either of you, we will proceed to do so.

Sincerely,



Carol Hall Fraley
President & CEO

GRAYSON RURAL ELECTRIC
COOPERATIVE CORPORATION

CHF/pfs

cc: Lonnie Vice, Strategic Issues Chairman
W. Jeffrey Scott, Cooperative Legal Counsel

W. JEFFREY SCOTT, P.S.C.
P.O. Box 608 – 311 West Main Street
Grayson, KY 41143



Phone (606) 474-5194
Fax (606) 474-5196
E-Mail: wjscott@windstream.net



FACSIMILE COVER PAGE

To: Tony Campbell

Fax #: (859) 744-7053

From: W. Jeffrey Scott

Date: August 10, 2012

Re: Notice pursuant to Amendment 3 to Wholesale Power Contract between East Kentucky Power Cooperative, Inc., and Grayson Rural Electric Cooperative Corporation.

Total Number of Pages 2 (including cover page)

**The original will follow via regular mail. If you have any questions do not hesitate to contact the office. Thank you.*

If there are any pages missing, please contact us immediately.

This document is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are notified that any dissemination or distribution of this document is strictly prohibited. If you have received this document in error, please notify us immediately by telephone and return the original document to us at the address above.

Grayson Rural Electric Cooperative Corporation

109 Bagby Park • Grayson, KY 41143-1292
Telephone 606-474-5136 • 1-800-562-3532 • Fax 606-474-5862

August 9, 2012

East Kentucky Power Cooperative
4775 Lexington Road
P.O. Box 707
Winchester, KY 40392-0707

**NOTICE PURSUANT TO AMENDMENT NO. 3 TO WHOLESALE
POWER CONTRACT BETWEEN EAST KENTUCKY POWER
COOPERATIVE, INC., AND GRAYSON RURAL ELECTRIC
COOPERATIVE CORPORATION**

TO: ANTHONY "TONY" CAMPBELL
President and CEO of East Kentucky Power Cooperative
FROM: Grayson Rural Electric Cooperative Corporation

Please be advised that Grayson Rural Electric Cooperative Corporation amends its Notice of June 22, 2012, regarding the foregoing to state that it intends to purchase from Magnum Drilling of Ohio, Inc., 5 megawatts of electric power commencing in the year 2012.

Accept as stated herein and accept as inconsistent herewith the content of the June 22, 2012, Notice will remain the same, i.e. only the amount of power intended to be purchased from Magnum for the year 2012 and the total dollar reduction in the cost of same to Grayson Rural Electric Cooperative Corporation as modified. The resultant decrease in the costs of power would be lessened based upon the lower number of megawatt (MW) being purchased.

If you have any questions, do not hesitate to contact me, Grayson Rural Electric Cooperative Corporation by Carol Ann Fraley, President and CEO.


**GRAYSON RURAL ELECTRIC
COOPERATIVE CORPORATION**

BY: 
CAROL ANN FRALEY, PRESIDENT & CEO

Roy Palk

From: Roy Palk
To: VTvu@rus.usda.gov
Cc: Dale Henley; Charles Lile; David Eames
Subject: FW: Amendment #3 to the wholesale power contract

Sent: Tue 7/1/2003 8:01 PM

Attachments:  [Amendment to East Kentucky \(7-1\)1.doc\(40KB\)](#)

Victor:

Here is the latest proposed amendment to the all-requirements power contract between EKPC and its members as proposed by both Fleming-Mason Energy and South Kentucky RECC.

We will see you tomorrow at 2:00 pm. in the meeting with Administrator Legg and others from the RUS staff.

Among our group will be myself and Charles Lile from the EKPC legal staff, Tony Overby, president and CEO, and Marvin Suit, legal counsel, from Fleming-Mason Energy; Allen Anderson, president and CEO and Daryl Saunders, legal counsel from South Kentucky RECC; and Don Howell of the Vincent and Elkins law firm, outside counsel for both Fleming-Mason and South Kentucky coops.

We hope the meeting will yield the result which will allow a favorable review and approval of the loan application for the E.A. Gilbert generating plant.

Roy Palk

-----Original Message-----

From: Allen Anderson [mailto:eaanderson@skrecc.com]
Sent: Tue 7/1/2003 7:10 PM
To: Roy Palk
Cc:
Subject: Amendment #3 to the wholesale power contract

Roy,

Sorry for the delay. I am sending an attachment which is the revised wording. Look over and send to RUS and we can discuss tomorrow. Thanks. If you have trouble opening just call me. Home # is 606-423-2554 and cell # is 606-872-8072.


Allen

*Privileged & Confidential
Attorney Work Product*

MEMORANDUM

Monday, June 23, 2003

TO: Roy Palk
BULs
Charlie Lile
Frank Oliva
Bill Bosta

FROM: Dale Henley 

RE: Wholesale Power Contract; Proposed Amendment Thereto

Attached is the proposed Amendment from South Kentucky RECC and Fleming-Mason Energy. I propose that we meet and discuss whether this amendment; in its present form, can be proposed for action at the July 2003 Board Meeting. If agreeable, let's meet at 1:30 p.m., Thursday, June 26 in the Law Library.

dwh/ln
attachment

RUS:
1. "Resolving dispute"
2. How #1 affects electric's planning

AMENDMENT NO. 3 TO WHOLESALE POWER CONTRACT
BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND

This Agreement dated the _____ day of _____, 2003, amends
the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power
Cooperative, Inc. (hereinafter "Seller") and _____
_____ (hereinafter "Member") as follows:

I. Numerical Section 1 of the Wholesale Power Contract shall be amended
and restated to read in its entirety as follows:

1. General - The Seller shall sell and deliver to the Member and the Member shall
purchase and receive from the Seller all electric power and energy which shall be required to
serve the Member's load, including all electric power and energy required for the operation of
the Member's system. Notwithstanding the foregoing, the Member shall have the option, with
notice to the Seller, to elect to exclude from the all requirements provisions of the Wholesale
Power Contract any service territory or customers which may be acquired (whether by contract,
purchase, merger, consolidation, or otherwise) after the date of this Agreement not in the
Member's present service territory. In addition to areas or customers outside the Member's
present service territory, the Member's present service territory shall not be construed to include
municipalities and/or entities that distribute electric power and energy which have their own
recognized service territories which may be located within the present boundaries of the service
territory of the Member as established by state law and which have been previously self-served
or served by providers other than the Member, and other than the Seller. Any such election shall

How much?

RUS
not too crazy
about this or
this theme the
carry through
the doc.

continue until thirty (30) days after the Member gives Seller notice of cancellation of any such election. *How much?*

RUS ok

Further, notwithstanding the first sentence of this Section, the Member may also elect from time to time, to receive electric power and energy, from persons other than the Seller or from facilities owned or leased by the Member provided that the aggregate amount (measured in megawatts in any hour) so obtained under this paragraph shall not exceed five percent (5%) of the Seller's greatest prior measured hourly demand from time to time, of its system and further provided that no Member shall receive more than 10% of its greatest prior measured hourly demand from time to time, of its system, in each case determined as of the date of any such election. The Member shall give Seller notice of not less than 30 days prior to any exercise of any such election. Any such election shall continue until 30 days after the Member gives Seller notice of cancellation of any such election. The additional territorial area or customers subject to the Member's election granted in the preceding paragraph shall not be part of the 10% limit set forth in this paragraph. Any power and energy which the Member is required to purchase or receive from persons other than the Seller by federal or state law or regulation from time to time shall also be excluded from the requirements of the first sentence of this Section and shall be excluded from each of the percentage limits set forth in this paragraph. *RUS not energy*

Seller will provide transmission, substation, and ancillary services without discrimination or adverse distinction with regard to rates, terms of service or availability of such service as between power supplies under paragraphs above and Member will pay charges therefore to Seller. Seller also agrees to allow, at Member's sole cost and expense, such additional interconnection as may be reasonably required to provide such capacity and energy as contemplated in the above paragraphs.

Member will be solely responsible for all additional cost associated with the exercise of elections under the above paragraphs including but not limited to administrative, scheduling, transmission tariff and any penalties, charges and costs, imposed by the Midwest Independent System Operator (“MISO”) or other authorities.

II. Section 10 of the Wholesale Power Contract shall be restated as Section 11 and new Section 10 and Section 11 shall read in their entirety as follows:

10. Retail Competition - Seller and its subsidiaries, shall not, during the term of this contract, without the consent of the Member, (i) sell or offer to sell electric power or energy at retail within the Member’s assigned or expanded geographic area, if any, established by applicable laws or regulations or (ii) provide or offer to provide retail electric service to any person which is a customer of the Member.

11. Term – This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2041, and thereafter until terminated by either party’s giving to the other not less than six months’ written notice of its intention to terminate. Subject to the provisions of Section 1 hereof, service hereunder and the obligation of the Member to pay therefore shall commence upon completion of the facilities necessary to provide service.

Executed the day and year first above mentioned.

EAST KENTUCKY POWER
COOPERATIVE, INC.

BY: _____

ITS: _____

ATTEST, SECRETARY

BY: _____

ITS: _____

ATTEST, SECRETARY

faxed 11:45 AM
6/27/03
SK Requests 29 & 31
Page 324 of 926

*Claudia -
your copy.
ln*

MEMORANDUM

TO: Allen Anderson, South Kentucky RECC
Tony Overbey, Fleming-Mason Energy

FROM: Roy M. Palk *Roy M. Palk*

SUBJECT: Wholesale Power Contract; Amendment Thereto

DATE: June 27, 2003

As discussed during our telephone conversation on Thursday afternoon, and at your request, I wanted to clarify certain matters relating to the proposed Amendment in an effort to have these issues resolved before our meeting next Wednesday with the RUS Administrator:

1. The first question we discussed was exclusion from the all-requirements provisions for new loads not in your present service territory, and our question dealt with whether this would apply to new loads or acquisitions of service territory from other EKPC member owners. In this regard, we would suggest the following language which appears in paragraph 1. General about midway down in that paragraph. "...after the date of this Agreement not in the Member's present service territory or in the territory of any other member owner of Seller.
2. We also discussed clarification of exclusion up to five percent of EKPC's demand and I believe we recognized that it might be appropriate to use, as was done in the Great Rivers contract, the concept of a rolling three years average. Therefore, for purposes of clarification, we suggest changing language appearing in the first full paragraph on page 2, to read as follows, "...from facilities owned or leased by the Member provided that the aggregate amount of of all members' elections (measured in megawatts in any hour) so obtained under this paragraph shall not exceed five percent (5%) of the Seller's average coincident peak demand for each calendar month occurring during the 36 months immediately preceding the Members' election provided herein. . .and further provided that no Member shall receive more than ten percent (10%) of its average peak demand for each calendar month occurring during the 36 months immediately preceding the Members' election as provided for herein."

3. We also discussed whether the 30 days notice to return to the all-requirements contract was sufficient, and in this regard, also felt that language in the Great Rivers contract was appropriate. Therefore, we propose the following language which would appear also on page 2 midway down in the first full paragraph to read as follows, "Any such election shall continue until Member gives Seller notice of cancellation of any such election, in which event, the Member may return to having its purchase and Seller's sale obligations governed by the all-requirements obligation only upon terms and conditions mutually satisfactory to the Member and Seller, each acting in its sole discretion.

4. We also had a question about paragraph 10. Retail Competition and wondered whether this might present anti-trust issues going forward. In this regard, we will defer to your outside counsel's opinion on this matter, but did think it was appropriate to raise it.

I hope that we can find agreement on these issues so that we can be unified during our meeting next Wednesday. Please let me hear from you as soon as possible.

rmp/lm

bc: Dave Eames
Frank Oliva
Bill Bosta
Charlie Lile

Claudia Embs

From: Cheung, John -RUS [JCheung@RUS.usda.gov]
Sent: Tuesday, August 12, 2003 12:23 PM
To: David Eames
Cc: Stockton, Blaine -RUS; Vu, Victor -RUS; Moy, Wei -RUS; BRADY, TERENCE -OGC; Norman, Mike -RUS; Roy Palk
Subject: RUS Comments to Amendment # 3 to EKPC WPC

Dave,

RUS has reviewed the draft Amendment No. 3 to the EKPC Wholesale Power Contract (WPC) and has the following comments:

1. Amendment No. 3 to the WPC should incorporate language specifying that the Member cannot acquire new service territory or municipal loads unless the Member:

(a) Provides evidences in the New Load Purchase Agreement that their acquired new service territory or municipal loads must be served by the current power supplier as a condition of the new load acquisition; and

(b) Provides evidences that the cost of power for this new load from the existing power supplier is less than or equal to the cost of power from East Kentucky.

2. The 10 % maximum limitation of Member load and the 5 % maximum limitation of East Kentucky load set forth in Section 1 of this agreement include load served by Member owned Distributed Generation (DG) and the new service territory or municipal loads.

3. The Member may elect East Kentucky to be the power supplier for these new loads upon Member giving East Kentucky an advance 24 month notice of such election. Any such election will only be upon terms and conditions mutually satisfactory to the Member and East Kentucky, each acting in its sole discretion. (RUS shall be notified of such election by the Member)

4. Once the new load is transferred to be served by East Kentucky, Member will not be allowed to switch the load to another power supplier.

If you have any questions, please contact Wei or me.

Thanks,

John

Memorandum

From: Roy Palk

To: Wei Moy
John Cheung

Date: August 13, 2003

Re: Amendment to WPC: RUS comments dated August 12, 2003

Post-it® Fax Note	7671	Date	8/14/03	# of pages	1
To	Wei Moy	From	Roy Palk		
Co./Dept.					

Post-it® Fax Note	7671	Date	8/14/03	# of pages	1
To	Tony Overley	From	Roy Palk		
Co./Dept.					

Post-it® Fax Note	7671	Date	8/14/03	# of pages	1
To	Allen Anderson	From	Roy Palk		
Co./Dept.	So. Ky	Co.	EKPC		
Phone #		Phone #	859-744-4812		
Fax #	606-679-8279	Fax #	859-744-7053		

After discussing the RUS comments with representatives of both South Kentucky RECC and Fleming Mason Energy, the parties are in agreement as to the following:

Point 1. (a) is acceptable;

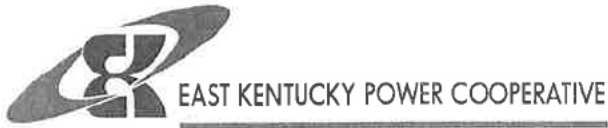
Point 1. (b) is not a relevant consideration since it precludes member-owner opportunities such as acquiring TVA service areas where rates are higher than EKPC. The parties recommend removal of this provision;

Point 2. is recommended for removal in its entirety since it precludes opportunities that both EKPC and member owners regard as opportunities which should be available to them, i.e., as an example, acquisition of a single municipal system could exceed the 10% limitation;

Point 3. the parties prefer the original language of the earlier amendment which differentiates between large and small loads, and time periods required to accommodate each. For that reason, the parties recommend removal and replacement with earlier drafted language; and

Point 4. is acceptable on the understanding "new loads brought under the Whole Sale Power Contract" would be subject to the 10% flexibility.

*Conference Call with Wei Moy
10 a.m. EDT Thursday, Aug. 14
call in number: 888-443-7106
passcode: 8480269#*



August 22, 2003

Mr. Victor Vu, Director
Power Supply Division
Rural Utilities Service
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250-1500

Dear Victor:

The following is my attempt to summarize the responses you gave me by phone this afternoon regarding the Wholesale Power Contract between East Kentucky Power Cooperative and its members:

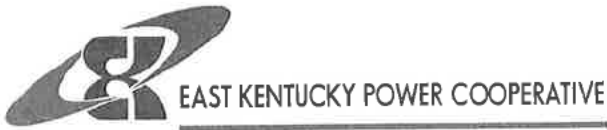
- 1(b) – RUS deleted in whole this portion
- 2 – increasing the 10 percent allowance for members to purchase from non-EKPC sources to 15 percent but still not to exceed 5 percent of EKPC's average 3-year rolling average system peak. This is inclusive of Distributed generation
- 3 – RUS agrees to accept EKPC's offer that loads coming onto its system from the members, originating from non-EKPC service, of 5 MW or less shall only require 90 days notice, but loads of 5 MW or greater shall require notice not to exceed eighteen months.

Please send clarifying language to these points. EKPC will, along with our members, take responsibility for drafting the new contract with these revisions if they are acceptable.

Sincerely,



Roy M. Palk
President and Chief Executive Officer



Post-it® Fax Note	7671	Date	8/25/03	# of pages	1
To	Victor Vu	From	Roy Palk		
Co./Dept.	RUS	Co.	EKPC		
Phone #		Phone #	859-744-4812		
Fax #	202-720-1401	Fax #	859-744-7053		

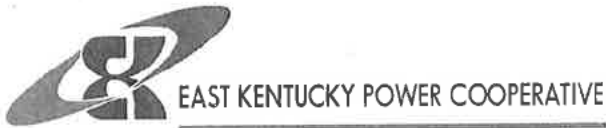
MEMORANDUM

TO: Victor Vu
FROM: Roy M. Palk
DATE: August 25, 2003
SUBJECT: EKPC's Wholesale Power Contract

I have discussed the RUS comments to Amendment No. 3 to East Kentucky Power Cooperative's ("EKPC") Wholesale Power Contract ("WPC") that John Chung e-mailed to Dave Eames and me on August 12, 2003, with South Kentucky RECC and Fleming-Mason Energy. They are okay with Nos. 1a, 3, and 4. They continue to feel that any newly-acquired service territory should be excluded from the WPC until such time as EKPC starts to serve it. They are quite strong on this point, such that it could be a deal killer for them. They continue to believe that the last submittal from EKPC is appropriate and protects both EKPC and RUS from any risk.

I will call you on Thursday morning to discuss if there is any other suggested language RUS could live with that would allow EKPC to meet their concerns on this item.


dge/dd



Post-it® Fax Note	7671	Date	9/5/03	# of pages	4
To	Roy Palk	From	Claudia		
Co./Dept.	So Ky.	Co.	EKPC		
Phone #	606-678-4121	Phone #	859-744-4864 x314		
Fax #	606-679-8279	Fax #	859-744-7053		

MEMORANDUM

TO: Board of Directors
Member System Managers

FROM: Roy M. Palk 

DATE: September 4, 2003

SUBJECT: RUS' Comments Regarding Amendment of the Wholesale Power Contract

1. Attached are RUS' latest comments received yesterday, September 3, 2003. In general, the comments are intended to demonstrate that RUS is willing to allow "greater flexibility" to EKPC member-owners than it has allowed to any other G&T system.
2. The letter makes the following important points:
 - a. Member-owners will be allowed to purchase non-EKPC sources to serve loads not to exceed 15% of the member's 3-year rolling average peak, including distributed generation;
 - b. the cap on the total non-EKPC sources to not exceed 5% of the 3-year rolling average system peak;
 - c. recognition that when a new load transfers into EKPC, the member again has the opportunity to acquire additional loads not to exceed the 15% limit; and
 - d. recognition that if a member can acquire a single new load that would exceed its 15% limit in total, then RUS would be willing to consider an exception on a case by case basis.
3. May I suggest that we come prepared to discuss this matter next Tuesday.

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE
ELECTRIC PROGRAM
1400 INDEPENDENCE AVENUE, S.W.
ROOM 0270-SOUTH, STOP 1568
WASHINGTON, DC 20250



Fax

To: Roy Palk **From:** Victor Vu

Fax: 859-744-6008 **Pages:** 3 Includes cover sheet

Phone: **Date:** 9/3/03

Re:

CC:

Urgent For Review Please Comment Please Reply Please Recycle

• **Comments:**

Roy,

Attached is a letter summarizing our position following our last phone conversation.

Victor

September 3, 2003

DRAFT

Mr. Roy M. Palk
President and Chief Executive Officer
East Kentucky Power Cooperative
P.O. Box 707
Winchester, KY 40392-0707

Dear Roy:

To follow up on our discussion by phone with you and Dave Eames on August 28 regarding the Wholesale Power Contract, I will summarize RUS' position.

- 1 (a). Provide evidence in the New Load Purchase Agreement that the acquired new service territory or municipal loads must be served by the current power supplier as a condition of the new load acquisition.

This is acceptable to EKPC.

- 1 (b). Provide evidence that the cost of power for this new load from the existing power supplier is less than or equal to the cost of power from East Kentucky.

Deleted by RUS.

2. The 10% maximum limitation of Member load and the 5 % maximum limitation of East Kentucky's load set forth in Section 1 of this agreement include load served by Member owned Distributed Generation (DG) and the new service territory or municipal loads.

This was changed to increase the 10% allowance for members to purchase from non-EKPC sources to 15%, but still maintains the not to exceed 5% of EKPC's 3-year rolling average system peak. This is inclusive of member Distributed Generation. EKPC asked if the 5% G&T level could be raised to 10% to accommodate the possibility of multiple members with new territories and new municipal loads in which the aggregate of new loads could exceed the 5% G&T level. After careful consideration, RUS holds firm to the 15% member level and 5% G&T level. RUS is already giving EKPC members greater flexibility by allowing the member to enter into power purchase contract(s) from suppliers other than EKPC to serve new territory(ies) and new municipal loads not to exceed in total 15% of the member's 3-year rolling average peak. RUS has only allowed other G&Ts' members 5%.

In reaching our decision, RUS examined the loan security issue from a program-wide view and the risks associated with allowing a distribution member to stray from the all-requirements wholesale power contract with the G&T. RUS considered the precedent-setting decision being made, the impact it may cause with other G&Ts and their members, and the effect it may have on the entire Program. RUS understands

distribution members wanting flexibility to seek opportunities for growth. However, RUS must ensure that our loan security in the G&T program is not significantly decreased. EKPC and its members have maintained a good working relationship with RUS, so to show our flexibility, RUS is allowing EKPC members to purchase non-EKPC sources to serve loads not to exceed 15% of the member 3-year rolling average peak. However, we must limit the risks to EKPC by placing a cap on the total non-EKPC sources to not exceed 5% of the 3-year rolling average system peak.

RUS would like to clarify that the member has a rolling allowance of 15%, i.e. when a new load transfers into EKPC, the member again has the opportunity to acquire additional loads not to exceed the 15% limit.

3. The Member may elect East Kentucky to be the power supplier for these new loads upon Member giving East Kentucky an advance 24 month notice of such election. Any such election will only be upon terms and conditions mutually satisfactory to the Member and East Kentucky, each acting in its sole discretion. (RUS shall be notified of such election by the Member)

RUS agrees to accept EKPC's offer that loads coming onto EKPC's system from members, originating from non-EKPC service, of 5 MW or less shall require a 90-day notice, but loads of greater than 5MW shall require a 12-month notice. RUS shall be notified of such notice by EKPC and/or the member.

4. Once the new load is transferred to be served by East Kentucky, Member will not be allowed to switch the load to another power supplier.

This is acceptable to EKPC.

Note that in the event a member can acquire a single new load that would exceed their 15% limit in total, then that member and EKPC can enter into discussions with RUS. RUS would consider requests for such exception on a case-by-case basis. This can be conveyed in the letter to EKPC upon approval of the amendment. Additionally, any load served by non-EKPC sources can experience normal growth that exceeds the member's 15% limit. In this case, the member will not be eligible for further loads using non-EKPC sources nor can any other member attain new loads using non-EKPC sources if the 5% G&T limit has been reached or exceeded.

If the above are acceptable to EKPC and its members, RUS ask EKPC to draft the new contract with these revisions. Also, RUS proposes to add language for joint & several liabilities in the amendment. RUS will provide the language to EKPC under separate cover.

Sincerely,

Victor T. Vu
Director, Power Supply Division
Rural Utilities Service



FLEMING-MASON ENERGY
COOPERATIVE, INC.

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

September 5, 2003

Mr. Roy Palk, President and CEO
East Kentucky Power
P O Box 707
Winchester Kentucky 40392-0707

Dear Roy:

At our regular Board of Directors meeting today we discussed the comments made by RUS in their communication to David Eames dated August 12, 2003.

Specifically, we cannot sign any amendment to our Wholesale Power Contract if it contains language "specifying that the Member cannot acquire new service territory or municipal loads unless the member: (a) includes provisions in any New Load Purchase Agreement that the acquired new service territory must be served by the current power supplier (EKP) as a condition of the new load acquisitions.

RUS is asking that we extend the present contract to the year 2041 and we are not willing to limit our ability to acquire new territory and serve persons in rural areas at their request with the restraints suggested by RUS.

We have adequately described situations that are or may be available for acquisitions that would require the continuation of their power supplier for a period of years before we could switch them to EKP. To require these future prospects to breach their contracts before their expiration dates virtually eliminates our growth in these areas.

The bottom line is, if RUS continues to insist on these stringent conditions, we still will not sign any amendment to our present Wholesale Power Contract. We are so close to an agreement, I hope this does not terminate our proposed amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony P. Overbey".

Anthony P. Overbey, President and CEO

SEP - 8 2003

Claudia Embs

From: Roy Palk
Sent: Thursday, September 11, 2003 3:25 PM
To: buddyr@kvnet.org; cfmartin@scrtc.com; DnnyDivine@aol.com; dtolliver@earthlink.net; edgaragilbert@aol.com; fbrown@irvineonline.net; grayson_director@earthlink.net; lvice@fmiscisfast.net; rick@stephensprop.com; spenn@owenelectric.com; thomasm.adams@mail.state.ky.us; wayne@jnmcpa.com; Allen Anderson (E-mail); Barry Myers (E-mail); Bill Duncan (E-mail); Bob Marshall (E-mail); Bruce Davis (E-mail); Carol Fraley (E-mail); Dan Brewer (E-mail); Don Schaefer (E-mail); Dudley Bottom (E-mail); Jackie Browning (E-mail); Jim Jacobus (E-mail); Larry Hicks (E-mail); Mickey Miller (E-mail); Overt Carroll (E-mail); Ted Hampton (E-mail); Tony Overbey (E-mail)
Cc: Barry Mayfield; Dale Henley; David Eames; Doug Oliver; Gary Crawford; Paul Atchison; Randy Dials; Ron Brown
Subject: Wholesale Power Contract

To keep everyone up to date with my latest discussion with RUS, I wanted to pass on to you the following information.

I talked with Victor Vu about project financing of the Gilbert Unit. Per Victor, RUS's requirements are that we put up five percent cash and a letter of credit of fifteen percent of the cost of the project.

Dave Eames informs me that we have enough cash to last until late summer or possibly early fall of 2004. Because of the time it would take to put a project financing together EKPC will have to conserve its cash. This may cause EKPC to delay some of its planned projects.

I will keep you updated on any new information I receive.

Mail to: P. D. Depp
Jack Winter
Jimmy Longmire
Wade May

MEMORANDUM

TO: Member System Managers

FROM: Roy M. Palk

SUBJECT: Update Meeting Regarding Wholesale Power Contract

DATE: September 25, 2003

Earlier today, I contacted each of you regarding a called meeting for Monday, September 29, in Winchester to discuss the latest efforts on extension of the Wholesale Power Contract (WPC). I realize this is very short notice, but to put this request into some time frame, I am needing to discuss a possibly acceptable proposal that may be agreeable to Fleming-Mason Energy (FM), South Kentucky RECC (SK), EKPC and RUS. This proposal was arrived at yesterday afternoon and we are moving this topic of the amendment number three to the EKPC board agenda for action on October 14. Thus, there is a need to move a lot of information to a lot of people within a very short time period.

The following is a chronology of events leading up to this request. As you will recall, RUS's final position on extending the WPC was discussed at our September board meeting. In summary, RUS's final position includes the following:

1. territory or load acquired outside of a distributor's present service area will require the EKPC member cooperative to honor the terms of the power supply contract then serving that load;
2. the total load acquired outside of the present co-op service area cannot exceed 15% of the member co-op's 3-year rolling average peak and all the 16 members' loads collectively cannot exceed 5% of EKPC's 3-year rolling average system peak, including distributed generation (allocation method to be developed and agreed to among EKPC member systems);

Note: RUS has agreed, by their transmittal letter, to consider other opportunities beyond these percentages on a case-by-case basis.

3. loads acquired from areas outside the distribution co-op's service area and brought to the EKPC system for power supply will require a 90-day notice to EKPC for loads under 5MW. For loads over 5MW the notice period will not be less than 18 months;
4. once the election to place newly acquired loads onto the EKPC system, that election is irrevocable.

Point number 2, previously stated, is the most troubling point to both FM and SK. In an attempt to reach a consensus, I requested the EKPC Operations, Services and Support Committee and the EKPC Board not to take action at the September board meeting and to postpone any action until the October board meeting. During the ensuing period since the September board meeting, several suggestions have been made to move this matter toward a consensus. Those, boiled down, are eight in number, and are as follows:

1. investigate what the current EKPC by-laws say regarding a matter such as extending the WPC;
2. consider a split amortization schedule for the Gilbert loan whereby FM's and SK's loads, as a percentage of EKPC's total load, are allocated to the loan amount and amortized between now and 2025, the expiration date of the current WPC, and amortize the balance of the loans from now through 2041, the new extension period;
3. investigate whether the current WPC is, indeed, self-expiring or is renewable unless either party, distributor member or EKPC, gives notice to the other;
4. develop methods for allocating the 5%/15% in an equitable and practical manner;
5. review any further submittals from Don Howell, SK's and FM's outside counsel;
6. place case-by-case language into the WPC and develop guidelines to remove as much ambiguity as possible;
7. sign the extension of the WPC containing the four RUS provisions, amendment #3, with the understanding that, within a reasonable timeframe, all members would have the option of converting to a partial requirements contract;
8. proportion the liability, similar to #2, but on the approach that FM and SK each obtain their portion of the Gilbert loan and re-lend those amounts to EKPC.

A conference call was held yesterday afternoon with RUS. Participating in the call were, from RUS – Victor Vu and John Chung; from South Kentucky – Allen Anderson; Tony Overbey was on vacation; and from EKPC – myself, Dale Henley and Dave Eames. The phone call lasted approximately one hour and all eight points previously stated were discussed.

The conclusion of the call is that all parties to the call think that point number seven, sign on now with the RUS conditions included, and begin efforts to create a partial requirements contract conversion option for all members, within 24 months. Dale Henley and Dave Eames have included an explanation of what the resolution language means.

Enclosed, herewith, are their language explanation, amendment #3 to the current WPC and the board proposed resolution, which the EKPC board will be asked to approve at the

October board meeting. Thus, my need and desire to meet with you and answer any questions you may have.

**Explanation of the Partial Requirements Language
Contained Within the EKPC Board Resolution**

One of the items we discussed is a partial requirements contract, which RUS has agreed to work on over the next 24 months. The board resolution makes reference to this commitment by both RUS and EKPC for member-owners wishing to convert their wholesale power contract, as amended, to a partial requirements contract.

The board resolution commits EKPC to working with member-owners toward converting their wholesale power contract, as amended, to a partial requirements contract. When a partial requirements contract has been successfully negotiated, each member-owner will have an opportunity to vote on it, and may elect to use it.

In simple terms, I understand that a partial requirements contract has the effect of permanently fixing, or capping a member-owner's obligation to purchase its electric power and energy from the G&T at an agreed time. Thereafter, neither party is obligated to sell or buy beyond the capped amount. The capped amount is generally based upon historic usage over an agreed-upon period of time.

Board Agenda Item

OCTOBER

TO: Operations, Services & Support and Board of Directors

FROM: Roy M. Palk

DATE: August 29, 2003

SUBJECT: Wholesale Power Contract Amendment No. 3

KEY MEASURE(S): Competitively Priced Energy

Background

On February 6, 2001, the East Kentucky Power Cooperative, Inc. ("EKPC") Board of Directors ("Board") approved construction of the 268 MW E.A. Gilbert Generating Unit ("Gilbert") at the Spurlock Power Station in Mason County, Kentucky, for purposes of securing an economical long-term source of wholesale power for EKPC's 16 member-owners. On August 14, 2001, the EKPC Board approved a loan filing with the Rural Utilities Service ("RUS") for \$410,000,000 to finance Gilbert and related transmission facilities; and on April 8, 2003, this loan application was amended to increase the amount to \$434,000,000.

RUS has informed EKPC that its approval of the loan package is conditioned on extension of the Wholesale Power Contracts ("WPC") by each of the member-owners through 2041. RUS has also indicated that it would consider modifications to the WPC to permit some flexibility to member-owners under their present obligation to secure all of their system power supply needs from EKPC.

Justification and Strategic Analysis

RUS financing is the least cost option for Gilbert. As a condition for making the loan, RUS requires that EKPC and its member-owners extend the WPC through 2041. Extension of the WPC, with acceptable modifications, assures the financial support of the member-owners for EKPC's operations. Extension of the WPC, in turn, is relied upon by RUS to ensure that its loan is adequately secured. Thus, the extension through 2041 is intended to cover the period of the loan repayment and, provides assurance that the member-owners will have an adequate source of competitively priced dependable wholesale power with which to generate retail sales that will provide the primary source of revenue to EKPC for repaying the Gilbert loan, and their own obligations to RUS.

Board Agenda Item

OCTOBER

This amendment also provides, for the first time, some flexibility to the member-owners' current obligation to secure all of their system power supply needs from EKPC. RUS has agreed to consider opportunities for member-owners outside the percentage limitations contained in Amendment No. 3 on a case-by-case basis, and to make every effort to work with member-owners and EKPC to convert any member-owner's WPC, as amended, to a partial requirements contract within 24 months.

Recommendation

Management recommends that the Board approve Amendment No. 3 to the WPC and requests that each of the member systems have its board of directors approve it at their next meeting.

rmp/lm

Resolution

OCTOBER

WHOLESALE POWER CONTRACT AMENDMENT NO. 3

Whereas, On February 6, 2001, the East Kentucky Power Cooperative, Inc. ("EKPC") Board of Directors ("Board") approved construction of the 268 MW E.A. Gilbert Generating Unit ("Gilbert") at the Spurlock Power Station in Mason County, Kentucky, for purposes of securing an economical long-term source of wholesale power for EKPC's 16 member-owners;

Whereas, On August 14, 2001, the EKPC Board approved a loan filing with the Rural Utilities Service ("RUS") for \$410,000,000 to finance Gilbert and related transmission facilities; and on April 8, 2003, this loan application was amended to increase the amount to \$434,000,000;

Whereas, RUS has informed EKPC that its approval of the loan package is conditioned on extension of the Wholesale Power Contracts ("WPC") through 2041;

Whereas, The proposed amendment provides, for the first time, some flexibility to the member-owners' current obligation to secure all of their system power supply needs from EKPC;

Whereas, RUS has agreed to consider opportunities for member-owners outside the percentage limitations contained in Amendment No. 3 on a case-by-case basis; to make every effort to work with member-owners and EKPC to convert any member-owner's WPC, as amended, to a partial requirements contract with 24 months;

Whereas, RUS financing is the least cost option for Gilbert; and

Whereas, Management and the Operations, Services and Support Committee recommend approval; now, therefore, be it

Resolved, That the EKPC Board approves Amendment No. 3 to the WPC, as attached, subject to RUS review and approval;

Resolved, That the EKPC Board commits to making every effort to work with member-owners and RUS to convert any member-owner's WPC, as amended, to a partial requirements contract within 24 months; and

Resolved, That the EKPC Board requests that each of its member-owner cooperatives approve and execute Amendment No. 3 at their next board meeting.

AMENDMENT NO. 3 TO WHOLESALE POWER CONTRACT
BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND

This Agreement dated the _____ day of _____, 2003, amends the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. (hereinafter "Seller") and _____ (hereinafter "Member") as follows:

I. Numerical Section 1 of the Wholesale Power Contract shall be amended and restated to read in its entirety as follows:

1. General - The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which shall be required to serve the Member's load, including all electric power and energy required for the operation of the Member's system. Notwithstanding the foregoing, the Member shall have the option, from time to time, with notice to the Seller, to receive electric power and energy, from persons other than the Seller, or from facilities owned or leased by the Member, provided that the aggregate amount of all members' elections (measured in megawatts in 15-minute intervals) so obtained under this paragraph shall not exceed five percent (5%) of the rolling average of Seller's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member from time to time, as provided herein and further provided that no Member shall receive more than fifteen percent (15%) of the rolling average of its coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the 3 twelve

month periods immediately preceding any election by the Member from time to time, as provided herein.

For any election made or cancelled under this Section, the following provisions shall apply:

a. During any calendar year, the Member may make or cancel any such election or elections by giving at least 90 days' notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or less, in the annual aggregate.

b. During any calendar year, the Member may make or cancel any such election or elections by giving at least 18 months or greater notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or more, in the annual aggregate

Upon the effective date of the Member's cancellation of any such election under this Agreement, the load or loads shall be governed by the all requirements obligations of the Seller and the Member in this Section, and notice of same shall be provided to the Rural Utilities Service ("RUS") by the member. Such loads which are transferred to Seller's all-requirements obligations shall not thereafter be switched by Member to a different power supplier.

c. Should any such election by Member involve the acquisition of new service territory currently served by another power supplier or municipal utility, Member shall provide evidence to Seller and RUS in the new Load Purchase Agreement that the acquired territory must be served by the current power supplier as a condition of the acquisition of the new load.

Seller will provide transmission, substation, and ancillary services without

discrimination or adverse distinction with regard to rates, terms of service or availability of such service as between power supplies under paragraphs above and Member will pay charges therefore to Seller. Seller also agrees to allow, at Member's sole cost and expense, such additional interconnection as may be reasonably required to provide such capacity and energy as contemplated in the above paragraphs.

Member will be solely responsible for all additional cost associated with the exercise of elections under the above paragraphs including but not limited to administrative, scheduling, transmission tariff and any penalties, charges and costs, imposed by the Midwest Independent System Operator ("MISO") or other authorities.

II. Section 10 of the Wholesale Power Contract shall be restated as Section 11 and new Section 10 and Section 11 shall read in their entirety as follows:

10. Retail Competition - Seller and its subsidiaries, shall not, during the term of this contract, without the consent of the Member, (i) sell or offer to sell electric power or energy at retail within the Member's assigned or expanded geographic area, if any, established by applicable laws or regulations or (ii) provide or offer to provide retail electric service to any person which is a customer of the Member.

11. Term – This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2041, and thereafter until terminated by either party's giving to the other not less than six months' written notice of its intention to terminate. Subject to the provisions of Section 1 hereof, service hereunder and the obligation of the Member to pay therefore shall commence upon completion of the facilities necessary to provide service.

Executed the day and year first above mentioned.

EAST KENTUCKY POWER
COOPERATIVE, INC.

BY: _____

ITS: _____

ATTEST, SECRETARY

BY: _____

ITS: _____

ATTEST, SECRETARY

(H:Legal/misc/amend-3-wpc)

Draft – Not for circulation

The following questions and areas of interests have been raised regarding the Wholesale Power Contract (WPC) extension discussions.

In an attempt to move this issue to a final agreement I have discussed a joint board meeting between Fleming-Mason and South Kentucky's boards, also to include appropriate staff, before either of their individual board meetings, October 2 and October 9, respectively. The board officers also have offered to attend these individual board meetings as well. The need for this meeting will be measured by Don Howell's proposed language to be placed on item #5. Mr. Howell is FM's and SK's outside counsel.

We are trying every way we can possibly think of to bring a successful conclusion to this matter.

1. Do the EKPC bylaws address, in any way, the negotiations for the WPC?

Bylaw Section 1.06 requires member-owners to purchase all of their electric energy from EKPC. The Bylaws further provide that member-owners must comply with our Bylaws as a condition of membership.

2. How would a split amortization schedule for Fleming-Mason Energy (FM) and South Kentucky RECC (SK) based on a percentage of load work?

SK has averaged 11.8% and FM has averaged 6.8% of EKPC's peak load over the last three years. It is suggested that the Gilbert loan be split into two pieces, 81.4% amortized over the normal loan period for the 14 members that are willing to extend the WPC and 18.6% over the remaining life of the current WPC. This would not significantly impact rates, but would affect cash flow fairly significantly around 2015 and beyond.

3. Is the present WPC indeed self-expiring or does it automatically renew without notice by either party to the other?

The WPC expires January 1, 2025. The contract automatically renews until notice is given by either party. The notice must be at least six months in advance of termination.

4. What would be an equitable and practical allocation method for the 5% EKPC average peak and the 15% member system peak?

Method I:

Each co-op is allocated 5% and is allowed to give, trade or sell it if they do not want to use it themselves.

Method II:

Each co-op is asked if they want it and it is then allocated only to those co-ops that express a desire to use their allocation. They are then free to use, sell, trade or give away their allocation.

Method III:

EKPC auctions off its allocation in 5 MW (or any other size) bundles to the highest bidder.

Method IV:

First come first serve.

5. Don Howell, FM's and SK's outside counsel, has submitted the following language for consideration:

6. What is the legal effect of moving RUS' "case-by-case" language from their cover letter into the WPC itself along with appropriate guidelines to remove as much ambiguity as possible?

Placing this language in the amendment formalizes a good faith commitment by RUS to consider such opportunities. However, RUS may not be able to contract on such a basis, as a governmental entity. Nevertheless, an effort should be made to include it.

- 7. How amenable are the EKPC member systems to signing the current WPC with RUS' for condition as stated in their final position letter but, within a time certain, negotiate a partial requirements replacement contract for all members?**

Have to ask SK and FM.

- 8. What proportional liability arrangements might be acceptable such as FM and SK borrowing their proportional amount of money for Gilbert based on their percentage of EKPC's load and, in turn, lending those amounts to EKPC?**

See #2

MEMORANDUM

TO: Board of Directors
Member System Managers

FROM: Roy M. Palk

SUBJECT: Amendment No. 3 to the Wholesale Power Contract

DATE: October 8, 2003

With their permission, I am sending you a copy of Allen and Tony's letter dated October 6, 2003. This letter served as a basis for a detailed conversation with them and their attorneys on Tuesday afternoon. We have agreed to have a follow-up discussion later this week, possibly on Friday. Tony and Allen are working to develop their thoughts regarding a term sheet for a Partial Requirements Contract (point 3), and to possibly offer additional options to the four suggestions already on the table regarding allocation of the five percent EKPC average peak, and the fifteen percent average member system peak (point 2).

I am also resubmitting for your attention the four suggestions previously shared with you.

rmp/lh
enclosures

Material emailed to directors and managers on 10/8/03.

Copy mailed to:

*Jimmy Longmire
Jack Dinter*

*Wade May
P. D. Depp*

Method 1:

Each co-op is allocated 5% and is allowed to give, trade or sell it if they do not want to use it themselves.

Method 2:

Each co-op is asked if they want it and it is then allocated only to those co-ops that express a desire to use their allocation. They are then free to use, sell, trade or give away their allocation.

Method 3:

EKPC auctions off its allocation in 5 MW (or any other size) bundles to the highest bidder.

Method 4:

First come first serve.

(H:Legal/misc/wpc/bdmem)

**SOUTH KENTUCKY RURAL ELECTRIC
COOPERATIVE CORPORATION**

AND

FLEMING-MASON ENERGY COOPERATIVE

October 6, 2003

East Kentucky Power Cooperative
4775 Lexington Road
Winchester, KY 40391

ATTENTION: Roy Palk

RE: Amendment No. 3 to All
Requirements Contract

Dear Roy:

South Kentucky Rural Electric Cooperative Corporation and Fleming-Mason Energy Cooperative are supportive of the goal of East Kentucky Power Cooperative to finance the Gilbert Plant with the RUS, and they are willing to explore all options for arriving at a contract that will allow South Kentucky and Fleming-Mason to continue to acquire new service areas while providing financial support for the Gilbert Plant. However, the existing Amendment No. 3 which you have proposed does not provide adequate flexibility for our acquisition of new service areas and is not acceptable as written.

The position of South Kentucky and Fleming-Mason throughout all negotiations has not changed. An exclusion from the all requirements contract for new service areas is our desire. However, in order to explore new alternatives you are asked to consider the following:

1. Promptly amend East Kentucky's bylaws to provide that a member may be any cooperative which is or may become a partial requirements customer and that an existing all requirements customer which becomes a partial requirements customer will continue its membership status.
2. Promptly decide whether the 15-5 formula will be administered on a first come, first serve basis, or if not, the basis for the allocation.

Page 2

3. Promptly negotiate a term sheet for a partial requirements contract to be discussed with the RUS as an alternative to excluding new service areas if South Kentucky and/or Fleming-Mason are forced to use a partial requirements contract as the only alternative which will allow acquisition of new service areas while still providing financial support for the Gilbert Plant.

While we still maintain that exclusion of new service areas provides the optimum solution, consideration of the points set forth above may prove beneficial.

Yours truly,

Allen Anderson, CEO
South Kentucky Rural Electric Cooperative
Corporation

Anthony P. Overbey, President and CEO
Fleming-Mason Energy Cooperative

TO: EKPC Member System Managers
FROM: Roy M. Palk
DATE: April 28, 2003
SUBJECT: Wholesale Power Contract Extension

For clarification purposes, eleven of the sixteen members have expressed their intentions to extend the Wholesale Power Contract as currently written.

Because of some questions raised by some member systems related to the allowance to purchase a portion of their requirements from another supplier and the ability to totally exit the East Kentucky Power Cooperative (EKPC) system if they choose, EKPC has submitted draft contract language on both topics and the Rural Utilities Service (RUS) is currently reviewing our draft. A copy is enclosed with this memo for your information.

If you are one of the eleven systems who has already expressed an intention to extend the contract, you need do nothing at the present time unless you have questions about the enclosed document. If so, please send your questions or comments to me as soon as possible.

If you are one of the five systems who has requested consideration of an off-system purchase allowance and a possible exit policy or clause, please review the enclosed document and send me your comments as soon as possible, as well.

RUS has advised EKPC that the Gilbert loan will not go to the RUS Loan Committee for approval until such time as the Wholesale Power Contract has been extended by all 16 members.

All comments and questions will be compiled and these matters taken up with RUS. RUS will have to approve the changes to the contract. Then, we will mail a new set of amended documents to you with a request for your approval.

Please call me if you have any questions or need further information.

dd
Enclosure

DISCUSSION DRAFT

AMENDMENT NO. 3 TO
WHOLESALE POWER CONTRACT
BETWEEN
EAST KENTUCKY POWER COOPERATIVE, INC.
AND

This agreement dated the _____ day of _____, 2003, amends the Wholesale Power Contract dated _____ between said parties as follows:

- I. Section 1 of the Wholesale Power Contract shall be amended and restated to read in its entirety as follows:
1. General – The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which the Member shall require for the operation of the Member's system.

Notwithstanding the provisions above, the Member may elect to receive electric power and energy other than from Seller provided that the aggregate amount so obtained under this paragraph shall not exceed 5% of the Member's highest historical monthly, uncontrolled demand. Member shall give Seller notice of not less than 12 months prior to this election. This election shall continue until 12 months after Member gives Seller notice of cancellation of the election. Energy from power supply under this paragraph will be required to be scheduled approximately on the basis of Member's most recent rolling three-year historical load profile at the time of the election.

Seller will provide transmission, substation, and ancillary services without discrimination or adverse distinction with regard to rates, terms of service or availability of such service as between power supplies under paragraphs above and Member will pay charges therefore to seller. Seller also agrees to allow, at Member's sole cost and expense, such additional interconnection as may be reasonably required to provide such capacity and energy as contemplated in the above paragraphs.

Member will be solely responsible for all additional cost associated with the exercise of elections under the above paragraphs including but not limited to administrative, scheduling, transmission tariff and any penalties, charges and costs, imposed by the Midwest Independent System Operator ("MISO") or other authorities.

DISCUSSION DRAFT

II. Section 10 of the Wholesale Power Contract shall be restated as Section 11 and new Section 10 shall read in its entirety as follows:

10. Withdrawal – A Member that decides to withdraw from Seller shall submit to Seller a resolution from its board of directors stating its intended course of action and specifying an effective date, which shall be no earlier than 12 months from the date of the resolution, unless the withdrawal action is a consolidation or merger which is designated a Permitted Transaction pursuant to Section 2(i) or (ii) of the Supplemental Agreement. Any withdrawal which is not a Permitted Transaction will require the approval of the Seller's board of directors and the Rural Utilities Service ("RUS").

Seller's management will recommend that their board of directors approve a withdrawal unless an analysis shows that, despite all relevant commitments agreed to by the Member as conditions for withdrawal, such actions would result in rate increases to other members, would impair Seller's ability to repay its secured loans in accordance with their terms, or would adversely affect system performance in a material way.

Any settlement due the Seller from the Member shall be determined at the time of the Member's withdrawal from the Seller and will be subject to the approval of the Seller's board of directors, RUS, and any other regulatory agencies as appropriate.

Seller's final approval will be conditioned upon the withdrawing Member's: (i) execution of all necessary documents to effect the withdrawal, including confidentiality agreements; (ii) compliance with other relevant provisions of the Seller's Articles, Bylaws, and Board Policies; (iii) and compliance with any relevant RUS, and other regulatory requirements related to such withdrawal. *requirements* → ~~Circumstances~~ may require the Board to prescribe additional terms and conditions for a Member withdrawal, consistent with terms hereinabove.

The rights of a withdrawing Member to the retirement of patronage capital of Seller credited to its account shall be governed by the Articles, Bylaws, and Board Policies of Seller, as amended from time to time, including any amendments subsequent to the date of this policy or the Member's withdrawal; provided, however, that no such amendments will discriminate against a withdrawn Member in this regard.

11. Term. This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2041, and thereafter until terminated by either party's giving to the other not less than six months' written notice of its intention to terminate. Subject to the provisions of Article 1

DISCUSSION DRAFT

hereof, service hereunder and the obligation of the Member to pay therefore shall commence upon completion of the facilities necessary to provide service.

Executed the day and year first above mentioned.

EAST KENTUCKY POWER COOPERATIVE, INC.
Seller

By: _____
Chairman of the Board

ATTEST:

Secretary

Member

By: _____
Chairman of the Board

ATTEST:

Secretary

(FINDIV\FINANCE\GENERAL\WHOLESALE POWER CONTRACT-AMEND-W-CHANGES-4-28-03)



Oglethorpe Power Corporation
2100 East Exchange Place
PO Box 1349
Tucker, GA 30085-1349
phone 404-270-7600
fax 404-270-7872

February 13, 1994

Mr. Roy Palk
President & CEO
East Kentucky Power Cooperative
P. O. Box 707
Winchester, KY 40392-0707

Subject: RUS Memorandum of Understanding

Per your request, I am forwarding a copy of the Memorandum of Understanding (MOU) that we signed with RUS, including Amendment No. 1.

In developing the MOU, we focused on areas of activity where Oglethorpe had been generating a fairly high volume of requests and areas that had become somewhat routine. The objective of both parties in developing the MOU was to reduce the amount of administrative effort necessary for these kinds of approval by RUS, as well as to establish a routine for streamlining the process for approvals that required more review. Upon implementation we saw the need to develop more thoroughly one section of the MOU, as reflected in Amendment No. 1. We continue to work with RUS to refine the procedures that we use to implement this MOU, particularly in the area of transmission construction.

If you have any questions regarding the MOU, please feel free to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "GB Taylor".

George B. Taylor, Jr.
Manager, Regulatory Compliance

GBT:gw

Enclosure

REC'D FEB 16 1995

MEMORANDUM OF UNDERSTANDING

RECITALS

Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Cooperative) ("Oglethorpe Power") is an electric generation and transmission cooperative ("G&T") incorporated in 1974 under the laws of the State of Georgia. Oglethorpe Power, which operates on a not for profit basis, provides wholesale electric service to its 39 retail electric distribution cooperative members in the State of Georgia. It is currently the largest electric G&T cooperative in the nation based on operating revenues, assets, kilowatt-hour sales, and ultimate consumers served. As of December 31, 1992, its members served approximately 1 million electric consumers covering 70% of the land area in the state and having a population of approximately 2.2 million. Currently no one member accounts for more than 10% of Oglethorpe Power's total revenues. Member sales by customer class include residential at 73%, commercial/industrial at 25% and all others at 2%. Members' demand and energy growth has been strong in recent years, with average annual increases of 4.9% and 4.0%, respectively, since 1988.

Oglethorpe Power and its members enjoy a very favorable regulatory climate. Neither the rates charged by Oglethorpe Power nor those charged by its members are subject to the prior approval of an other Federal or state agency or authority besides the Rural Electrification Administration ("REA"). It is recognized, however, that Georgia law prohibits the members from unreasonable discrimination in rates, charges, service rules or regulations among consumers of a class and among classes. Pursuant to the Georgia Territorial Electric Service Act, the Georgia Public Service Commission assigned virtually all areas in the state to specified retail suppliers. These areas cannot be changed without Commission action.

Oglethorpe Power possesses substantial and diverse assets in the form of generation and transmission resources. Oglethorpe Power has a 30% interest in the Plant Hatch and Vogtle Nuclear facilities, a 30% interest in the coal-fired Plant Wansley, and a 60% interest in the coal-fired Plant Scherer Units 1 and 2. The facilities are operated by Georgia Power Company ("GPC"), a co-owner. Oglethorpe Power will operate and co-own with GPC the Rocky Mountain Project, a hydroelectric pumped storage facility currently under construction. Oglethorpe Power and the generating facility co-owners also own transmission facilities that together form the Georgia Integrated Transmission System which serves virtually the entire state.

REA is an agency within the United States Department of Agriculture. Acting pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. §§ 901 et. seq.), REA has loaned or guaranteed over \$4 billion to Oglethorpe Power through a series of secured transactions beginning in 1975, of which approximately \$3.1 billion is outstanding. Oglethorpe Power has consistently met its obligations under these transactions. Oglethorpe Power has also consistently performed on \$1.3 billion in non-REA assisted obligations which it has issued to the private sector on the strength of its own credit. Oglethorpe Power's current credit ratings are as follows:

Instrument	S&P	Moody's	Fitch
Pollution Control Bond	AA-	A3	A+
Variable Rate Bonds	AAA/A-1+	Aa1/P-1	AAA/F-1
Commercial Paper	A-1+	P-2	F-1

Under the terms of its Loan Documents (hereinafter defined), Oglethorpe Power must obtain prior approval from REA for many recurring types of transactions such as system additions and improvements financed with general funds, dispositions of property, short term energy sales and so forth. Oglethorpe Power staff meet quarterly with REA staff in Washington, D.C. to brief them on pending and upcoming matters before REA. Oglethorpe Power also conducts briefings with REA personnel on as needed basis. In addition, Oglethorpe Power files periodic reports with REA pursuant to the Loan Documents and furnishes REA with copies of reports which Oglethorpe Power is required to file with the Securities and Exchange Commission pursuant to 13 or 15(d) of the Securities Exchange Act of 1934.

Because of its large scale, sustained load growth and highly sophisticated capitalization structure, Oglethorpe Power presents a very high volume of requests to REA for approval (See attached Exhibit A). Although Oglethorpe Power's requests vary in their significance to REA's programmatic and security interests, many of these requests concern matters which do not affect those interests materially and which can properly be categorized as routine. Because of its complicated financial structure, Oglethorpe Power often submits requests for approvals even in circumstances where it is unclear whether the Loan Documents require it to do so.

Because of staffing constraints, REA is unable to allocate sufficient resources to process Oglethorpe Power's numerous requests in a timely and predictable manner without adversely affecting the needs of other participants in its programs. The Administrator of REA believes that it is essential for REA to prioritize its needs and focus its limited resources on matters of the greatest significance if REA is to exercise its responsibilities effectively under the Rural Electrification Act, including its responsibility to protect the Government's financial interests.

Under these circumstances, Oglethorpe Power and REA believe that it will be mutually beneficial for REA to (i) exercise its approval rights under the Loan Documents categorically for some types of these requests for approvals, (ii) clarify how certain broadly worded approval requirements in the Loan Documents apply to Oglethorpe Power's particular situation, and (iii) establish additional specific procedures for processing requests from Oglethorpe Power that are not routine. In addition, the Administrator has determined pursuant to 7 CFR 1710.4 (1993) that waiver or reduction of any requirement imposed by REA under Part 1710 or other existing REA regulations that is inconsistent with the provisions of this Memorandum of Understanding is necessary to avoid adversely affecting the Government's financial interest. Requirements imposed by REA after the date hereof shall be treated as hereinafter set forth.

NOW, THEREFORE, the parties to this Memorandum of Understanding hereby agree as follows:

PART ONE

Definitions

1.1 Mortgage Definitions. All capitalized terms not specifically defined in this Memorandum of Understanding shall be as defined in that Certain Consolidated Mortgage and Security Agreement made by and among Oglethorpe Power and the United States of America, National Bank for Cooperatives, Credit Suisse, acting by and through its New York Branch and Trust Company Bank, as Trustee, dated as of December 1, 1992 and any amendments or supplements thereto (the "Mortgage").

1.2 Special Definitions. All other capitalized terms used in this Memorandum of Understanding shall be as defined below:

(a) "BER" shall mean a Borrower's Environmental Report, as defined in 7 CFR 1794.31(a).

(b) "FERC" shall mean the Federal Energy Regulatory Commission.

(c) "Government-wide Regulation" shall mean any regulation that is promulgated by REA pursuant to statutory directive, executive order or similar requirement affecting Federal agencies generally and that is beyond the power of the Administrator of REA to waive, as such regulation may be in effect from time to time.

(d) "Implementing Regulation" shall mean any REA bulletin or regulation implementing provisions of the Loan Documents or the Rural Electrification Act of 1936, as amended, that is not a Government-wide Regulation, as such bulletin or regulation may be in effect from time to time.

(e) "ITS" shall mean the Georgia Integrated Transmission System.

(f) "Jointly Owned Generating Facilities" shall mean Plant Robert W. Scherer Units No. 1 and 2 and related common facilities, Plant Edwin I. Hatch, Plant Hal Wansley, and Plant Alvin Vogtle, all of which are co-owned by GPC, Oglethorpe Power, the Municipal Electric Authority of Georgia, and the City of Dalton, and the Rocky Mountain Pumped Storage Hydroelectric Project, co-owned by GPC and Oglethorpe Power.

(g) "Loan Documents" shall mean the REA Loan Contract and the Mortgage, as the same may be amended, consolidated or restated from time to time, and any new consolidated mortgage and security agreement that replaces the Mortgage.

(h) "Members" shall mean the thirty-nine electric membership corporations that are members of and are served by Oglethorpe Power.

(i) "PURPA" shall mean the Public Utility Regulatory Policies Act of 1978, as amended.

(j) "QF" shall mean a qualifying cogeneration or small power production facility pursuant to Section 210 of PURPA.

(k) "Standard Approval" shall mean an approval by REA of a type described in Section 4.1 of this Memorandum of Understanding.

(l) "Standard Offer Contract" shall mean the form of contract contained in Oglethorpe Power's currently effective Interconnection Policy of Oglethorpe Power Corporation and its Members for Cogenerators and Small Power Producers, as accepted by FERC and permitted to go into effect in Oglethorpe Power Corp., 32 FERC ¶ 61,103, order on rehearing, 35 FERC ¶ 61,069,

aff'd sub. nom. Greensboro Lumber Company v. FERC, 825 F.2d 518 (D.C. Cir. 1987), as such Interconnection Policy may be amended or supplemented from time to time pursuant to applicable law and regulations.

(m) "Total Utility Plant" shall mean the amount specified as Total Utility Plant in Section B, Line 3 of REA Form 12a as referenced in the Mortgage.

PART TWO

Categorical Approvals

2.1 General. Subject to the conditions and limitations hereinafter set forth, the transactions described in this Part Two, and any related contracts and agreements, are hereby approved by REA for purposes of the Loan Documents and Implementing Regulations. In the case of individual transactions, contracts or agreements, this approval becomes effective at the time such transaction, contract and agreement is entered into by Oglethorpe Power provided that the conditions under this Part Two have been satisfied as to a particular transaction. REA approval shall be deemed effective as of the date of this Memorandum of Understanding for any transaction and related contracts and agreements executed prior to the date hereof that meets the requirements of this Part Two. No further action by REA shall be required with respect to the approvals granted pursuant to this Part Two.

2.2 Qualifying Facility Arrangements. REA hereby approves purchases from QF's

- if the purchase is made pursuant to a contract that substantially conforms to the Standard Offer Contract; and
- if such contract is for 5 megawatts or less and for a term of 3 years or less, or if the rate for the purchased power is at or below Oglethorpe Power's applicable standard offer QF rate.

2.3 Purchase, Sale and Transmission Arrangements (Under 1 Year). REA hereby approves the purchase or sale by Oglethorpe Power of capacity, energy and transmission services pursuant to purchase, sale and/or wheeling agreements:

- if the term of such agreement does not exceed one year;

- if the performance of such agreement will not adversely affect the reliability of the Oglethorpe Power system, which will be conclusively evidenced if Oglethorpe Power's system will be in compliance with all Southeastern Electric Reliability Council reliability standards notwithstanding implementation of the transaction; and
- if the performance of such agreement will not necessitate construction of facilities to implement the transaction, or if construction is required, any requisite REA approval has been obtained, either under the terms of this Memorandum of Understanding or otherwise.

2.4 Operation and Maintenance Agreements. Except as otherwise provided in the next sentence, REA hereby approves Oglethorpe Power's entering into, from time to time, operation and maintenance contracts for its system. The approval contained in this section 2.4 does not apply to

- amendments to the current operating agreements for the Jointly Owned Generating Facilities or the Transmission Facilities Operations and Maintenance Contract, by and between Oglethorpe Power and GPC, dated as of June 9, 1986, covering Oglethorpe Power's ITS assets; or
- any contract for the operation and maintenance of all or substantially all of the Tallasee Project or any new generating facility.

PART THREE

Deemed Approvals

3.1 General. For purposes of the Loan Documents and Implementing Regulations, this Memorandum of Understanding shall constitute approval (with no further written notice required from REA) of certain minor and routine transactions having little or no impact on REA's security, as specified and limited in sections 3.2 through 3.7 below, upon the occurrence of the following conditions:

- Oglethorpe Power has certified to REA that in completing such transactions it has substantially complied with its internal procedures for such transactions; and

- REA has not within the specified period of days after submission of the application
 - specified that the application is incomplete (in which case the applicable time period will begin to run only upon REA's notifying Oglethorpe Power that the application is complete),
 - specifically denied approval, or
 - notified Oglethorpe Power that REA needs additional time to consider the application.

The particular types of transactions included in this category for approvals under Part Three are discussed below.

3.2 Use of General Funds for Minor Additions to System. Subject to section 3.1 of this Part, approval of the use of general funds (not subject to reimbursement from loan funds) for additions to the system will become effective 10 days after receipt of a completed application to REA if

- Oglethorpe Power has submitted to REA a completed *Request for Approval of the Use of General Funds* substantially in the form attached hereto as Exhibit B, with all required attachments as provided in such form;
- the expenditure
 - is for generation facilities and is less than \$1,000,000, or
 - is for property other than generation facilities, and is less than .1% of Total Utility Plant per transaction and the aggregate of all such additions approved pursuant to this provision does not exceed within any twelve-month period more than .5% of Total Utility Plant;
- Oglethorpe Power has submitted a budget to REA describing the additions and all costs thereof (which budget may be incorporated by reference in the application if previously filed with REA);
- Oglethorpe Power has committed in writing not to seek reimbursement from REA loan funds for such additions; and
- Oglethorpe Power has certified that any applicable environmental requirements of 7 C.F.R. Part 1794 have been met in one of the following ways:

- the project qualifies as a categorical exclusion for which a BER is required and the BER has been on file with REA for a minimum of 30 days, (i) with no written notice having been given by REA to Oglethorpe Power that the BER is inadequate or incomplete and (ii) with telephonic confirmation having been received by Oglethorpe Power from the Environmental Compliance Branch of REA to the effect that the project raises no outstanding environmental issues for REA.
- the project qualifies as a categorical exclusion for which no BER is required and the project is not located in a flood plain and does not affect wetlands, or
- at least 30 days have elapsed since REA has published a finding of no significant impact or a final environmental impact statement regarding the project.

3.3 Waiver of Certain Post-Loan Requirements for Facilities Financed Solely with General Funds. Subject to section 3.1 of this Part Three, with respect to facilities financed with general funds (not subject to reimbursement with loan funds), this memorandum of understanding constitutes an approval or a waiver, as the case may be, under the terms of the Loan Documents and the Implementing Regulations limited to REA post-loan requirements regarding contracting, procurement and bidding procedures; contract close-out procedures pertaining to project completion, final payment to contractor and related matters; and standard forms of construction and procurement contracts listed in 7 C.F.R. § 1726.300, which will become effective 10 days after receipt of written notice to REA if:

- Oglethorpe Power has submitted to REA a written notice describing the project and has certified to REA that:
 - any building is designed and constructed in compliance with Section 504 of the Rehabilitation Act of 1973 as amended, and facilities will be readily accessible to and usable by persons with handicaps in accordance with the Uniform Federal Accessibility Standards (UFAS), (Appendix A to 41 C.F.R. Part 101.19, Subpart 101-19.6);
 - REA has approved the use of general funds for the project, either pursuant to the terms of section 3.2 of this Memorandum of Understanding, or otherwise; and

- Oglethorpe Power has committed in writing not to seek reimbursement from REA loan funds for such additions.

3.4 **Disposition of Property.** Subject to the provisions of section 3.1 of this Part Three, this Memorandum of Understanding constitutes approval of the sale of property which will become effective 10 days after receipt of a completed application to REA substantially in the form attached hereto as **Exhibit C** if

- Oglethorpe Power has submitted a completed Form 369, *Request for Approval to Sell Capital Assets*, with all required attachments and material necessary to describe the transaction and its effects on Oglethorpe Power's System;
- no release of lien is required;
- the fair market value is less than .1% of Total Utility Plant per disposition and the aggregate of all such dispositions approved pursuant to this provision does not exceed within any twelve-month period more than .5% of Total Utility Plant;
- Oglethorpe Power has submitted to REA copies (executed or ready for execution) of any applicable contracts requiring approval by REA and evidence of corporate authority to enter into such contracts;
- Oglethorpe Power has certified to REA that the property is not used or useful in Oglethorpe Power's operations; and
- the proceeds of such dispositions are applied as required under article II, section 5(c)(aa) of the Mortgage.

In any circumstance where a release of lien is necessary, approval of the sale of property will become effective 30 days after receipt of a completed application to REA substantially in the form attached hereto as **Exhibit D** if

- Oglethorpe Power has submitted a completed Form 369, *Request for Approval to Sell Capital Assets*, with all required attachments and materials necessary to describe the transaction and its effects on Oglethorpe Power's system;
- Oglethorpe Power has submitted for REA execution a properly completed release in the form, as such form may be amended from time to time by Oglethorpe Power's counsel to add or delete references therein to Security

Instruments or Mortgagees (as those terms are defined in the Mortgage), attached as Appendix 1 to Exhibit D to this Memorandum of Understanding (which release REA will return executed, on behalf of REA, to Oglethorpe Power within 45 days of receipt);

- the fair market value is less than .1% of Total Utility Plant per disposition and the aggregate of all such dispositions approved pursuant to this provision does not exceed within any twelve-month period more than .5% of Total Utility Plant;
- Oglethorpe Power has submitted to REA copies (executed or ready for execution) of any applicable contracts requiring approval by REA and evidence of corporate authority to enter into such contracts;
- Oglethorpe Power has certified to REA that the property is not used or useful in Oglethorpe Power's operations; and
- the proceeds of such dispositions are applied as required under article II, section 5(c)(aa) of the Mortgage.

3.5 Purchase, Sale and Transmission Arrangements (1-3 Years).
Subject to the provisions of section 3.1 of this Part Three, this Memorandum of Understanding constitutes approval of arrangements relating to power purchase, sale and wheeling arrangements, such approval to become effective 30 days after receipt by REA of a completed application substantially in the form attached hereto as Exhibit E if

- the agreement is for a term of more than one year, but not greater than three years;
- Oglethorpe Power has certified that
 - the transaction will not adversely affect the reliability of the Oglethorpe Power system, which will be conclusively evidenced if Oglethorpe Power's system will be in compliance with all Southeastern Electric Reliability Council reliability standards notwithstanding implementation of the transaction and
 - no construction of facilities will be necessary to implement the transaction, or if construction is required, any requisite REA approval has been obtained, either under the terms of the Memorandum of Understanding or otherwise;

- Oglethorpe Power has submitted to REA copies (executed or ready for execution) of any applicable contracts requiring approval by REA and evidence of corporate authority to enter into such contracts; and
- Oglethorpe Power has submitted the economic analysis, financial forecast or cost benefit analysis on which Oglethorpe Power management based its decision.

3.6 Uncommitted Interconnection and Interchange Arrangements. Subject to the provisions of section 3.1 of this Part Three, this Memorandum of Understanding constitutes approval of interconnection and interchange arrangements, such approval to become effective 30 days after receipt of a completed application substantially in the form attached hereto as **Exhibit E** if

- the agreement does not in and of itself bind Oglethorpe Power to implement a specific transaction with the other party;
- Oglethorpe Power has submitted the analysis on which Oglethorpe Power management based its decision;
- any future transaction to be consummated pursuant to such agreement is made subject to REA approval (which approval may be obtained in accordance with applicable rules and policies, including this Memorandum of Understanding); and
- Oglethorpe Power has submitted to REA copies (executed or ready for execution) of any applicable contracts requiring approval by REA and evidence of corporate authority to enter into such contracts;

3.7 Withdrawals from Trusteed Construction Account to Reimburse General Funds Used for Capital Expenditures Within Prior 24 Months. Subject to the provisions of section 3.1 of this Part Three, this Memorandum of Understanding constitutes approval for withdrawals from the trustee construction account that comply with this section 3.7, such approval shall become effective 30 days after receipt of the completed application substantially in the form attached hereto as **Exhibit F** if

- The capital expenditure for which Oglethorpe Power is reimbursing general funds has received either a Standard Approval or an approval pursuant to section 3.2 of this Part Three; and
- Oglethorpe Power has certified that

- funds withdrawn from the account consist solely of proceeds from sales of property and not from loan funds;
- reimbursement is solely for capital expenditures incurred in the prior 24 months; and
- the tangible assets constructed or acquired with the general funds to be reimbursed are assets that are subject to the lien of the Mortgage.

PART FOUR

Standard Approvals

4.1 General. All REA approvals under the Loan Documents and Implementing Regulations not covered in Parts Two or Three are considered to be Standard Approvals. Some Standard Approvals are handled on a case-by-case basis and others are subject to specific Implementing Regulations and/or Government-wide Regulations.

4.2 Case-by-Case Transactions. In case-by-case transactions that are significant, REA staff will meet early in the process with Oglethorpe Power staff to develop to the extent practicable,

- an explicit and complete checklist of REA requirements relating to such transaction (which shall be updated as necessary to account for any issues later identified) and
- a schedule within which REA believes it can reach its decision (assuming, of course, that Oglethorpe Power satisfies the specified requirements).

Once such a checklist and schedule have been developed, on request REA staff will meet in Washington, D.C. with Oglethorpe Power to review the schedule and discuss the progress of the transaction.

4.3 Basic Refinancings. The following provisions shall be in effect until REA's rule on lien accommodations is final. Upon the effective date of such final rule, this section 4.3 shall be superseded in its entirety. REA will process refinancings under the Loan Documents in accordance with the criteria set forth below:

- Within 15 days of receiving Oglethorpe Power's application for a refinancing (which shall include proposed documents in substantially final form and any materials required by Implementing Regulations and Government-wide Regulations), REA will notify Oglethorpe Power in writing of any deficiencies in the application. Additional written notices will be provided if other deficiencies are subsequently discovered. Within 30 days of receipt of a completed application for refinancing, REA will either
 - approve the transaction if all of the requirements set forth below have been met;
 - if all requirements have not been met, send written notice to Oglethorpe Power to that effect; or
 - send written notice to Oglethorpe Power explaining why a decision cannot be made at that time and giving an estimated date when a decision is expected.
- For purposes of the Loan Documents and Implementing Regulations, REA will approve refinancings pursuant to this section 4.3 so long as:
 - the refinancing is a current refunding and does not involve interest rate swaps, forward delivery contracts, or similar features;
 - the principal amount of the refinancing loan does not exceed the sum of the outstanding principal amount of the debt being refinanced plus transaction costs of three and one half percent (3.5%);
 - the weighted average life of the refinancing loan is not greater than the weighted average remaining life of the loan being refinanced;
 - the present value of the cost of the refinancing loan, including all transaction costs and any required investments in the lender, is less than the present value of the cost of the loan being refinanced;
 - no amendments to the Mortgage are required other than to add holders of refinancing indebtedness; and

Oglethorpe Power provides REA with opinions of counsel regarding the lien of the Mortgage substantially in the forms attached hereto as Exhibits G-1 and G-2.

PART FIVE

Miscellaneous

5.1 Limitations. The procedures set forth in this Memorandum of Understanding shall be effective until such time as the Administrator of REA shall notify Oglethorpe Power in writing of the termination of any or all of the procedures set forth in this Memorandum of Understanding. Further, the procedures set forth in this Memorandum of Understanding shall not be applicable for any period during which there shall have occurred and be continuing an "event of default" under either the Mortgage or the Loan Contract. In the case of any approval by REA which has been given pursuant to this Memorandum of Understanding and which has not become effective prior to termination or suspension of the procedures set forth in this Memorandum of Understanding, such approval will not become effective unless and until the Administrator of REA notifies Oglethorpe Power in writing that such approval is given in spite of the limitations contained in this provision 5.1. This Memorandum of Understanding is terminable by Oglethorpe Power upon delivery of written notice to that effect to the Administrator. Either party may exercise its rights under this section 5.1 with or without cause.

5.2 Term of Arrangements -- Extensions. In determining if a particular transaction and related contract or agreement meets the characteristics described above as to the term thereof, such term shall be calculated from the date such arrangement is effective until its stated termination date, including all extensions and renewals that could occur without the consent of Oglethorpe Power. Extensions at the option of Oglethorpe Power shall be treated as a separate transaction for determining approval pursuant to the terms of this Memorandum of Understanding.

5.3 Amendments and Modifications. Any amendment or modification to any of the transactions and related contracts and agreements described in this Memorandum of Understanding shall be approved based on the same procedures described above so long as the amended or modified action or transaction and related amended or modified contract or agreement continues to meet the requirements for approval set forth above. Each amendment, modification or

supplement to this Memorandum of Understanding, if and when agreed to by the parties, shall be dated, numbered in sequence and clearly labeled on its face "Amendment No. ___ to Memorandum of Understanding."

5.4 Other Understandings and Arrangements. This Memorandum of Understanding shall not be in derogation of (a) any other similar understanding or arrangement entered into either before or after the date hereof between REA and Oglethorpe Power as to other types of transactions or (b) Implementing Regulations that permit an REA-assisted borrower to act in accordance with their terms.

5.5 Evidence of Corporate Authority. To the extent that this Memorandum of Understanding, the Loan Documents or any Implementing Regulation or other requirement calls for evidence of corporate authority or for a "board resolution" authorizing any particular transaction, REA agrees that such requirement will be satisfied by delivery to REA of any of the following as to such transaction or execution (i) an executed, certified copy of a resolution of a committee of Oglethorpe Power's Board of Directors, which committee has been duly authorized to act as to any such transaction or type of transaction on behalf of the Board of Directors, (ii) an executed, certified copy of a resolution of Oglethorpe Power's Board of Directors duly authorizing any officer or other employee of Oglethorpe Power to enter into such transaction or type of transaction without further Board action, or (iii) an executed, certified delegation by an officer or other employee of Oglethorpe Power duly authorized by a resolution of Oglethorpe Power's Board of Directors to enter into such transaction or type of transaction and duly authorizing such officer or employee to delegate such authority all without further Board action; PROVIDED, HOWEVER, that REA may require that such evidence of corporate authority under clauses (i), (ii) or (iii), as the case may be, shall be accompanied by an opinion of legal counsel, which counsel may be an employee of Oglethorpe Power, to the effect that the transaction has been duly authorized under Oglethorpe Power's articles of incorporation, bylaws, board policies and other governing documents.

5.6 Conflict with Published Regulations. In the event that any provision of this Memorandum of Understanding is determined by appropriate authority to be irreconcilable with any Government-wide Regulation published from time to time in the Code of Federal Regulations, such provision shall be null and void and of no further effect. In no event shall this Memorandum of Understanding in any way constrain the Administrator of REA from promulgating from time to time any regulation which the Administrator is otherwise authorized by law to do so. In the

event that the contingency described in the first sentence of this section occurs, REA will so notify Oglethorpe Power to that effect. In such circumstances, Oglethorpe Power will be considered in compliance with the Loan Instruments for any action which it has taken in good faith based on such provision of this Memorandum of Understanding prior to receiving such notice from REA under this section.

5.7 Headings. The headings for the parts and sections of this Memorandum of Understanding are intended solely for the convenience of the reader.

IN WITNESS WHEREOF, the United States of America, acting through the Administrator of the Rural Electrification Administration, and Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) have dated this Memorandum of Understanding for convenience of reference as of September 1, 1993, but have actually executed this Memorandum of Understanding on September 9, 1993 and agree that such latter date shall be the date on which this Memorandum of Understanding shall take effect.

OGLETHORPE POWER CORPORATION
(An Electric Membership Generation & Transmission Corporation)

BY:  _____

T. D. Kilgore, President & Chief Executive Officer

(SEAL)

Attest:

 _____

Patricia Nash, Assistant Secretary

UNITED STATES OF AMERICA

BY:  _____

James B. Huff, Sr., Administrator of the Rural Electrification Administration

**MEMORANDUM OF UNDERSTANDING
EXHIBITS**

REA ACTION LIST - SUMMARY OF ITEMS PENDING DURING 1992

Exhibit A

NAME OF ACTION ITEM	OPC CONTACT	REA CONTACT	* * * * REA CONTACT DATES * * * *			DESCRIPTION OF ACTION REQUESTED OF REA
			INITIAL/	SUBMITTAL/	ACTION	
NOTES: 1. Initial contacts - V = verbal; L = letter 2. Where contact has changed, only the current contact is listed. 3. * Indicates items less than \$300,000, where the contracts were submitted for records only per REA letter of January 15, 1992. 4. ** Indicates that REA approved the specification when approving construction contract or when contract was sent for records.						
1. Equity Plan	Heckl	Eddy	4/6/92	9/16/92	3/23/93	Approval of Plan
2. PCB Refinancing	Hampton	Eddy				
a. Forwards Transaction			5/14/91	5/15/92	2/25/93	Approval Letter/Lien Accomodation
b. Tender Swap Offer			5/14/91	7/2/91	4/6/92	Approval Letter/Lien Accomodation
c. Current Refunding			5/14/91	7/28/92	9/3/92	Preliminary Approval Letter (to Mail PO'S)
3. FFB Refinancing	Kofron	Eddy	4/27/92	7/27/92	10/20/92	Final Approval Letter
a. Note Modification			2/4/92	2/4/92	6/10/92	Execution of New Note
4. ECS Project	Earich	Sherman				
a. General Funds Request			2/91 V	3/20/91	1/6/92	Approval of General Funds
b. General Funds Request			7/9/92 L	7/9/92	11/3/92	Approval of additional funds
c. RTU Supplier Contract			12/12/91 L	12/12/91	2/20/92	Approval of Contract
d. RTU Installation Contract			12/17/91 V	12/30/91	1/17/92	Approval to Negotiate
e. RTU Installation Contract			12/17/91 V	1/27/92	2/20/92	Approval of Contract
f. RTU Inst. Contract No. 2			7/30/92 V	8/5/92	9/17/92	Approval to Negotiate
g. RTU Inst. Contract No. 2			7/30/92 V	11/19/92	12/11/92	Approval of Contract
h. Telecomm. Equipment Contract			2/91 V	6/14/91	1/10/92	Approval of Contract
i. Telecomm. Installation Contract			2/91 V	4/5/91	2/20/92	Approval of Contract
j. Master Station Contract			2/91 V	4/9/92	5/13/92	Approval of Contract
5. Trustee Funds	Kofron	Green				
a. Proceeds from three misc. sales of property			9/27/90	9/27/90	5/21/93	Approval to use funds to reimburse general funds
b. Proceeds from Sale of Scherer Common			10/2/89	12/19/89	5/21/93	Approval to use funds to reimburse general funds
c. Proceeds from sale of Lenora Church Rd. property			3/10/92	3/10/92	5/21/93	Approval to use funds to reimburse general funds
d. Vogtle PCB			1990	7/20/92	11/3/92	Approval to use funds to prepay FFB
e. Monroe PCB	10/92	10/15/92	11/3/92	Approval to use funds to prepay FFB		
6. Scherer/Wansley Amendments	Taylor	Moy				
a. Review of draft contracts			7/91	4/6/92	12/9/92	Review of contracts prior to finalizing
7. Scherer Rail Cars	D. Smith	Moy				
a. Use of General Funds			9/17/92 V	10/6/92	1/19/93	Approved Use of General Funds to Place Order
8. SONOPCO	D. Smith	Moy				
a. Nuclear Operating Agreement			1990 V	10/13/92	12/21/92	Approval to cast Managing Board vote
b. Nuclear Managing Board Agreement			1990 V	10/13/92	5/13/93	Review of Amended and Restated agreement before finalizing

REA ACTION LIST - SUMMARY OF ITEMS PENDING DURING 1992

Exhibit A

NAME OF ACTION ITEM	OPC CONTACT	REA CONTACT	REACTANT INITIAL/	REACTANT SUBMITTAL/	REACTANT DATES ACTION	DESCRIPTION OF ACTION REQUESTED OF REA
9. All Source Bid						
a. Transco (Hartwell) Contract	Carlton	Moy	10/91	12/11/91	6/5/92	Approval of Contract as to form
b. Hartwell Station BER	Trammell	Moy	10/91	6/30/92	8/31/92	Environmental Filing
c. General Funds				2/3/92	Withdrawn	
10. REA Protocol	Lowenthal	Eddy	8/92 V	12/16/92		Execution of Protocol Document
11. Interchange Agreements/ Purchase Contracts	Carlton	Moy				
a. Entergy - 100 MW purchase			11/90 V	4/21/91		Approval of contract (Waiting on FERC approval)
b. Big Rivers - 100 MW purchase			12/1/90 L	2/11/91	6/3/92	Amendment submitted by B.R. for approval
c. Entergy - Interchange			12/90 L	12/90	4/2/92	Approval of contract
d. Seminole - Interchange			12/90 L	4/2/92	8/10/92	Approval of contract
e. TVA - Wheeling			3/5/91 L	3/5/91	4/2/92	Approval of contract
TVA - Surplus			3/5/91 L	3/5/91	3/27/92	Approval of contract
f. Cajun - Interchange			5/30/91 L	5/30/91	7/28/92	Submitted by Cajun for approval
g. Louisville-Short term			1/20/92 V	2/17/92	N/A	Submitted for information
h. Fla. Power Corp. - Transmission			2/26/92 L	2/26/92	4/14/93	Approval of contract
i. Tampa - Interchange			4/92 V	5/27/92	8/26/92	Approval of contract
j. FP & L - Interchange			4/13/92 V	5/6/92	8/21/92	Approval of contract
k. JEA - Interchange			5/21/92 V	6/92	8/26/92	Approval of contract
l. Fla. Pwr. Corp. - Interchange			7/92 V	9/3/92	6/23/93	Approval of contract
m. East Kentucky - Interchange			7/92 V	9/3/92	6/28/93	Approval of contract
n. BPSA Term Extension			12/7/92 V	12/15/92	12/30/92	Approval of extension
o. Louisville - Interchange			11/12/92 V	3/24/93		Approval of contract
12. OPC-SEPA Contracts	Taylor	Moy				
a. OPC Pumping Account Amendment			8/91 V	12/5/91	8/20/92	Approval of contract
b. Transmission Services Amendment			5/91 V	12/5/91	8/20/92	Approval of contract
13. Wholesale Rate	Saylor	Green				
a. OPC-11			11/91	1/20/92	2/5/92	Approval of Rate
b. Member Rate Policy			2/20/92	2/20/92	N/A	Notification only
c. OPC-11 Revision			7/92	8/21/92	None	Approval of rate modification
d. OPC-12			1/92	11/11/92	1/26/93	Approval of Rate
14. Rocky Mountain	Murphy	Moy				
a. Transmission Line Towers			1988	7/13/92	8/4/92	Approval of Plans & Specifications
b. Substation Breakers			1988	6/19/92	8/4/92	Approval of Plans & Specifications
c. Substation Structures			1988	6/17/92	8/14/92	Approval of Plans & Specifications
d. Substation Construction			1988	6/17/92	8/4/92	Approval of Plans & Specifications
e. Transmission Line Construction			1988	9/11/92	10/15/92	Approval of Plans & Specifications
f. Change of Purpose			3/27/91	8/12/92	10/13/92	Approval of Change of Loan Purpose
g. Distributed Control System			9/9/91 L	9/9/91	11/25/91	Approval of Plans & Specifications
h. Advance of Loan Funds	Kofron	Green	1/9/92	1/9/92	2/12/92	Advance of loan funds
i. Advance of Loan Funds	Kofron	Green	4/3/92	4/3/92	5/6/92	Advance of loan funds
j. Advance of Loan Funds	Kofron	Green	6/22/92	6/22/92	7/24/92	Advance of loan funds
k. Advance of Loan Funds	Kofron	Green	8/31/92	8/31/92	10/1/92	Advance of loan funds
l. Advance of Loan Funds	Kofron	Green	11/16/92	11/16/92	12/30/92	Advance of loan funds

REA ACTION LIST - SUMMARY OF ITEMS PENDING DURING 1992

Exhibit A

NAME OF ACTION ITEM	OPC CONTACT	REA CONTACT	RE A INITIAL/	RE A SUBMITTAL/	CON TACT DATES * * * * ACTION	DESCRIPTION OF ACTION REQUESTED OF REA
15. Load Forecast a. 1991	Austin	Shultz			12/91 1/16/92 8/17/92	Approval of forecast for OPC & Members
16. Release of Lien a. Woodstock-Hawkins Store T/L b. Tritt Road S/S c. Mountain Park S/S	Norman	Cockey			6/5/92 L 6/5/92 7/92 7/15/92 L 7/15/92 8/6/92 12/31/92 L 12/31/92 1/28/93	Execution of release of lien
17. Misc. General Funds Requests a. Automated Billing Verification system	Kofron	Green			11/21/91 L 11/21/91 4/20/92	
18. Transmission Construction	Emrich	Sherman				
a. Borrower's Environmental Reports	Various	Quigle				Environmental Finding
1. Nancy Hart S/S			10/29/91 L	10/29/91	2/6/92	
2. Elberton S/S			1/14/92 L	1/14/92	2/6/92	
3. Boston S/S			1/17/92 L	1/17/92	2/6/92	
4. Sharpsburg T/L S/S			8/26/92 L	8/26/92	10/6/92	
5. Willard S/S			10/6/92 L	10/6/92	11/6/92	
6. N.E. Emanuel S/S			11/13/92 L	11/13/92	2/8/92	
7. Boardtown S/S			11/23/92 L	11/23/92	1/12/93	
b. General Funds Requests	Kofron	Green				Approve use of general funds
1. Boggs Road Substation			9/11/89 L	9/11/89		
2. Egypt Tap widened			1/24/91 L	1/24/91		
3. Highway 371 Substation			4/30/91 L	4/30/91		
4. Pulaski Substation and Line			4/30/91 L	4/30/91		
5. Winder Substation			5/2/91 L	5/2/91		
6. Dolas Substation and Line			9/18/91 L	9/18/91	11/3/92	
7. Sandersville Line			11/11/91 L	11/11/91		
8. Bath Substation			11/11/91 L	11/11/91		
9. Alamo Substation and Line			11/11/91 L	11/11/91		
10. West Carrollton (Tisinger)			3/11/92 L	3/11/92	11/3/92	
11. Bark Camp Mod			7/27/92 L	7/27/92		
12. Cane Creek-Juno TL			7/27/92 L	7/27/92		
13. Clermont-Murrayville TL			7/27/92 L	7/27/92		
14. Dasher SS			7/27/92 L	7/27/92		
15. Dawsonville Mod			7/27/92 L	7/27/92		
16. Kettle Creek SS			7/27/92 L	7/27/92	3/25/93	
17. Wilsonville Mod			7/27/92 L	7/27/92	3/25/93	
18. Wilsonville-Kettle Creek TL			7/27/92 L	7/27/92	3/25/93	
19. Lassiter Road Mod			7/27/92 L	7/27/92		
20. Menor SS			7/27/92 L	7/27/92		
21. Mtn. Park-Woodstock TL			7/27/92 L	7/27/92		
22. Murrayville SS			7/27/92 L	7/27/92		
23. NE Emanuel			7/27/92 L	7/27/92		
24. North Lilburn SS			7/27/92 L	7/27/92		
25. North Louisville SS			7/27/92 L	7/27/92		

REA ACTION LIST - SUMMARY OF ITEMS PENDING DURING 1992

Exhibit A

NAME OF ACTION ITEM	OPC	REA	* * * * REA CONTACT DATES * * * *		ACTION	DESCRIPTION OF ACTION REQUESTED OF REA
	CONTACT	CONTACT	INITIAL/	SUBMITTAL/		
26. North Marietta Mod			1/27/92 L	1/27/92		
27. Ocee Mod			1/27/92 L	1/27/92		
28. Sandy Plains SS & TL			1/27/92 L	1/27/92		
29. Snellville Mod			1/27/92 L	1/27/92		
30. South Acworth Mod			1/27/92 L	1/27/92		
31. Stillmore SS			1/27/92 L	1/27/92		
32. Tiger			1/27/92 L	1/27/92		
33. Transco			1/27/92 L	1/27/92		
34. Tritt Road			1/27/92 L	1/27/92		
35. West Donaldsonville SS			1/27/92 L	1/27/92		
36. West Side			1/27/92 L	1/27/92		
37. Willard			1/27/92 L	1/27/92		
c. Specification Approval						
1. Lassiter - Mt. Park T/L			11/4/91 L	11/4/91	..	Approval of Plans & Specifications
2. Lassiter Rd. - Woodstock T/L			11/4/91 L	11/4/91	..	
3. Pavo D/S			11/7/91 L	11/7/91	..	
4. Cool Branch Tap T/L R/W Clearing			11/18/91 L	11/18/91	..	
5. Cane Creek - Juno T/L			11/21/91 L	11/21/91	..	
6. Lithia Springs S/S			1/2/92 L	1/2/92	2/18/92	
7. Cool Branch Tap D/S			1/3/92 L	1/3/92	..	
8. Lassiter Rd S/S			1/9/92 L	1/9/92	2/18/92	
9. West Americus S/S			1/23/92 L	1/23/92	..	
10. Cool Branch Tap T/L			1/23/92 L	1/23/92	..	
11. Elberton S/S			2/21/92 L	2/21/92	..	
12. Nancy Hart S/S			2/21/92 L	2/21/92	..	
13. Lake Capri S/S			3/4/92 L	3/4/92	..	
14. Homer S/S			4/21/92 L	4/21/92	..	
15. Douglasville S/S			5/5/92 L	5/5/92	..	
16. Cecil S/S			5/29/92 L	5/29/92	6/26/92	
17. Elpino S/S			5/29/92 L	5/29/92	6/26/92	
18. Tisinger S/S			6/3/92 L	6/3/92	6/29/92	
19. Snellville S/S			7/21/92 L	7/21/92	..	
20. Central Church Rd. S/S			8/14/92 L	8/14/92	..	
21. Sharpsburg S/S T/L			8/26/92 L	8/26/92	10/1/92	
22. Pine Grove S/S			8/31/92 L	8/31/92	..	
23. Dawsonville S/S Mod			9/8/92 L	9/8/92	..	
24. River S/S			9/18/92 L	9/18/92	..	
25. Gillsville S/S			9/22/92 L	9/22/92	..	
26. Metal Container S/S T/L			10/7/92 L	10/7/92	..	
27. Bartlett S/S			10/7/92 L	10/7/92	11/9/92	
28. E. Thomson			10/16/92 L	10/16/92	11/9/92	
29. Fosters Crossroads			11/4/92 L	11/4/92	..	
30. Sandersville Loop T/L			11/14/91 L	11/14/91	1/3/92	
31. Highway 301 S/S			12/15/92 L	12/15/92	2/4/92	
32. Rock Quarry S/S			12/17/92 L	12/17/92	2/4/93	

REA ACTION LIST - SUMMARY OF ITEMS PENDING DURING 1992

Exhibit A

NAME OF ACTION ITEM	OPC CONTACT	REA CONTACT	* * * * REA CONTACT DATES * * * *			DESCRIPTION OF ACTION REQUESTED OF REA
			INITIAL/	SUBMITTAL/	ACTION	
d. Contract Approval						
1. Mt. Park - Woodstock T/L			2/6/92 L	2/6/92	3/9/92	Approval of Contract
2. Sandersville Loop T/L			2/6/92 L	2/6/92	3/9/92	
3. Pavo D/S			2/6/92 L	2/6/92	3/9/92	
4. Lassiter Rd S/S			3/5/92 L	3/5/92	4/15/92	
5. Tisinger S/S			8/6/92 L	8/6/92	10/6/92	
6. Central Church Rd. S/S			8/14/92 L	8/14/92	11/23/92	
7. Snellville S/S			9/29/92 L	9/29/92	10/20/92	
8. Pine Grove S/S			10/22/92 L	10/22/92	11/23/92	
9. Dawsonville S/S Mod			10/23/92 L	10/23/92	11/25/92	
10. Sharpsburg S/S T/L			11/19/92 L	11/19/92	12/4/92	
11. Metal Container S/S T/L			12/18/92 L	12/18/92	1/5/93	
12. Doles Tap T/L			2/6/92 L	2/6/92	3/9/92	
13. Steele Rd. D/S			1/28/92 L	1/28/92	2/19/92	
14. Bartlett D/S			11/12/92 L	11/12/92	*N/A	
15. Boston S/S			12/18/92 L	12/18/92	*N/A	
16. Cecil D/S			8/6/92 L	8/6/92	*N/A	
17. Chase Rd. D/S			2/9/92 L	2/9/92	*N/A	
18. Cool Branch D/S			3/13/92 L	3/13/92	*N/A	
19. Cool Branch Tap T/L R/W Clearing			2/21/92 L	2/21/92	*N/A	
20. Cool Branch Tap T/L			4/8/92 L	4/8/92	*N/A	
21. Doles D/S			2/12/92 L	2/12/92	*N/A	
22. Elpino D/S			7/31/92 L	7/31/92	*N/A	
23. Gillsville D/S			12/10/92 L	12/10/92	*N/A	
24. Homer D/S			6/12/92 L	6/12/92	*N/A	
25. Juno-Cane Creek T/L			2/21/92 L	2/21/92	*N/A	
26. Lake Capri			4/14/92 L	4/14/92	*N/A	
27. N. Carrollton Loop T/L			3/5/92 L	3/5/92	*N/A	
28. River D/S			12/17/92 L	12/17/92	*N/A	
29. West Americus			4/8/92 L	4/8/92	*N/A	
30. Elberton S/S			4/8/92 L	4/8/92	*N/A	
31. Nancy Hart S/S			4/8/92 L	4/8/92	*N/A	
32. Douglasville T/S			5/27/92 L	5/27/92	*N/A	
e. Project Close-out Documents						
1. Five Points D/S			10/2/89 L	10/2/89		Approval of Close-out
2. Groover Lake D/S			10/2/89 L	10/2/89		
3. Lithia Springs			11/13/89 L	11/13/89		
4. Cleveland-Leaf T/L			7/30/91 L	7/30/91		
5. Douglas-Wilsonville T/L			8/13/91 L	8/13/91		
6. Mt. Pleasant D/S			10/2/91 L	10/2/91		
7. Greensboro Lumber Co. D/S			12/9/91 L	12/9/91		
8. Campton S/S Mod			12/17/91 L	12/17/91	2/20/92	
9. Lassiter Rd-Tritt Rd T/L			3/11/92 L	3/11/92		
10. Mitchell Prison D/S			5/12/92 L	5/12/92	4/30/93	
11. Sugarloaf D/S			5/27/92 L	5/27/92		
12. DeShong D/S Modification			7/14/92 L	7/14/92		
13. Durand D/S			8/6/92 L	8/6/92	4/26/93	
14. Bernhard Rd D/S Modification			8/6/92 L	8/6/92		
15. North Lilburn D/S			8/28/92 L	8/28/92	4/26/93	
16. Hawkinsville-Pulaski T/L			10/9/92 L	10/9/92	5/11/93	

REA ACTION LIST - SUMMARY OF ITEMS PENDING DURING 1992

Exhibit A

NAME OF ACTION ITEM	OPC CONTACT	REA CONTACT	* * * * REA CONTACT DATES * * * *			DESCRIPTION OF ACTION REQUESTED OF REA
			INITIAL/	SUBMITTAL/	ACTION	
17. Dasher S/S			9/11/92 L	9/11/92	10/14/92	
18. Tritt Rd. S/S			1/12/92 L	3/12/92	10/6/92	
19. Big Creek - S/S Mod			1/17/92 L	3/17/92	6/26/92	
20. Murrayville S/S			3/23/92 L	3/23/92	6/26/92	
21. Highway 54 S/S			3/23/92 L	3/23/92	6/29/92	
22. Bushnell S/S Mod			4/24/92 L	4/29/92	7/21/92	
23. Alamo Tap T/L			4/24/92 L	4/24/92	7/16/92	
24. Bushnell S/S			4/24/92 L	4/24/92	7/21/92	
25. Hwy. 371 S/S			4/29/92 L	4/29/92	12/31/92	
26. Gaines Ferry S/S			4/29/92 L	4/29/92	10/6/92	
27. Mitchell Prison S/S			5/12/92 L	5/12/92	4/30/93	
28. Fairplay S/S			5/28/92 L	5/28/92	7/16/92	
29. Jonesville S/S			5/28/92 L	5/28/92	1/4/93	
30. Juno S/S			5/28/92 L	5/28/92	10/6/92	
31. Brookstone S/S			6/8/92 L	6/8/92	10/6/92	
32. W. Homerville S/S			6/8/92 L	6/8/92	7/17/92	
33. Arnold Mill S/S			6/8/92 L	6/8/92	7/17/92	
34. Beaver Dam Tap T/L			7/9/92 L	7/9/92	10/1/92	
35. Eulenia S/S			8/28/92 L	8/28/92	10/14/92	
36. W. Donaldsonville			9/11/92 L	9/11/92	10/14/92	
37. Doles S/S			9/11/92 L	9/11/92	1/4/93	
38. Peavey S/S			9/11/92 L	9/11/92	1/4/93	
39. Manor S/S			9/18/92 L	9/18/92	12/31/92	
40. West Oak S/S			9/22/92 L	9/22/92	10/19/92	
41. Mt. Zion S/S			9/22/92 L	9/22/92	10/15/92	

EXHIBIT B

OGLETHORPE POWER CORPORATION
GEORGIA 109-OGLETHORPE

REQUEST FOR APPROVAL OF THE USE OF GENERAL FUNDS
UNDER MEMORANDUM OF UNDERSTANDING

This request is made pursuant to Section 3.2 of that certain Memorandum of Understanding ("MOU") between Oglethorpe Power Corporation (the "Oglethorpe Power") and the United States of America acting through the Administrator (the "Administrator") of the Rural Electrification Administration, dated as of August 1, 1993. All capitalized terms not defined in this request shall have the meaning ascribed to them in the MOU. Assuming this application is complete and REA does not notify Oglethorpe Power in writing that approval is denied, approval shall be effective 10 days from the date on which receipt of this request is confirmed by REA in the space provided below.

Funds will be used as follows [check box(es) applicable]:

- generating facilities in an amount less than \$1,000,000;
- property not involving generation facilities in an amount less than .1% of "Total Utility Plant" per transaction and, when combined with all other transactions approved under Section 3.2 of the MOU in the past 12 months, not more than .5% of "Total Utility Plant."

[Fill in following information:]

Oglethorpe Power seeks the Administrator's approval to expend a total of:	\$
Oglethorpe Power's Total Utility Plant (Part B, Line 3 of Form 12a for period ending _____)	
.1% of Total Utility Plant	
Total expenditures by Oglethorpe Power under Section 3.2 of MOU in prior 11 months and this month	
.5% of Total Utility Plant	

Oglethorpe Power hereby certifies to the Administrator as follows:

1. In planning and implementing the expenditures Oglethorpe Power has and will substantially comply with its internal procedures for such transaction.

2. A budget describing the additions and all costs thereof [check one box]

is incorporated herein by reference from the following document submitted to REA previously:

is attached to this request.

3. Oglethorpe Power will not seek reimbursement from REA direct or guaranteed loan funds for the expenditures made pursuant to this request for approval.

4. A certified copy of the board resolution approving this expenditure and agreeing that the corporation shall not seek reimbursement from loan funds is attached to this request.

5. Any applicable environmental requirements of 7 C.F.R. Part 1794 have been met in the following way [check one box]:

The project qualifies as a categorical exclusion for which a BER is required, the BER has been on file with REA for a minimum of 30 days, no written notice has been received by Oglethorpe Power from REA that the BER is inadequate or incomplete and Oglethorpe Power has confirmed by telephone call on _____ with _____ of REA's Environmental Compliance Branch that the project raises no outstanding environmental issues for REA.

The project qualifies as a categorical exclusion for which no BER is required and the project is not located in a flood plain and does not affect wetlands.

At least 30 days have elapsed since REA published a finding of no significant impact or a final environmental impact statement regarding the project, which appeared in the Federal Register on _____.

Any response by the Administrator should be directed to the following person:

Oglethorpe Power Corporation
2100 East Exchange Place
P.O. Box 1349
Tucker, Georgia 30085-1349
Phone: _____
Fax: _____

Date: _____ OGLETHORPE POWER CORPORATION

By: _____

Received on behalf of the Administrator of the Rural Electrification Administration

By : _____

Date: _____

EXHIBIT C

OGLETHORPE POWER CORPORATION
GEORGIA 109-OGLETHORPE

REQUEST FOR APPROVAL OF THE SALE OF PROPERTY
UNDER MEMORANDUM OF UNDERSTANDING
(NO RELEASE REQUIRED)

This request is made pursuant to Section 3.4 of that certain Memorandum of Understanding ("MOU") between Oglethorpe Power Corporation (the "Oglethorpe Power") and the United States of America acting through the Administrator (the "Administrator") of the Rural Electrification Administration, dated as of August 1, 1993. All capitalized terms not defined in this notice shall be as defined in the MOU. Assuming this application is complete, no release of lien is necessary and REA does not notify Oglethorpe Power in writing that approval is denied, approval shall be effective 10 days from the date on which receipt of this request is confirmed by REA in the space provided below.

[Check applicable box(es):]

- Oglethorpe Power's completed REA Form 369, with any required attachments and material necessary to describe the transaction and its effects on Oglethorpe Power's system, is attached to this request.
- no release of lien is required,
- the fair market value of this disposition is less than .1% of Total Utility Plant and, when combined with all other dispositions made under section 3.4 of the MOU is the previous 11 months and this month, does not exceed .5% of Total Utility Plant.

Oglethorpe Power seeks the Administrator's approval to transfer property with a fair market value of	\$
Oglethorpe Power's Total Utility Plant (Part B, Line 3 of Form 12a for period ending)	
.1% of Total Utility Plant	
Total sales of property by Oglethorpe Power under Section 3.4 of MOU in prior 11 months and this month	
.5% of Total Utility Plant	

Oglethorpe Power hereby certifies to the Administrator as follows:

1. In planning and implementing the disposition Oglethorpe Power has and will substantially comply with its internal procedures for such transaction.
2. The property to be disposed of is not used or useful in Oglethorpe Power's operations.
3. The proceeds of the disposition will be applied as required under article II, section 5(c)(aa) of the Mortgage.
4. Oglethorpe Power has submitted to REA copies of any applicable contracts requiring REA approval.

Any response by the Administrator should be directed to the following person:

Oglethorpe Power Corporation
2100 East Exchange Place
P.O. Box 1349
Tucker, Georgia 30085-1349
Phone: _____
Fax: _____

Date: _____ OGLETHORPE POWER CORPORATION
By: _____

Received on behalf of the Administrator of the Rural Electrification Administration
By : _____
Date: _____

EXHIBIT D

OGLETHORPE POWER CORPORATION
GEORGIA 109-OGLETHORPE

REQUEST FOR APPROVAL OF THE SALE OF PROPERTY
UNDER MEMORANDUM OF UNDERSTANDING
(RELEASE REQUIRED)

This request is made pursuant to Section 3.4 of that certain Memorandum of Understanding ("MOU") between Oglethorpe Power Corporation (the "Oglethorpe Power") and the United States of America acting through the Administrator (the "Administrator") of the Rural Electrification Administration, dated as of August 1, 1993. All capitalized terms not defined in this notice shall be as defined in the MOU. Assuming this application is complete and REA does not notify Oglethorpe Power in writing that approval is denied, approval shall be effective 30 days from the date on which receipt of this request is confirmed by REA in the space provided below.

[Check applicable box(es):]

- Oglethorpe Power's completed REA Form 369, with any required attachments and material necessary to describe the transaction and its effects on Oglethorpe Power's system, is attached to this request,
- a release of lien is required and _____ execution copies of the release, which is substantially in the form included in the MOU, are attached, and
- the fair market value of this disposition is less than .1% of Total Utility Plant and, when combined with all other dispositions made under section 3.4 of the MOU is the previous 11 months and this month, does not exceed .5% of Total Utility Plant.

Oglethorpe Power seeks the Administrator's approval to transfer property with a fair market value of	\$
Oglethorpe Power's Total Utility Plant (Part B, Line 3 of Form 12a for period ending _____)	
.1% of Total Utility Plant	
Total sales of property by Oglethorpe Power under Section 3.4 of MOU in prior 11 months and this month	
.5% of Total Utility Plant	

Oglethorpe Power hereby certifies to the Administrator as follows:

1. In planning and implementing the disposition Oglethorpe Power has and will substantially comply with its internal procedures for such transaction.
2. The property to be disposed of is not used or useful in Oglethorpe Power's operations.
3. The proceeds of the disposition will be applied as required under article II, section 5(c)(aa) of the Mortgage.
4. Oglethorpe Power has submitted to REA copies of any applicable contracts requiring REA approval.

Any response by the Administrator should be directed to the following person:

Oglethorpe Power Corporation
2100 East Exchange Place
P.O. Box 1349
Tucker, Georgia 30085-1349
Phone: _____
Fax: _____

Date: _____ OGLETHORPE POWER CORPORATION

By: _____

Received on behalf of the Administrator of the Rural Electrification Administration

By : _____

Date: _____

Schedule 1 to EXHIBIT D

FORM OF RELEASE

To Be Recorded:

Reference:

STATE OF GEORGIA
CORPORATION

OGLETHORPE POWER

> County

No. GA 109

PARTIAL RELEASE OF LIEN

PARTIAL RELEASE, dated as of the ____ day of _____, 199__, made by the UNITED STATES OF AMERICA, acting through the Administrator of the Rural Electrification Administration (the "Government"), NATIONAL BANK FOR COOPERATIVES, as successor by merger to COLUMBIA BANK FOR COOPERATIVES effective January 1, 1989 (the "Bank for Cooperatives"), CREDIT SUISSE, ACTING BY AND THROUGH ITS NEW YORK BRANCH, and TRUST COMPANY BANK, as Trustee under certain bond indentures hereinafter described [herein collectively called the "Mortgagees"] to and in favor of OGLETHORPE POWER CORPORATION (AN ELECTRIC MEMBERSHIP GENERATION & TRANSMISSION CORPORATION) [herein called the "Mortgagor"].

W I T N E S S E T H:

WHEREAS, the Mortgagor has, in respect of loans made (or guaranteed) by the Mortgagees, executed and delivered certain notes payable to (or assigned to) the Mortgagees, which notes are recited and fully identified in the Security Instruments hereinafter described; and

WHEREAS, the Mortgagor, to secure said notes, has executed and delivered the following instruments [herein called the "Security Instruments"]"

Consolidated Mortgage and Security Agreement, dated as of November 1, 1978 (the "1978 Mortgage"), by and among the Mortgagor, and the Government and Trust Company Bank, as Mortgagees, recorded in Deed Book >, page >, in the Office of the Clerk of the Superior Court of > County, Georgia, as amended by Confirmation of Execution and Delivery of Notes and First Amendment to Consolidated Mortgage and Security Agreement, dated as of January 11, 1979, by and among the same parties to the 1978 Mortgage and recorded in Deed Book >, Page >, in the aforesaid records, and as further amended by Supplement and Second Amendment to

Consolidated Mortgage and Security Agreement, dated as of April 30, 1980, by and among the same parties to the 1978 Mortgage and recorded in Deed Book > , page > , in the aforesaid records.

Consolidated Mortgage and Security Agreement, dated as of September 15, 1982, by and among the same parties to the 1978 Mortgage and recorded in Deed Book > , page > , in the aforesaid records.

Consolidated Mortgage and Security Agreement, dated as of June 1, 1984 by and among the Mortgagor, and the Government, the Bank for Cooperatives and Trust Company Bank, as Mortgagees (the "June 1984 Mortgage") and recorded in Deed Book > , page > , in the aforesaid records.

Consolidated Mortgage and Security Agreement, dated as of December 1, 1984, by and among the same parties to the June 1984 Mortgage and recorded in Deed Book > , Page > , in the aforesaid records.

Consolidated Mortgage and Security Agreement, dated as of October 15, 1985, by and among the same parties to the June 1984 Mortgage and recorded in Deed Book > , Page > , in the aforesaid records, and as supplemented and amended by the First Supplement and Amendment to the Consolidated Mortgage and Security Agreement, dated as of November 1, 1988, by and among the same parties to the June 1984 Mortgage and recorded in Deed Book > , Page > , in the aforesaid records.

Consolidated Mortgage and Security Agreement, dated as of December 1, 1989, by and among the same parties to the June 1984 Mortgage and recorded in Deed Book > , Page > , in the aforesaid records, and as supplemented and amended by the Supplement to Consolidated Mortgage and Security Agreement, dated as of November 21, 1990, by and among the same parties to the June 1984 Mortgage, and recorded in Deed Book > , Page > , in the aforesaid records.

Consolidated Mortgage and Security Agreement, dated as of April 1, 1992, by and among Mortgagor, and the Government, the Bank for Cooperatives, Credit Suisse, Acting by and Through its New York Branch, and Trust Company Bank, as Mortgagees, and recorded in Deed Book > , Page > , in the aforesaid records.

Consolidated Mortgage and Security Agreement, dated as of October 1, 1992, by and among Mortgagor, and the Government, the Bank for Cooperatives, Credit Suisse, Acting by and Through its New York

Branch, and Trust Company Bank, as Mortgagees, and recorded in Deed Book >, Page >, in the aforesaid records.

Consolidated Mortgage and Security Agreement, dated as of December 1, 1992, by and among Mortgagor, and the Government, the Bank for Cooperatives, Credit Suisse, Acting by and Through its New York Branch, and Trust Company Bank, as Mortgagees, and recorded in Deed Book >, Page >, in the aforesaid records; and

WHEREAS, the indebtedness evidenced by said notes is the only indebtedness as of the date hereof secured by the Security Instruments; and

WHEREAS, the Mortgagor has requested that certain property hereinafter described be released from the lien of the Security Instruments.

N O W T H E R E F O R E:

BY THESE PRESENTS, the Mortgagees, in consideration of the sum of one dollar in hand paid by the Mortgagor to the Mortgagees at the time of the delivery of these presents, the receipt whereof is hereby acknowledged, do hereby release and discharge unto the Mortgagor, its successors and assigns, all right, title, interest, claim or demand whatsoever which the Mortgagees may have acquired by virtue of aforesaid Security Instruments (or otherwise by, through or from the Mortgagor) in and to the following described property, and do hereby quitclaim said property unto the Mortgagor, its successors and assigns:

>

THIS PARTIAL RELEASE is made by the Mortgagees and accepted by the Mortgagor on the express condition that it shall not in any way affect or impair the liens and security of aforesaid Security Instruments upon other premises and properties now subject thereto and not expressly released hereby. This Partial Release is made and accepted without covenant or warranty, expressed or implied, at law or in equity, and without recourse to the Mortgagees, in any event or in any contingency.

IN WITNESS WHEREOF, UNITED STATES OF AMERICA; TRUST COMPANY BANK in its capacity as Trustee under, respectively, the Oglethorpe-Applying 1978 Bond Indenture, the Oglethorpe-Applying 1984 Bond Indenture, the Oglethorpe-Applying 1985 Bond Indenture, the Oglethorpe-Burke 1982 Bond Indenture, the Oglethorpe-Burke 1984 Bond Indenture, the Oglethorpe-Burke 1984B Bond Indenture, the Oglethorpe-Burke 1985 Bond Indenture, the Oglethorpe-Burke 1989 Bond Indenture, the Oglethorpe-Burke 1992A Bond Indenture, the Oglethorpe-Burke 1992 (1993A) Bond Indenture, the Oglethorpe-Burke 1992 (1994A) Bond Indenture, the Oglethorpe-Heard 1978 Bond Indenture, the Oglethorpe-Monroe Bond 1982 Indenture, and the Oglethorpe-Monroe 1992A Bond Indenture; NATIONAL BANK

FOR COOPERATIVES; and CREDIT SUISSE ACTING BY AND THROUGH ITS NEW YORK BRANCH, each have caused this Partial Release of Lien to be signed in its name and its official seal to be hereunto affixed and attested by its officials thereunto duly authorized, all effective as of the date first above written.

Signed and delivered
in the presence of:

UNITED STATES OF AMERICA

Witness

By: _____

For the Administrator of
the Rural Electrification
Administration

Notary Public

My Commission Expires:

[Notarial Seal]

Executed by the above Notary
Public this ____ day of
_____, 199__.

TRUST COMPANY BANK, as
Trustee

Attest: _____
Title:

By: _____
Title:

Signed, sealed and delivered
in the presence of:

[Corporate Seal]

Witness

Notary Public

My commission expires:

[Notarial Seal]

Executed by the above Notary
Public this ___ day of
_____, 199_.

COOPERATIVES,

COOPERATIVES

NATIONAL BANK FOR

as successor by merger to
COLUMBIA BANK FOR

Attest: _____
Title: _____

By: _____
Title _____

Signed, sealed and delivered
in the presence of:

[Corporate Seal]

Witness

Notary Public

My Commission expires:

[Notarial Seal]

Executed by the above Notary
Public this ___ day of
_____, 199_.

AND

BRANCH

CREDIT SUISSE, ACTING BY

THROUGH ITS NEW YORK

Attest: _____
Title: _____

By: _____
Title: _____

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My Commission expires:

[Notarial Seal]

Executed by the above Notary
Public this ___ day of
_____, 199_.

EXHIBIT E

OGLETHORPE POWER CORPORATION
GEORGIA 109-OGLETHORPE

REQUEST FOR APPROVAL OF POWER CONTRACT
UNDER MEMORANDUM OF UNDERSTANDING

This request is made pursuant to Section 3.5 or Section 3.6 of that certain Memorandum of Understanding ("MOU") between Oglethorpe Power Corporation (the "Oglethorpe Power") and the United States of America acting through the Administrator (the "Administrator") of the Rural Electrification Administration, dated as of August 1, 1993. All capitalized terms not defined in this notice shall be as defined in the MOU. Assuming this application is complete and REA does not notify Oglethorpe Power in writing that approval is denied, approval shall be effective 30 days from the date on which receipt of this request is confirmed by REA in the space provided below.

[Check applicable box(es):]

- The contract for which REA approval is sought is:
 - a power purchase, sale or wheeling agreement with a term of more than one but not greater than three years;
 - an uncommitted interchange agreement that does not in and of itself bind Oglethorpe Power to implement a specific transaction and any transaction to be consummated pursuant to this agreement will be subject to further REA approval.
- One executed copy of contract, the effectiveness of which is subject to REA approval, is attached to this request.
- A copy of the contract in the form to be executed after REA approval becomes effective is attached to this request. An executed copy of the contract will be submitted to REA promptly upon execution.
- The economic analysis, financial forecast or cost benefit analysis on which Oglethorpe Power's management based its decision to approve the contract is attached.

Oglethorpe Power hereby certifies to the Administrator as follows:

1. In negotiating and implementing the contract Oglethorpe Power has and will substantially comply with its internal procedures for such transaction.

2. The transaction will not adversely affect the reliability of Oglethorpe Power's system.
3. No construction of the facilities will be necessary to implement the contract, or if construction is required, any requisite REA approval have been obtained.

Any response by the Administrator should be directed to the following person:

Oglethorpe Power Corporation
2100 East Exchange Place
P.O. Box 1349
Tucker, Georgia 30085-1349
Phone: _____
Fax: _____

Date: _____ OGLETHORPE POWER CORPORATION

By: _____

Received on behalf of the Administrator of the Rural Electrification Administration

By : _____

Date: _____

EXHIBIT F

OGLETHORPE POWER CORPORATION
GEORGIA 109-OGLETHORPE

REQUEST FOR APPROVAL
OF WITHDRAWALS FROM TRUSTEED ACCOUNT
UNDER MEMORANDUM OF UNDERSTANDING

This request is made pursuant to Section 3.7 of that certain Memorandum of Understanding ("MOU") between Oglethorpe Power Corporation (the "Oglethorpe Power") and the United States of America acting through the Administrator (the "Administrator") of the Rural Electrification Administration, dated as of August 1, 1993. All capitalized terms not defined in this notice shall be as defined in the MOU. Assuming this application is complete and REA does not notify Oglethorpe Power in writing that approval is denied, approval shall be effective 30 days from the date on which receipt of this request is confirmed by REA in the space provided below.

Oglethorpe Power requests approval to withdraw funds from the trusted construction account in an amount equal to _____.

Oglethorpe Power hereby certifies to the Administrator as follows:

1. Funds withdrawn from the account consist solely of proceeds from sales of property and not from loan funds.
2. Reimbursement is solely for capital expenditures incurred in the prior 24 months.
3. The tangible assets constructed or acquired with the general funds to be reimbursed are assets that are subject to the lien of the Mortgage.

Any response by the Administrator should be directed to the following person:

Oglethorpe Power Corporation
2100 East Exchange Place
P.O. Box 1349
Tucker, Georgia 30085-1349
Phone: _____
Fax: _____

Date: _____ OGLETHORPE POWER CORPORATION

By: _____

Received on behalf of the Administrator of the Rural Electrification Administration

By : _____

Date: _____

EXHIBIT G-1

[Opinion of General Counsel to Oglethorpe Power]

[Date]

Administrator
Rural Electrification Administration
United States Department of Agriculture
Washington, DC 20250

Re: [Insert Refinancing Designation Here]

Dear [Sir][Madame]:

This opinion is given in connection with [insert description of transaction] and delivered pursuant to Section 4.3 of that certain Memorandum of Understanding by and between the Rural Electrification Administration ("REA") and Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) ("Oglethorpe Power").

I have examined the Articles of Incorporation and Bylaws of Oglethorpe Power now in effect. I have also examined (i) all corporate proceedings of Oglethorpe Power relating to the adoption of the Bylaws of Oglethorpe Power and any amendments to the Bylaws or the Articles of Incorporation of Oglethorpe Power and (ii) the action taken by Oglethorpe Power, its Members, its Board of Directors [and the Special Refinancing Committee appointed by the Board of Directors] in connection with the authorization of:

- (a) [The borrowing by Oglethorpe Power from . . .];
- (b) [The execution and delivery by Oglethorpe Power of . . .];
- (c) [The execution and delivery of that certain Consolidated Mortgage and Security Agreement (the "Mortgage"), dated as of . . .]; and
- (d) [The acceptance of that certain letter from REA to Oglethorpe Power (the "_____ Loan Contract Amendment"), dated . . .].

I have also examined: (i) all corporate proceedings of Oglethorpe Power relating to the election of the directors and officers holding office at the time the above-mentioned corporate proceedings occurred; (ii) the following documents as executed and delivered: [_____ (collectively, the "Oglethorpe Documents")]; [(iii) other documents relevant to the opinions given but to which Oglethorpe Power is not a party]; and (iv) that certain Amended and Consolidated Loan Contract, dated as of June 1, 1984 (the "REA Loan Contract"), as heretofore amended or supplemented (including as amended and supplemented

by the _____ Loan Contract Amendment), which amended and consolidated that certain Loan Contract, dated as of January 7, 1975, by and between Oglethorpe Power and the Government, as such Loan Contract had theretofore been amended or supplemented.

Based on the foregoing, and with due regard for such legal and other considerations as I deem appropriate, I am of the opinion (but subject in all respects to each and all of the qualifications set forth in this letter) that:

- (1) Oglethorpe Power is a corporation duly organized, existing and in good standing under the Georgia Electric Membership Corporation Act and has been qualified to transact business and is in good standing as a foreign corporation in the State of Alabama; its Bylaws have been duly adopted and its Articles of Incorporation and Bylaws in the form attached hereto are now in effect; and Oglethorpe Power has corporate power (i) to execute, deliver and perform all acts required to be done by it under the [Oglethorpe Documents] and the REA Loan Contract and (ii) to own, operate and maintain the [Facilities];
- (2) All corporate proceedings of Oglethorpe Power, its Members and its Board of Directors, necessary to be taken in connection with the authorizations specified in the first paragraph of this letter, have been duly taken and all such authorizations are presently in effect;
- (3) All authorizations from regulatory bodies required in connection with the execution and delivery by Oglethorpe Power of the [Oglethorpe Documents] and the REA Loan Contract and the acceptance by Oglethorpe Power of the _____ Loan Contract Amendment have been obtained and are in full force and effect;
- (4) Each of the [Oglethorpe Documents] and the REA Loan Contract has been duly executed and delivered by Oglethorpe Power in accordance with the authorizations thereof mentioned above, and each constitutes the legal, valid and binding obligation of Oglethorpe Power enforceable in accordance with its terms;
- (5) The _____ Loan Contract Amendment has been duly and validly authorized and accepted by Oglethorpe Power and constitutes a legal, valid and binding amendment and supplement to the REA Loan Contract;
- (6) No legal proceedings have been instituted or are pending to which Oglethorpe Power is a party and which affect any of its property, except the legal proceedings referred to in the statement attached hereto as Exhibit A, and there are no judgments against Oglethorpe Power and no liens against any of the real or personal property of Oglethorpe Power, other than as disclosed in the opinion letter of _____, Attorney for Oglethorpe Power, rendered to you in connection with this transaction;
- (7) The several advances provided for in the REA Loan Contract made to Oglethorpe Power are duly secured to the Government by the Mortgage without the necessity for further act by or on behalf of the Government;
- (8) The obligations of Oglethorpe Power to the Government on account of the several advances to Oglethorpe Power to be made in the future pursuant to the REA Loan Contract will, when such advances are made, be duly secured to the Government by the Mortgage without the necessity for further act by or on behalf of the Government;

Page 5, 19

(9) To my knowledge, after reasonable inquiry, Oglethorpe Power is not in default with respect to any covenant or agreement made by Oglethorpe Power in the [Oglethorpe Documents] or the REA Loan Contract; nor to my knowledge is any representation made by Oglethorpe Power in the [Oglethorpe Documents] untrue; and

(10) Oglethorpe Power owns no title or interest in or to any real property located outside of the State of Georgia; and it conducts no business in the State of Alabama other than in connection with the sale or purchase of electric power on a wholesale basis.

The opinions expressed in this letter are further subject to and qualified by the following:

(a) I express no opinion as to whether or to what extent Oglethorpe Power has title to or any interest in the Mortgaged Property (as defined in the Mortgage), as to the status of any such title or interest or as to the priority of the security title and interest created by the Mortgage, with the understanding that, with respect to such matters, you are relying upon the opinion letter of _____, Attorney for Oglethorpe Power, rendered to you in connection with this transaction;

(b) The rights and remedies set forth in the [Oglethorpe Documents] and the REA Loan Contract may be limited by applicable bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or similar laws from time to time in effect relating to or affecting the enforcement of creditors' rights generally and by other laws of general application affecting the rights and remedies of creditors;

(c) With respect to Oglethorpe Power's interest in atomic energy facilities, the exercise of certain rights and remedies under the [Oglethorpe Documents], the REA Loan Contract and the Mortgage may be limited by the provisions of the Atomic Energy Act of 1954, as amended, and the regulations thereunder;

(d) The rights and remedies set forth in the [Oglethorpe Documents] and the REA Loan Contract may be limited by other applicable state and Federal laws and legal and equitable principles, but in my opinion the [Oglethorpe Documents] and the REA Loan Contract provide remedies currently enforceable under the laws of the State of Georgia sufficient to permit the security interest under the Mortgage to be enforced;

(e) I express no opinion as to the effect or availability of equitable remedies;

(f) I express no opinion as to the legality, validity or enforceability of any waiver by Oglethorpe Power of its right to insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated;

(g) The rights to indemnity and contribution set forth in the [Oglethorpe Documents] may be limited under state and Federal securities laws or other applicable laws;

Page 6 —, 19—

(h) I express no opinion as to the legality, validity or enforceability of any provisions of the [Oglethorpe Documents] which purport to empower any holder thereof to exercise its rights thereunder without notice to Oglethorpe Power or without a prior judicial hearing, except, however, with respect to the ability of the Mortgagees (as defined in the Mortgage) to exercise the right of non-judicial foreclosure, if exercised strictly in accordance with the provisions of the laws of the State of Georgia and the terms of the Mortgage;

(i) Amendments or other acts permitted to be taken by the Government acting alone or in combination with other Mortgagees under the Mortgage may constitute a novation, resulting in the extinguishment of the security title under the Mortgage and the creation of a new instrument that supersedes the Mortgage. In such event, the priority of the Mortgagees' security title would be altered and the rights of other parties could be prior to that of the mortgagees under such new instrument;

(j) In the event any portion of the Mortgaged Property now or hereafter made subject to the Mortgage, or any valuable interest in such property, is transferred or conveyed to any other person or party, such transfer or conveyance may result in the loss of the security title and interest, or the priority thereof, created by the Mortgage with respect to the Mortgaged Property which is subject to such transfer or conveyance, for advances of indebtedness made subsequent to the date of such transfer or conveyance;

[(k) With respect to the issuance and sale of the Series ___ Bonds and the Series ___ Bonds, I express no opinion regarding the necessity for any qualification or other action under the Blue Sky or securities laws of any jurisdiction, the necessity to register the sale of the Series ___ Bonds or the Series ___ Bonds under the Securities Act of 1933, as amended, or to qualify the Indentures under the Trust Indenture Act of 1939, as amended;] and

(l) In the event the interest of any Mortgagee under the Mortgage is transferred or conveyed to any other person or party, advances of indebtedness made by any such transferee may not be secured by the Mortgage.

In rendering this opinion, I am not passing on any matter which is not governed by the laws of the State of Georgia or the United States of America, and this opinion is limited to the facts and laws in existence on this date and at no time subsequent thereto.

Page 7 —, 19—

The opinions set forth herein are given solely to REA, and may not be utilized or relied upon by any other party.

Very truly yours,

Page 8 —, 19 —

EXHIBIT G-2

[Title Opinion]

[Date]

Administrator
Rural Electrification Administration
United States Department of Agriculture
Washington, DC 20250

Re: [Insert Refinancing Designation Here]

Dear [Sir][Madame]:

This opinion is given in connection with the execution, delivery and filing of record in certain counties in the State of Georgia of that certain [Consolidated Mortgage and Security Agreement (the "Mortgage"), dated as of . . .] in connection with [insert description of transaction] and delivered pursuant to Section 4.3 of that certain Memorandum of Understanding by and between the Rural Electrification Administration ("REA") and Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) ("Oglethorpe Power").

I am an attorney for Oglethorpe Power and, as such, am familiar with the real and personal property of Oglethorpe Power. In such capacity, I review, or supervise the review of, and approve all instruments of conveyance, title insurance policies and title certificates, and such other documents and instruments as I deem appropriate, in connection with all acquisitions by Oglethorpe Power of any real property.

Local counsel named on Exhibit A hereto, whom I believe to be competent and trustworthy, have been associated and instructed at my direction (a) to file the Mortgage in the official records of the counties indicated beside their respective names for recordation as a real and personal property security instrument; (b) to examine all public records and files maintained under the authority of the Clerk of the Superior Court of each such county in which there may be recorded, filed or indexed any liens of any nature whatsoever affecting the title to any real or personal property of Oglethorpe Power to be encumbered by the Mortgage with respect to the period from January 1, 1975 (before which date Oglethorpe Power acquired no property), through the date and time of filing of the Mortgage in each such county; and (c) to furnish their limited qualified certificates of title (the "Title Certificates of Local Counsel"). As to matters revealed by such examination of public records and files, the following opinions are as of the date and time of filing of the Mortgage in each county.

For purposes of this opinion, I have: (a) examined executed counterparts of the Mortgage and certified resolutions evidencing the corporate proceedings taken by Oglethorpe Power to authorize the execution, delivery and performance of the Mortgage; (b) examined that certain Amended and Consolidated Loan Contract, dated as of June 1, 1984 (the "REA Loan Contract"), as heretofore amended or supplemented (including as amended and supplemented by the _____ Loan Contract Amendment), which amended and consolidated that certain Loan Contract, dated as of January 7, 1975, by and between Oglethorpe Power and the Government, as such Loan Contract had theretofore been amended or supplemented; (c) reviewed the Title Certificates of Local Counsel; (d) reviewed all owner's and mortgagee's title insurance policies insuring Oglethorpe Power or mortgagees of Oglethorpe Power, and such other files and records of Oglethorpe Power and such other certificates, documents and papers as I have deemed advisable; (e) relied upon my review and knowledge of the real and personal property records of Oglethorpe Power, including title records relating to Oglethorpe Power's acquisition of its properties; and (f) made inquiry of responsible and informed members of the engineering, property and legal departments of Oglethorpe Power, and such other employees of Oglethorpe Power as I have deemed appropriate, including, without limitation, the President and Chief Executive Officer and the General Counsel of Oglethorpe Power.

Based on the foregoing, and with due regard for such legal and other considerations as I deem appropriate, I am of the opinion (but subject in all respects to each and all of the qualifications set forth in this letter) that:

(11) There are no judgments against Oglethorpe Power and no liens against any of the real or personal property of Oglethorpe Power except the liens of the Mortgage and the underlying security instruments referred to therein and Permitted Encumbrances (as defined in the Mortgage), including the matters referred to in Exhibit B hereto;

(12) The Mortgage has been duly recorded and filed and indexed to constitute a validly recorded and filed and indexed conveyance of security title to the real and personal property of Oglethorpe Power described in the Mortgage, in the counties named therein, including, without limitation, all such real and personal property of Oglethorpe Power acquired after the date of the delivery of the Mortgage and situated in said counties and all such real and personal property which may be hereafter acquired by Oglethorpe Power and situated in said counties, subject only to Permitted Encumbrances, including the matters referred to in Exhibit B hereto, the liens of the underlying instruments referred to in the Mortgage, and, as to any after-acquired property, all liens and other matters affecting title which shall have been granted, created, suffered or which shall have arisen before or in connection with the acquisition by Oglethorpe Power of its title or interest in such property (collectively, the "Title Matters");

(13) Oglethorpe Power owns no real property or other interest therein except in the State of Georgia;

(14) The several advances provided for in the REA Loan Contract made to Oglethorpe Power are duly secured to the Government by the Mortgage without the necessity for further act by or on behalf of the Government, subject only to the Title Matters;

(15) The obligations of Oglethorpe Power to the Government on account of the several advances to Oglethorpe Power to be made in the future pursuant to the REA Loan

Page 10 —, 19 —

Contract will, when such advances are made, be duly secured to the Government by the Mortgage without the necessity for further act by or on behalf of the Government, subject only to the Title Matters; and

(16) None of the Title Matters existing on the date hereof has a material effect on the property of Oglethorpe Power or affects the value of the System (as defined in the REA Loan Contract) as a whole.

The opinions expressed in this letter are further subject to and qualified by the following:

(a) Amendments or other acts permitted to be taken by the Government acting alone or in combination with other Mortgagees (as defined in the Mortgage) under the Mortgage may constitute a novation, resulting in the extinguishment of the security title under the Mortgage and the creation of a new instrument that supersedes the Mortgage. In such event, the priority of the Mortgagees' security title would be altered and the rights of other parties could be prior to that of the mortgagees under such new instrument;

(b) In the event any portion of the Mortgaged Property (as defined in the Mortgage) now or hereafter made subject to the Mortgage, or any valuable interest in such property, is transferred or conveyed to any other person or party, such transfer or conveyance may result in the loss of the security title and interest, or the priority thereof, created by the Mortgage with respect to the Mortgaged Property which is subject to such transfer or conveyance, for advances of indebtedness made subsequent to the date of such transfer or conveyance; and

(c) In the event the interest of any Mortgagee under the Mortgage is transferred or conveyed to any other person or party, advances of indebtedness made by any such transferee may not be secured by the Mortgage.

In rendering this opinion, I am not passing on any matter which is not governed by the laws of the State of Georgia or the United States of America, and this opinion is limited to the facts and laws in existence on this date and at no time subsequent thereto.

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Page 11

The opinions set forth herein are given solely to REA, and may not be utilized or relied upon by any other party.

Very truly yours,

AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING

This AMENDMENT NO. 1 to that certain Memorandum of Understanding (the "MOU") by and between Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Cooperative) ("Oglethorpe Power") and the United States of America acting by and through the Administrator of the Rural Electrification Administration ("REA"), dated as of September 1, 1993 is entered into as of the 1st day of February, 1994. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the MOU.

RECITALS

In implementation of the MOU Oglethorpe Power and REA have identified certain instances where clarifications and modifications of the MOU will enhance the benefits of the MOU to Oglethorpe Power while reducing unnecessary reviews by REA and resulting delays, by (a) clarifying Section 3.3 of the MOU regarding the need for Oglethorpe Power to certify as to certain things prior to any waiver of certain post-loan requirements being effective; (b) providing for a form of notice for invocation of the waiver provisions of Section 3.3; and (c) allowing for a shorter review period after the filing of a BER.

NOW, THEREFORE, the parties to this Memorandum of Understanding hereby agree to amend and restate Sections 3.2 and 3.3 and Exhibit B of the MOU as follows:

3.2 Use of General Funds for Minor Additions to System. Subject to section 3.1 of this Part, approval of the use of general funds (not subject to reimbursement from loan funds) for additions to the system will become effective 10 days after receipt of a completed application to REA if

- Oglethorpe Power has submitted to REA a completed *Request for Approval of the Use of General Funds* substantially in the form contained in Exhibit B attached hereto, with all required attachments as provided in such form;
- the expenditure
 - is for generation facilities and is less than \$1,000,000, or

- is for property other than generation facilities, and is less than .1 % of Total Utility Plant per transaction and the aggregate of all such additions approved pursuant to this provision does not exceed within any twelve-month period more than .5 % of Total Utility Plant:
- Oglethorpe Power has submitted a budget to REA describing the additions and all costs thereof (which budget may be incorporated by reference in the application if previously filed with REA);
- Oglethorpe Power has committed in writing not to seek reimbursement from REA loan funds for such additions; and
- Oglethorpe Power has certified that any applicable environmental requirements of 7 C.F.R. Part 1794 have been met in one of the following ways:
 - the project qualifies as a categorical exclusion for which a BER is required and (a) the BER has been on file with REA for a minimum of 30 days, (i) with no written notice having been given by REA to Oglethorpe Power that the BER is inadequate or incomplete and (ii) with telephonic confirmation having been received by Oglethorpe Power from the Environmental Compliance Branch of REA to the effect that the project raises no outstanding environmental issues for REA or (b) REA has provided Oglethorpe Power with a letter confirming receipt and review of the BER and stating that an environmental assessment or environmental impact statement will not be prepared for REA's action related to this project.
 - the project qualifies as a categorical exclusion for which no BER is required and the project is not located in a flood plain and does not affect wetlands, or
 - at least 30 days have elapsed since REA has published a finding of no significant impact or a final environmental impact statement regarding the project.

3.3 Waiver of Certain Post-Loan Requirements for Facilities Financed Solely with General Funds. Subject to section 3.1 of this Part Three, with respect to facilities financed with general funds (not subject to reimbursement with loan funds), this memorandum of understanding constitutes an approval or a waiver, as the case may be, under the terms of the Loan Documents and the Implementing Regulations

limited to REA post-loan requirements regarding contracting, procurement and bidding procedures; contract close-out procedures pertaining to project completion, final payment to contractor and related matters; and standard forms of construction and procurement contracts listed in 7 C.F.R. § 1726.300, which will become effective 10 days after receipt of written notice to REA if:

Oglethorpe Power has submitted to REA a written notice describing the project and has certified to REA that:

- REA has approved the use of general funds for the project, either pursuant to the terms of section 3.2 of this Memorandum of Understanding, or otherwise;
- any building is designed and constructed in compliance with Section 504 of the Rehabilitation Act of 1973 as amended, and facilities will be readily accessible to and usable by persons with handicaps in accordance with the Uniform Federal Accessibility Standards (UFAS), (Appendix A to 41 C.F.R. Part 101.19, Subpart 101-19.6);
- In the case of distribution or transmission facilities, Oglethorpe will:
 - comply with the National Electrical Safety Code, in accordance with 7 CFR 1724.41;
 - use only materials for distribution and transmission facilities that have been determined by REA to be acceptable, as required by 7 CFR 1728.70(a) and (b), or if such materials are not available, use materials approved by a registered professional engineer;
 - comply with standards for construction established by REA, such as those in 7 CFR 1728.97, except as otherwise provided in 7 CFR 1724.45;
 - within 90 days of completion of construction, provide to REA a certification from a registered professional engineer that the facilities have been constructed in conformance with REA construction and materials standards, as required by subparagraphs (a), (b) and (c) of this paragraph; and

- ensure that projects are developed in accordance with regional Integrated Transmission System studies, other engineering analyses, or member-approved two-year work plans; and
- Oglethorpe Power has committed in writing not to seek reimbursement from REA loan funds for such additions.
- Oglethorpe Power has certified that any applicable environmental requirements of 7 C.F.R. Part 1794 have been met in one of the following ways:
 - the project qualifies as a categorical exclusion for which a BER is required and (a) the BER has been on file with REA for a minimum of 30 days, (i) with no written notice having been given by REA to Oglethorpe Power that the BER is inadequate or incomplete and (ii) with telephonic confirmation having been received by Oglethorpe Power from the Environmental Compliance Branch of REA to the effect that the project raises no outstanding environmental issues for REA or (b) REA has provided Oglethorpe Power with a letter confirming receipt and review of the BER and stating that an environmental assessment or environmental impact statement will not be prepared for REA's action related to this project.
 - the project qualifies as a categorical exclusion for which no BER is required and the project is not located in a flood plain and does not affect wetlands, or
 - at least 30 days have elapsed since REA has published a finding of no significant impact or a final environmental impact statement regarding the project.

IN WITNESS WHEREOF, the United States of America, acting through the Administrator of the Rural Electrification Administration, and Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) have entered into this Amendment No. 1 to the Memorandum of Understanding, to be effective as of February 15, 1997. *TE*

OGLETHORPE POWER CORPORATION
(An Electric Membership Generation & Transmission Corporation)

BY: *Tom D. Kilgore*
Tom D. Kilgore, *President and Chief Executive Officer*

(SEAL)

Attest:

Patricia Nash
Patricia Nash
Assistant Secretary

UNITED STATES OF AMERICA

BY: *Wally Beyer*
Wally Beyer
Administrator of the Rural Electrification Administration

EXHIBIT B

OGLETHORPE POWER CORPORATION
GEORGIA 109-OGLETHORPE

REQUEST FOR APPROVAL OF THE USE OF GENERAL FUNDS
AND/OR NOTICE FOR WAIVER OF CERTAIN POST LOAN REQUIREMENTS
UNDER MEMORANDUM OF UNDERSTANDING

This request and/or notice for waiver, as applicable, is made pursuant to Section 3.2 and/or Section 3.3 of that certain Memorandum of Understanding ("MOU") between Oglethorpe Power Corporation (the "Oglethorpe Power") and the United States of America acting through the Administrator (the "Administrator") of the Rural Electrification Administration, dated as of September 1, 1993, as amended by Amendment No. 1, dated as of February __, 1994. All capitalized terms not defined in this request shall have the meaning ascribed to them in the MOU. Assuming this document is complete and REA does not notify Oglethorpe Power in writing that approval is denied and/or waiver is rescinded, such action shall be effective 10 days from the date on which receipt of this document is confirmed by REA in the space provided below.

PART ONE - REQUEST FOR APPROVAL UNDER SECTION 3.2

- Check here if this application is a request for approval of the use of general funds under Section 3.2 of the MOU and fill out all information under this Part One

Funds will be used as follows [check box(es) applicable]:

- generating facilities in an amount less than \$1,000,000;
- property not involving generation facilities in an amount less than .1% of "Total Utility Plant" per transaction and, when combined with all other transactions approved under Section 3.2 of the MOU in the past 12 months, not more than .5% of "Total Utility Plant."

[Fill in following information:]

Oglethorpe Power seeks the Administrator's approval to expend a total of:	\$
Oglethorpe Power's Total Utility Plant (Part B, Line 3 of Form 12a for period ending _____)	
.1 % of Total Utility Plant	
Total expenditures by Oglethorpe Power under Section 3.2 of MOU in prior 11 months and this month	
.5 % of Total Utility Plant	

Oglethorpe Power hereby certifies to the Administrator as follows:

1. A budget describing the additions and all costs thereof [check one box]

is incorporated herein by reference from the following document submitted to REA previously:

is attached to this request.

PART TWO - NOTICE OF WAIVER UNDER SECTION 3.3

Check here if this is a notice for waiver of certain post loan requirements under Section 3.3 of the MOU and fill out all information under this Part Two

[Fill in following information:]

Project Name: _____

Project Description: _____

Total Expenditure: _____

Oglethorpe Power hereby certifies to the Administrator as follows:

1. [Check one box]:

A request for approval of the use of general funds pursuant to the terms of Section 3.2 of the MOU is submitted herewith.

REA has approved the use of general funds pursuant to REA Bulletin 103-2, or its successor.

REA has approved the use of general funds by letter dated _____ from _____ to _____.

2. In the case of distribution or transmission facilities. Oglethorpe will:

(a) Comply with the National Electrical Safety Code, in accordance with 7 CFR 1724.41;

(b) Use only materials for distribution and transmission facilities that have been determined by REA to be acceptable, as required by 7 CFR 1728.70(a) and (b), or if such materials are not available, use materials approved by a registered professional engineer;

(c) Comply with standards for construction established by REA, such as those in 7 CFR 1728.97, except as otherwise provided in 7 CFR 1724.45; and

(d) Within 90 days of completion of construction, provide to REA a certification from a registered professional engineer that the facilities have been constructed

in conformance with REA construction and materials standards, as required by subparagraphs (a), (b) and (c) of this paragraph.

- (e) Ensure that projects are developed in accordance with regional Integrated Transmission System studies, other engineering analyses, or member-approved two-year work plans.

PART THREE - GENERAL TERMS APPLICABLE TO THIS REQUEST OR NOTICE

Oglethorpe Power hereby certifies to the Administrator as follows:

1. In planning and implementing the expenditures Oglethorpe Power has and will substantially comply with its internal procedures for such transaction.
2. Any building has been designed and constructed in compliance with Section 504 of the Rehabilitation Act of 1973 as amended, and facilities will be readily accessible to and usable by persons with handicaps in accordance with the Uniform Federal Accessibility Standards ("UFAS"), (Appendix A 241 C.F.R. part 101 .19, subpart 101-19.6);
3. Oglethorpe Power will not seek reimbursement from REA direct or guaranteed loan funds for the expenditures made pursuant to this notice.
4. A certified copy of the board resolution approving this expenditure and agreeing that the corporation shall not seek reimbursement from loan funds is attached to this application.
5. Any applicable environmental requirements of 7 C.F.R. Part 1794 have been met in the following way [check one box]:
 - The project qualifies as a categorical exclusion for which a BER is required and (a) the BER has been on file with REA for a minimum of 30 days and no written notice has been received by Oglethorpe Power from REA that the BER is inadequate or incomplete and Oglethorpe Power has confirmed by telephone call on _____ with _____ of REA's Environmental Compliance Branch that the project raises no outstanding environmental issues for REA or (b) REA has provided Oglethorpe Power with a letter confirming receipt and review of the BER and stating that an environmental assessment or environmental impact statement will not be prepared for REA's action related to this project.

- [] The project qualifies as a categorical exclusion for which no BER is required and the project is not located in a flood plain and does not affect wetlands.
- [] At least 30 days have elapsed since REA published a finding of no significant impact or a final environmental impact statement regarding the project, which appeared in the Federal Register on _____.

Any response by the Administrator should be directed to the following person:

Oglethorpe Power Corporation
2100 East Exchange Place
P.O. Box 1349
Tucker, Georgia 30085-1349
Phone: _____
Fax: _____

Date: _____ OGLETHORPE POWER CORPORATION

By: _____

Received on behalf of the Administrator of the Rural Electrification Administration

By: _____

Date: _____



SALT RIVER ELECTRIC

111 West Brashear Avenue • Bardstown, Kentucky 40004
(502) 348-3931 • (502) 955-9732 • Fax. (502) 348-1993

FAX TRANSMITTAL

May 29, 1997
Date

TO: Roy Palk

FAX# 606/744-7053

FROM: Larry Hicks

TELEPHONE# (502) 348-3931

FAX# 502/348-1993

Pages (including this cover sheet): Two /2

Instructions: Attached are the comments I plan to make
as it pertains to Supplemental Agreement. If you should have
any comments and/or suggestions, please feel free to contact me.

Jan
Operator

THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL AND INTENDED ONLY FOR THE USE OF THE INDIVIDUAL NAMED. IF THE READER OF THIS TRANSMITTAL IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF THIS COMMUNICATION HAS BEEN RECEIVED BY YOU IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE.

THANK YOU.

Supplemental Agreement (Shoshone)

What it says (my paraphrasing):

That Salt River (SR) can not reorganize, dissolve, consolidate, merge, or sale or lease a substantial portion of its assets, both owned now or acquired in the future without approval of EKP and RUS.

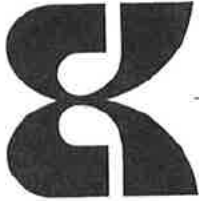
- Approval will not be *unreasonably* withheld.
 - ...But any reorganization, dissolution, etc. will require SR to pay to EKP a portion of EKP debt or any other EKP obligation as determined by EKP with consent and approval of RUS.
 - ...And SR agrees to eliminate any likely adverse effect any reorganization, dissolution, etc. will have on EKP's rates.
 - And SR agrees to assure EKP's ability to repay EKP's debt if SR decide to reorganize, dissolve, etc.
1. Effectively SR guarantees an unknown portion of EKP's debt. EKP and RUS will determine the amount.
 2. We give up SR's right to EKP assets, but agree to pay a portion of EKP's debt.

My issues:

1. Why is there an urgency to sign this supplemental agreement? EKP has \$100,000,000 in the bank.
2. This seems inconsistent with RUS other actions. Recently RUS asks EKP to put together a FFB loan package. RUS feared they would loose funding because this money was not being used. They ask EKP because they consider EKP a good borrower. RUS has agreed to special memorandums of understanding to reduce regulatory control over EKP, because they recognize how well EKP is run. Now, why do they want EKP members to agree to additional conditions?
3. RUS is already adequately secured. Market value of EKP assets easily exceed its debt by \$250 - \$500 million dollars. RUS also has wholesale power agreements with the members. Why do our loan agreements get tougher as our business booms? Is it because of bad experiences RUS has had with other G and T's?
4. Language is too broad. What is reasonable? Has Big River's dealing with RUS always appeared reasonable to EKP? What happens to SR's right to EKP's assets if they choose to exit EKP?
5. The control and operation of SR is the sole responsibility of SR's elected board. It should not be encumbered in any way by outside influence. Merger and Acquisitions are always tenuous and a multitude of agendas, create unnecessary complications.

Roy will:

1. Go back to RUS with SR concerns.
2. Ask for middle-ground suggestions from RUS.
3. Discuss with his staff and RUS the feasibility of working out a detail exit procedure that will satisfy SR, EKP and RUS interest.
4. Work to make sure any disagreement in principle that SR has with EKP and the other members do not result in any negative repercussions toward SR.




EAST KENTUCKY POWER COOPERATIVE, Inc.

4758 Lexington Road (40391)
P.O. Box 707
Winchester, Kentucky 40392-0707
Tel. (606) 744-4812
Fax. (606) 744-6008

MEMORANDUM

TO: Larry Hicks
Tony Overbey
Keith Sloan

FROM: Roy Palk 

SUBJECT: Shoshone Language

DATE: June 16, 1997


As a further step in my efforts to achieve one hundred percent participation among the member systems of EKPC regarding the above-named topic, I would like each of you to go with me to Washington to meet with Tom Eddy, RUS' director of power supply.

No date has been set, but he and I are both available on June 26 p.m., July 9 p.m., and July 14 all day. Would each of you look at your calendars and see if any of these dates would allow you to attend such a meeting. I will then contact Mr. Eddy, again. He has already agreed to this arrangement subject to your availability.

If you have any questions please let me know.

RMP:ce



TO: Roy M. Palk, Foster J. Collis
FROM: Dale W. Henley 
SUBJECT: RUS Meeting to Discuss Agreement to Supplemental Mortgage
DATE: July 7, 1997

In response to my earlier letter and telephone call, Keith Sloan indicates that any of the previously announced dates are satisfactory; and Tony Overbey indicates that August 20 or 21 are satisfactory. Larry Hicks' office confirmed this morning that he together with Doug Hubbard and Jimmy Longmire would be available on August 20.

Based on this information, it appears the date most convenient is August 20, 1997.

*call Tom Eddy & set up -
confirm with above*

FACSIMILE SHEET

East Kentucky Power Cooperative

East Kentucky Power Cooperative
4775 Lexington Road 40391
P.O. Box 707, Winchester, Kentucky 40392-0707
Tel. (606) 744-4812 • Fax: (606) 744-6008

Date: 10/22/97 Time: 1:50pm.

PLEASE DELIVER THE FOLLOWING PAGES TO:

Name: Mike Kelly Fax: 202-690-3991

Company: RUS

City: Washington State: DC

From: Loy Falk

TOTAL NUMBER OF PAGES, INCLUDING THIS PAGE: 9

SUBJECT MATTER/EXPLANATION OF TRANSMITTED MATERIAL:

Following are two letters to you from Marvin
Suit dated September 15 & October 16
and a draft policy re Member Withdrawal
& Buyout of the Wholesale Power Contract.
I will try to reach you by phone to
discuss this on Thursday, October 23.
Thank you for your assistance in this
matter.



DRAFT

EAST KENTUCKY POWER COOPERATIVE, INC.

POLICY NO. _____

MEMBER WITHDRAWAL AND BUYOUT OF WHOLESALE POWER CONTRACT

I. OBJECTIVE

To establish equitable terms for the settlement of a member's obligations under the Wholesale Power Contract ("WPC") in the event of a withdrawal from membership in East Kentucky Power Cooperative, Inc. ("EKPC").

II. CONTENT

- A. An EKPC member system shall provide written notice to EKPC within 5 days of any action by the member system board of directors to authorize any review or study of any reorganization, dissolution, consolidation or merger of the member system or the review or study of any sale, lease or transfer of all or a substantial portion of the member system's assets, whether now owned or hereafter acquired (hereinafter collectively referred to as "Withdrawal Actions.")
- B. A member system examining such potential withdrawal actions will keep EKPC informed of the progress of its review or study.
- C. A member system that decides to proceed with a withdrawal action shall submit to EKPC a resolution from its board of directors stating its intended course of action and specifying an effective date, which shall be no earlier than six months from the date of the resolution.
- D. Unless the withdrawal action is a reorganization, consolidation or merger by and between the member system and another EKPC member system whereby the obligations of the member system under the Wholesale Power Contract with EKPC are assumed by the surviving organization, EKPC and/or Rural Utilities Service ("RUS") approval will be required.
- E. The withdrawing member system shall not need EKPC approval for a withdrawal action if RUS approval is obtained pursuant to Section 1 (b)-(c) of the Supplemental Agreement to the Wholesale Power Contract.

- F. EKPC will approve a withdrawal action unless it would result in rate increases to other member systems, would impair EKPC's ability to repay its secured loans in accordance with their terms, or would adversely affect system performance in a material way.
- G. Absent other unusual adverse system impacts of a withdrawal action, the payment by the withdrawing member system of a settlement amount, as calculated hereinbelow, shall be deemed to satisfy any further obligations of the member system under the Wholesale Power Contract. The calculation of the settlement amount shall be as follows:
- H. EKPC approval will be conditioned upon the withdrawing member system's execution of all necessary documents to effect the withdrawal, including confidentiality agreements, compliance with other relevant provisions of the EKPC Articles, Bylaws and Board Policies; and compliance with any relevant RUS and other regulatory requirements related to such withdrawal. Circumstances may require the EKPC Board of Directors to prescribe additional terms and conditions for a member system withdrawal, consistent with Section II (F) hereinabove.
- I. The rights of a withdrawing member system to the retirement of patronage capital of EKPC credited to its account shall be governed by the Articles, Bylaws, and Board Policies of EKPC, as amended from time to time, including anytime subsequent to the date of this policy or the member system's withdrawal; provided, however, that no such amendments will discriminate against a withdrawn member system.

III. RESPONSIBILITY

- A. The Chairman of the Board of Directors shall make sure this Policy is adhered to.

(mw&b)

SUIT, MCCARTNEY & PRICE
ATTORNEYS AT LAW
207 COURT SQUARE
FLEMINGSBURG, KENTUCKY 41041

COPY

MARVIN W. SUIT
FRANK H. MCCARTNEY
PATRICK E. PRICE
JOHN C. PRICE

PHONE 606-849-2338
FAX 606-845-8701

October 16, 1997

Mr. Michael Kelly
Rural Utilities Division
Office of the General Counsel
United States Dept. Of Agriculture
1400 Independence Ave. SW
Room 2349
Washington, DC 20250-1414

Re: Fleming-Mason Rural Electric Cooperative Corporation
Flemingsburg, Kentucky

Dear Mike:

Time is running out on the members of Fleming-Mason RECC who have requested approval to prepay, under 7 CFR Part 1786, Discounted Prepayments on RUS Electric Loans, by letter of March 17, 1997. The buy-out will amount to something like 1.2 million dollars in savings to their 20,000 members in an eight county area of Kentucky. With the tobacco industry facing mammoth condemnation at the present time, these rural Kentuckians need all the help they can muster and you are in a position to help them.

According to the Rule, the application was to be reviewed and the coop was to be advised within 30 days as to whether the application was approved. They have heard nothing to date.

On September 15th, I wrote to you, and copied the letter to Tom Eddy of RUS, Roy M. Palk, President of East Kentucky Power Cooperative in Winchester, Kentucky and their general counsel, Foster J. Collis, offering for Fleming-Mason to execute a shortened Supplemental Agreement which RUS and East Kentucky had requested that they sign. To date I have not

heard from this offer. We need to have that Supplemental Agreement approved so Fleming-Mason can proceed with their buy-out. It will not only save their members much money but will put a sizable chunk of money back into the coffers of the federal government at a time when they seem to need it.

Although, neither you nor Tom Eddy were certain about any exemption having been granted to any cooperative to not sign the Supplemental Agreement, Mr. Overbey again contacted Martin Thomson, Executive Vice President and General Manager of Presque Isle Electric & Gas Cooperative of Onaway, Michigan, who consulted with their attorney, and they verified that the coop did buy out their loans without signing any agreement. So there is precedent for granting our limited request.

May we hear from you soon, so Fleming-Mason may continue with their buy-out plans?

Sincerely,



Marvin W. Suit

MWS/mc.

CC:

Mr. Roy M. Palk, President
East Kentucky Power Cooperative
P. O. Box 707
Winchester, KY 40392

Mr. Tom Eddy
USDA-RUS/NEAE
Room 0241 South Building
14th & Independence Ave. SW
Washington, DC 20250

SUIT, MCCARTNEY & PRICE
ATTORNEYS AT LAW
207 COURT SQUARE
FLEMINGSBURG, KENTUCKY 41041

MARVIN W. SUIT
FRANK H. MCCARTNEY
PATRICK E. PRICE
JOHN C. PRICE

PHONE 606-849-2338
FAX 606-845-8701

September 15, 1997

Mr. Michael Kelly
Rural Utilities Division
Office of the General Counsel
United States Dept. of Agriculture
1400 Independence Ave. SW
Room 2349
Washington, DC 20250-1414

RE: Fleming-Mason Rural Electric Cooperative Corporation
Flemingsburg, Kentucky

Dear Mike:

Tony Overbey and I discussed our meeting with you, Tom Eddy and the officials of East Kentucky Power relative to the Supplemental Agreement with the members of the Board of Directors of Fleming-Mason at their meeting this month and they agreed to a compromise agreement, a copy of which is enclosed.

Their position is that they fully recognize their obligations under their wholesale power contract with East Ky. and are in no way planning to evade their obligations under it. They don't mind signing the Supplemental Agreement to the extent that there are Limitations on Transfers of the Member's Assets as set out in the sample agreement. The provision for specific performance is also not objectionable. But they do not want to sign any language in advance limiting them to the procedures to be followed in the unlikely event that the Administrator should refuse approval of a change of the cooperative in the future.

Likewise, they are not amenable to giving East Kentucky a so-called "veto power" over their uncharted course of business in the unknown future. They feel that the contractual obligations in the present contracts are

SEP 18 1997

sufficient to protect each entity in their continued operations and no additional restraints should be forthcoming from either party.

As has been stated by everyone who has advocated the advantage of the Supplemental Agreement, it is mainly for clarification. They do not object to that and consequently, are offering to sign the proposed shortened Supplemental Agreement as enclosed.

Sincerely,



Marvin W. Suit

MWS/mc

CC:

Mr. Roy M. Palk, President
East Kentucky Power Cooperative
P. O. Box 707
Winchester, KY 40392

Hon. Foster J. Collis
General Counsel
East Kentucky Power Cooperative
P. O. Box 707
Winchester, KY 40392

Mr. Tom Eddy
Rural Utilities Service
Washington, DC

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT made as of September _____, 1997, between **EAST KENTUCKY POWER COOPERATIVE, INC.** (hereinafter called the "**Seller**"), **FLEMING-MASON RURAL ELECTRIC COOPERATIVE CORPORATION** (hereinafter called the "**Member**"), its successors and assigns, and the **UNITED STATES OF AMERICA** (hereinafter called the "**Government**") acting through the **ADMINISTRATOR OF THE RURAL UTILITIES SERVICE** (hereinafter called the "**Administrator**").

WHEREAS, the Seller and the Member have entered into a contract for the purchase and sale of electric power and energy dated October 1, 1964, with amendments, which contract is hereinafter called the "**Power Contract**"; and

WHEREAS, the Government is relying on said Power Contract as amended and similar contracts between Seller and other borrowers from the Rural Utilities Service to assure that the "**Notes**" referred to in the Power Contract are repaid and the purposes of the Rural Electrification Act of 1936, as amended, are carried out and the Seller and Member by executing this Supplemental Agreement, acknowledge this reliance;

NOW, THEREFORE, in consideration of the mutual undertaking herein contained, the parties hereto agree as follows:

SECTION 1. Limitations on Transfers of the Member's Assets.

(a) The Member agrees that, for so long as any of the Seller's Notes are outstanding, the Member will not, without the approval in writing of the Administrator, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a majority portion of its assets, whether now owned or hereafter acquired. The Administrator will not unreasonably withhold or condition its consent except in cases where to do otherwise would result in the inability of the Seller to repay its now existing secured loans in accordance with their terms.

(b) In the event of a reorganization, consolidation or merger by and between the Member and another member of the Seller whereby the obligations of the Member under the Power Contract, as amended and supplemented, are assumed by the survivor, the requirements set out in this Section 1 shall not apply; provided, however, this paragraph shall not be construed as waiving any other approval rights of the Administrator regarding such reorganization, consolidation or merger.

SECTION 2. Specific Performance Available.

The Seller, the Member and the Administrator agree that (i) if the Member shall fail to comply with any provision of the Power Contract, the Seller, or the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of the Member under the provisions of the Power Contract and (ii) if the Seller shall fail to comply with any provision of the Power Contract, the Member, or the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of the Seller under the provisions of the Power Contract. Such enforcement may be by instituting all necessary actions at law or suits in equity, including, without limitation, suits for specific performance. Such rights of the Administrator to enforce the provisions of the Power Contract are in addition to and shall not limit the rights which the Administrator shall otherwise have as third party beneficiary of the Power Contract or pursuant to the assignment and pledge of the Power Contract and the payments required to be made thereunder as provided in the "**Mortgage**" referred to in the Power Contract. The Government shall not, under any circumstances, assume or be bound by the obligations of the

Seller or Member under the Power Contract except to the extent the Government shall agree in writing to accept and be bound by such obligations in whole or in part.

SECTION 3.

This Agreement may be simultaneously executed and delivered in two or more counterparts, each or which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

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

**FLEMING-MASON RURAL ELECTRIC
COOPERATIVE CORPORATION**

By: _____
MEMBER

Title: _____

ATTEST:

SECRETARY

**EAST KENTUCKY POWER
COOPERATIVE, INC.**

By: _____
SELLER

Title: _____

ATTEST:

SECRETARY

UNITED STATES OF AMERICA

By: _____
**ADMINISTRATOR
OF
RURAL UTILITIES SERVICES**

<tl/contract/SupAg-Flem>

Keith,
RUS' position on a meeting
is still as noted on
page 2. *Royce*

Post-it® Fax Note	7671	Date	2/20/98	# of pages	2
To	<i>Keith Sloan</i>		From	<i>Roy Palk</i>	
Co./Dept.	<i>So Ky</i>		Co.	<i>EKPC</i>	
Phone #.	<i>606-678-4121</i>		Phone #	<i>606-744-481</i>	
Fax #	<i>606-679-8279</i>		Fax #	<i>606-744-705</i>	

FEBRUARY BOARD AGENDA

TO: Board of Directors
Member System Managers

FROM: Roy M. Palk

SUBJECT: My Visit with RUS, January 14, 1998,
Regarding Supplemental Mortgage (Shoshone)

DATE: January 30, 1998

On the above-referenced date I met in the office of Mr. Tom Eddy of the RUS staff in Washington, DC for the aforementioned purpose.

Present from the RUS staff, other than Mr. Eddy, were Mike Kelly, OGC, and Steve Slovikosky of the Power Supply Division.

The meeting began by RUS stating its position that it would entertain options to accomplish the intent of Shoshone, but that no waivers would be granted to East Kentucky Power. They went on to state that approximately twenty-six G&Ts had complied with the Shoshone requirements.

Options discussed were as follows:

1. RUS would issue a supplemental document stating that the fundamental rights of the parties would not be altered by the execution of the supplemental mortgage.
2. They felt there would perhaps be a PSC hearing required if EKPC were forced to go to higher-cost financing sources that could result in rate increases. However, they could not say a hearing would be required for sure.

Page Two
January 30, 1998

3. They felt that the distribution systems might have the authority to re-lend to EKPC, the portion of loan funds necessary for their individual systems under the "15 percent rule," 15% of general plant value. However, they would need to research this matter under the appropriate regulations to be sure.
4. We and they felt that even though a surcharge might be justified upon the three EKPC member systems which did not sign Shoshone, such would be the last resort.
5. They stated their willingness to accept the "authorities" EKPC might derive from the supplemental language, but only under two circumstances:
 - A. Each system would give RUS a hold harmless agreement, and
 - B. RUS would consult EKPC about any matter of withdrawal of an EKPC system before exercising such authority.

Mr. Eddy and Mr. Kelly restated their willingness to come to Kentucky again to visit with the three member systems, but only with the knowledge of what the chances of achieving signatures would be before spending the time and travel money.

It was suggested that perhaps officials of the three systems, EKPC and RUS could meet during the NRECA Annual Meeting in Nashville, Tennessee to discuss a solution to this matter.

I have asked Larry Hicks, Tony Overbey and Keith Sloan to respond to me on the possibility of getting together in Nashville and I will, if they desire to meet, set up something with RUS.

RMP:CE



EAST KENTUCKY POWER COOPERATIVE, Inc.

4775 Lexington Road 40391
P.O. Box 707
Winchester, Kentucky 40392-0707
Tel. (606) 744-4812
Fax: (606) 744-6008

VIA FAX 606-679-8279

February 20, 1998

Mr. Keith Sloan
General Manager & CEO
South Kentucky RECC
P.O. Box 910
Somerset, KY 42502

Dear Keith:

Enclosed is language proposed by Fleming-Mason RECC to be added to the Supplemental Agreement. USDA Office of General Counsel does not object, but they prefer a side agreement among Fleming-Mason, EKPC and RUS, which they are now preparing.

Very truly yours,

Charles Lile

CAL/lhs

enclosure

cc: Roy Palk

SENT BY: SuitMcCartneyPrice; 2- 3-98 10:43AM; 6068492338 =>

#2/2

December 4, 1997

Mr. Michael Kelly
Office of the General Counsel, USDA
1400 Independence Ave. SW
Washington, DC 20250-1414

Re: Fleming-Mason Rural Electric Cooperative Corporation
Flemingsburg, Kentucky

Dear Mike:

Fleming-Mason is agreeable to signing the Supplemental Agreement if the following language is included at the end of the document.

SECTION 4. It is agreed by and between the parties hereto, that this Supplemental Agreement simply clarifies the present legal obligations which the federal courts have found to exist as implied terms of the Wholesale Power Contract which exists between East Kentucky Power Cooperative, Inc. And Fleming-Mason Rural Electric Cooperative Corporation and adds no new obligations, duties or responsibilities.

As I indicated earlier, Fleming-Mason wants to proceed with all due haste to buy out their RUS loans and is willing to sign the Supplemental Agreement with the above understanding.

Sincerely,

Marvin W. Suit

By Fax



EAST KENTUCKY POWER COOPERATIVE, Inc.

4775 Lexington Road 40391
P.O. Box 707
Winchester, Kentucky 40392-0707
Tel. (606) 744-4812
Fax: (606) 744-6008

*Claudia -
Copy for
your file.*

MEMORANDUM

S. Heavill

TO: Anthony P. Overbey
James W. Wells
J. Larry Hicks
Jimmy Longmire
Barry L. Myers
William Harris

FROM: Roy M. Palk *RMP*

SUBJECT: Supplemental Agreement

DATE: March 17, 1998

Enclosed is a copy of the Western Farmers Electric Cooperative Supplemental Agreement that I promised to forward to each of you.

RMP:ln

Enclosure



WESTERN FARMERS ELECTRIC COOPERATIVE
P.O. BOX 429
701 NE 7TH STREET
ANADARKO, OK 73005

Date: March 17, 1998

Number of pages including cover sheet: 7

TO:

Roy Palk
East Kentucky Power
Cooperative

PHONE: 606-744-4812

FAX: 606-744-7053

CC:

FROM:

Jane Lafferty
Western Farmers Electric Co-op
P.O. Box 429
Anadarko, OK 73005

PHONE: (405)247-4254

FAX: (405)247-4444

REMARKS: Urgent For your review Reply ASAP Please comment

Mr. Palk,

I am sending the Supplemental Agreement document as amended by our legal counsel and accepted by the Office of General Counsel and RUS. If I can be of further service, please call.

A handwritten signature in cursive script that reads "Jane Lafferty".

SUPPLEMENTAL AGREEMENT

This Supplemental Agreement is made as of _____, 199⁸, among _____ Electric Cooperative (hereinafter called the "Power Supplier"), a cooperative organized and existing under the laws of the State of _____, its successors and assigns, _____ ELECTRIC COOPERATIVE, INC. (hereinafter called the "Member"), its successors and assigns, and the United States of America (hereinafter called the "Government"), acting through the Administrator of the Rural Utilities Service, formerly the Rural Electrification Administration, (hereinafter called the "Administrator").

WHEREAS, the Power Supplier and the Member entered into a Wholesale Power Contract, for the purchase and sale of electric power and energy dated _____, as supplemented and amended (said amendments hereinafter called "Capital Amendments"), which by this reference is incorporated herein and is hereinafter called the "Power Contract"; and

WHEREAS, the Power Supplier and the Member thereafter entered into several amendments to said Power Contract, thereby extending the term of the Power Contract; and

WHEREAS, the Government is relying on said Capital Amendments, the Power Contract, and similar contracts between Power Supplier and other borrowers from the Rural Utilities Service to assure that the "Notes" referred to in the Power Contract are repaid, and the purposes of the Rural Electrification Act of 1936, as amended, are carried out, and the Power Supplier and Member by executing this Supplemental Agreement acknowledge this reliance.

NOW, THEREFORE, in consideration of the mutual undertaking herein contained and the approval by the Administrator of the Power Contract, the parties hereto agree as follows:

SECTION 1. Limitations on Transfers of the Member's Assets to Other Member Cooperatives.

(a) The Member agrees that, for so long as any of the Power Supplier Notes are outstanding, the Member will not, without the approval in writing of the Administrator, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any other Member of Power Supplier ("Member Cooperative"), or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets to any other Member Cooperative, whether now owned or hereafter acquired. ("Member Transaction") The Administrator will not unreasonably withhold or condition its consent to any such reorganization, dissolution, consolidation, or merger, or to any such sale, lease or transfer (or any agreement therefor) of assets.

(b) Nothing contained in this Agreement shall be construed as discouraging Members of the Power Supplier from pursuing efforts to reorganize, consolidate or merge with each other.

(c) This section shall not be construed as waiving any other approval rights of the Administrator under any rule, regulation or other agreement regarding such reorganization, dissolution, consolidation, merger, sale, lease or transfer.

SECTION 2. Limitations on Transfers of the Member's Assets to Others.

(a) The Member agrees that, for so long as any of the Power Supplier Notes are outstanding, the Member will not, without the approval in writing of the Power Supplier and the Administrator, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any Non-Member entity, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets to any Non-Member entity, whether now owned or hereafter acquired. ("Non-Member Transaction") The Power Supplier will not

unreasonably withhold or condition its consent to any such reorganization, dissolution, consolidation, or merger, or to any such sale, lease or transfer (or any agreement therefor) of assets. The Power Supplier will not withhold or condition its consent except in cases where to do otherwise would result in rate increases for the other members of the Power Supplier or impair the ability of the Power Supplier to repay its secured loans in accordance with their terms, or adversely affect system performance in a material way. The consent of the Power Supplier shall require the affirmative vote of two-thirds (2/3) of the members thereof.

(b) Notwithstanding paragraph (a) of this section, the Administrator and Power Supplier shall consent to a Non-Member Transaction, only so long as (i) the Member shall have paid such portion of the outstanding indebtedness on the Power Supplier's Notes or other obligations as shall be determined by the Power Supplier with the prior written consent of the Administrator and (ii) the Member shall have otherwise complied with such reasonable terms and conditions as the Administrator and Power Supplier may require either:

(1) to eliminate any adverse effect that such action seems likely to have on the rates of the other member of the Power Supplier; or

(2) to assure that the Power Supplier's ability to repay the Power Supplier Notes and other obligations of the Power Supplier in accordance with their terms is not impaired.

(c) The Member shall provide the Power Supplier with a copy of its request for approval of a Non-Member Transaction concurrently with its submission to the Administrator. In recognition of the obligation of the Power Supplier to provide the Administrator with information on the effect of the Non-Member Transaction on the Power Supplier, the Member agrees that the

Administrator may release to the Power Supplier all information relating to the Non-Member Transaction that is made available to the Administrator.

(d) The Administrator may require, among other things, that any payment owed under (b) of this section that represents a portion of the Power Supplier's indebtedness on the Power Supplier Notes shall be paid by the Member in the manner necessary to accomplish a defeasance of those obligations in accordance with the loan documents relating thereto, or be paid directly to the holders of the Power Supplier Notes for application by them as prepayments in accordance with the provisions of such documents, or be paid to the Power Supplier and held and invested in a manner satisfactory to the Administrator.

(e) This section shall not be construed as waiving any other approval rights of the Administrator or Power Supplier under any rule, statute, regulation, by-law provision or other agreement regarding such reorganization, dissolution, consolidation, merger, sale, lease or transfer.

SECTION 3. Nonencumbrance of Distribution of Assets

The Power Supplier, the Member and the Administrator agree that nothing in this agreement shall be deemed to constitute an additional claim or encumbrance on the assets of the Member.

SECTION 4. Specific Performance Available.

The Power Supplier, the Member and the Administrator agree that (i) if the Member shall fail to comply with any provision of the Power Contract, the Power Supplier, or the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of the Member under the provisions of the Power Contract and (ii) if the Power Supplier shall fail to comply with any provision of the Power Contract, the Member, or the Administrator, if the

Administrator so elects, shall have the right to enforce the obligations of the Power Supplier under the provisions of the Power Contract. Such enforcement may be by instituting all necessary actions at law or suits in equity, including, without limitation, suits for specific performance. Such rights of the Administrator to enforce the provisions of the Power Contract are in addition to and shall not limit the rights which the Administrator shall otherwise have as third party beneficiary of the Power Contract or pursuant to the assignment and pledge of the Power Contract and the payments required to be made thereunder as provided in the "Mortgage" referred to in the Power Contract. The Administrator shall not, under any circumstances, assume or be bound by the obligations of the Power Supplier or Member under the Power Contract except to the extent the Administrator shall agree in writing to accept and be bound by any such obligations in whole or in part.

SECTION 5. This Agreement may be simultaneously executed and delivered in triplicate counterparts, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Member, the Power Supplier and the Government, acting through the Administrator, have caused this Agreement to be duly executed as of the day and year first above mentioned.

By: _____

Member

Title: _____

PRESIDENT OF THE BOARD OF TRUSTEES

ATTEST:

Secretary



SOUTH KENTUCKY RURAL ELECTRIC
COOPERATIVE CORPORATION

Keith Sloan
General Manager & C.E.O.
Phone (606) 678-4121

925-929 North Main Street
P.O. Box 910
Somerset, Kentucky 42502-0910

July 10, 1998

Roy Palk, President & CEO
East Kentucky Power Cooperative
P.O. Box 707
Winchester, KY 40392-0707

Dear Roy:

This is to advise that our Board did not elect to sign the supplemental power agreement as amended.

In making the decision, our Board cited the following:

Under Section 1, Limitations on Transfers of the Members Assets -

- (a) It is unknown on what basis or how the seller could predetermine its consent would result in a rate increase for other members or impair the ability of Seller to repay its secured loans.
- (b) The statement "or adversely affect system performance in any material way" is broad and vague to the extent it could be used in virtually any circumstance involving a reorganization, dissolution, consolidation, merger, sale, lease or transfer of assets.

Our Board feels that it alone, with its lenders, has final authority and responsibility regarding the disposition of Co-op assets and the protection of members rights. Furthermore, this authority and responsibility should not voluntarily be relinquished to another Board who would not have accountability for its actions.

Page 2

Consequently, our Board asks that prior to reconsidering signing the Supplemental Agreement that it must know what the terms and conditions of an exit strategy are and asks that East Kentucky expedite the development of such strategy to address situations covered by the agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Sloan". The signature is written in a cursive style with a large initial "K".

Keith Sloan, General
Manager and CEO

/b

**FROM THE MINUTE BOOK OF PROCEEDINGS
OF THE BOARD OF DIRECTORS OF
EAST KENTUCKY POWER COOPERATIVE, INC.**

At a regular meeting of the Board of Directors of East Kentucky Power Cooperative, Inc. held at the Headquarters Building, 4775 Lexington Road, located in Winchester, Kentucky, on Tuesday, October 14, 2003, at 12:20 p. m., EDT, the following business was transacted:

After review of the applicable information, a motion was made by Fred Brown, seconded by Wayne Stratton, and, there being no further discussion and upon the Chairman's request for a roll-call vote, with the following Directors voting "yes:" Michael Adams, Fred Brown, Donnie Crum, P. D. Depp, Daniel Divine, E. A. Gilbert, Virgil "Jack" Ginter, Jimmy Longmire, C. F. Martin, Wade May, Sam Penn, A. L. Rosenberger, Wayne Stratton, and Delno Tolliver; and the following Directors voting "no:" Rick Stephens and Lonnie Vice; the following motion was passed with 14 "yes" votes and 2 "no" votes:

Whereas, On February 6, 2001, the East Kentucky Power Cooperative, Inc. ("EKPC") Board of Directors ("Board") approved construction of the 268 MW E.A. Gilbert Generating Unit ("Gilbert") at the Spurlock Power Station in Mason County, Kentucky, for purposes of securing an economical long-term source of wholesale power for EKPC's 16 member-owners;

Whereas, On August 14, 2001, the EKPC Board approved a loan filing with the Rural Utilities Service ("RUS") for \$410,000,000 to finance Gilbert and related transmission facilities; and on April 8, 2003, this loan application was amended to increase the amount to \$434,000,000;

Whereas, RUS has informed EKPC that its approval of the loan package is conditioned on extension of the Wholesale Power Contracts ("WPC") through 2041;

Whereas, The proposed amendment provides, for the first time, some flexibility to the member-owners' current obligation to secure all of their system power supply needs from EKPC;

Whereas, RUS has agreed to consider opportunities for member-owners outside the percentage limitations contained in Amendment No. 3 on a case-by-case basis; to make every effort to work with member-owners and EKPC to convert any member-owner's WPC, as amended, to a partial requirements contract with 24 months;

Whereas, RUS financing is the least cost option for Gilbert; and

Whereas, Management and the Operations, Services and Support Committee recommend approval; now, therefore, be it

Resolved, That the EKPC Board approves Amendment No. 3 to the WPC, as attached, subject to RUS review and approval;

Resolved, That the EKPC Board commits to making every effort to work with member-owners and RUS to convert any member-owner's WPC, as amended, to a partial requirements contract within 24 months; and

Resolved, That the EKPC Board requests that each of its member-owner cooperatives approve and execute Amendment No. 3 at their next board meeting.

The foregoing is a true and exact copy of a resolution passed at a meeting called pursuant to proper notice at which a quorum was present and which now appears in the Minute Book of Proceedings of the Board of Directors of the Cooperative, and said resolution has not been rescinded or modified.

Witness my hand and seal this 14th day of October, 2003.



Sam Penn, Secretary

Corporate Seal

AMENDMENT NO. 3 TO WHOLESALE POWER CONTRACT
BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND

This Agreement dated the _____ day of _____, 2003, amends the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. (hereinafter "Seller") and _____ (hereinafter "Member") as follows:

I. Numerical Section 1 of the Wholesale Power Contract shall be amended and restated to read in its entirety as follows:

1. General - The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which shall be required to serve the Member's load, including all electric power and energy required for the operation of the Member's system. Notwithstanding the foregoing, the Member shall have the option, from time to time, with notice to the Seller, to receive electric power and energy, from persons other than the Seller, or from facilities owned or leased by the Member, provided that the aggregate amount of all members' elections (measured in megawatts in 15-minute intervals) so obtained under this paragraph shall not exceed five percent (5%) of the rolling average of Seller's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member from time to time, as provided herein and further provided that no Member shall receive more than fifteen percent (15%) of the rolling average of its coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the 3 twelve

month periods immediately preceding any election by the Member from time to time, as provided herein.

For any election made or cancelled under this Section, the following provisions shall apply:

a. During any calendar year, the Member may make or cancel any such election or elections by giving at least 90 days' notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or less, in the annual aggregate.

b. During any calendar year, the Member may make or cancel any such election or elections by giving at least 18 months or greater notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or more, in the annual aggregate

Upon the effective date of the Member's cancellation of any such election under this Agreement, the load or loads shall be governed by the all requirements obligations of the Seller and the Member in this Section, and notice of same shall be provided to the Rural Utilities Service ("RUS") by the member. Such loads which are transferred to Seller's all-requirements obligations shall not thereafter be switched by Member to a different power supplier.

c. Should any such election by Member involve the acquisition of new service territory currently served by another power supplier or municipal utility, Member shall provide evidence to Seller and RUS in the new Load Purchase Agreement that the acquired territory must be served by the current power supplier as a condition of the acquisition of the new load.

Seller will provide transmission, substation, and ancillary services without

discrimination or adverse distinction with regard to rates, terms of service or availability of such service as between power supplies under paragraphs above and Member will pay charges therefore to Seller. Seller also agrees to allow, at Member's sole cost and expense, such additional interconnection as may be reasonably required to provide such capacity and energy as contemplated in the above paragraphs.

Member will be solely responsible for all additional cost associated with the exercise of elections under the above paragraphs including but not limited to administrative, scheduling, transmission tariff and any penalties, charges and costs, imposed by the Midwest Independent System Operator ("MISO") or other authorities.

II. Section 10 of the Wholesale Power Contract shall be restated as Section 11 and new Section 10 and Section 11 shall read in their entirety as follows:

10. Retail Competition - Seller and its subsidiaries, shall not, during the term of this contract, without the consent of the Member, (i) sell or offer to sell electric power or energy at retail within the Member's assigned or expanded geographic area, if any, established by applicable laws or regulations or (ii) provide or offer to provide retail electric service to any person which is a customer of the Member.

11. Term - This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2041, and thereafter until terminated by either party's giving to the other not less than six months' written notice of its intention to terminate. Subject to the provisions of Section 1 hereof, service hereunder and the obligation of the Member to pay therefore shall commence upon completion of the facilities necessary to provide service.

Executed the day and year first above mentioned.

EAST KENTUCKY POWER
COOPERATIVE, INC.

BY: _____

ITS: _____

ATTEST, SECRETARY

BY: _____

ITS: _____

ATTEST, SECRETARY

(H:Legal/misc/amend-3-wpc)

Board Agenda Item

OCTOBER

TO: Operations, Services & Support Committee and Board of Directors

FROM: Roy M. Palk *Roy M. Palk*

DATE: October 3, 2003

SUBJECT: Wholesale Power Contract Amendment No. 3

KEY MEASURE(S) Competitively Priced Energy

Background

On February 6, 2001, the East Kentucky Power Cooperative, Inc. ("EKPC") Board of Directors ("Board") approved construction of the 268 MW E.A. Gilbert Generating Unit ("Gilbert") at the Spurlock Power Station in Mason County, Kentucky, for purposes of securing an economical long-term source of wholesale power for EKPC's 16 member-owners. On August 14, 2001, the EKPC Board approved a loan filing with the Rural Utilities Service ("RUS") for \$410,000,000 to finance Gilbert and related transmission facilities; and on April 8, 2003, this loan application was amended to increase the amount to \$434,000,000.

RUS has informed EKPC that its approval of the loan package is conditioned on extension of the Wholesale Power Contracts ("WPC") by each of the member-owners through 2041. RUS has also indicated that it would consider modifications to the WPC to permit some flexibility to member-owners under their present obligation to secure all of their system power supply needs from EKPC.

Justification and Strategic Analysis

RUS financing is the least cost option for Gilbert. As a condition for making the loan, RUS requires that EKPC and its member-owners extend the WPC through 2041. Extension of the WPC, with acceptable modifications, assures the financial support of the member-owners for EKPC's operations. Extension of the WPC, in turn, is relied upon by RUS to ensure that its loan is adequately secured. Thus, the extension through 2041 is intended to cover the period of the loan repayment and, provides assurance that the member-owners will have an adequate source of competitively priced dependable wholesale power with which to generate retail sales that will provide the primary source of revenue to EKPC for repaying the Gilbert loan, and their own obligations to RUS.

Board Agenda Item

OCTOBER

This amendment also provides, for the first time, some flexibility to the member-owners' current obligation to secure all of their system power supply needs from EKPC. RUS has agreed to consider opportunities for member-owners outside the percentage limitations contained in Amendment No. 3 on a case-by-case basis, and to make every effort to work with member-owners and EKPC to convert any member-owner's WPC, as amended, to a partial requirements contract within 24 months.

Recommendation

Management recommends that the Board approve Amendment No. 3 to the WPC and requests that each of the member systems have its board of directors approve it at their next meeting.

rmp/lh

Resolution

OCTOBER

WHOLESALE POWER CONTRACT AMENDMENT NO. 3

Whereas, On February 6, 2001, the East Kentucky Power Cooperative, Inc. ("EKPC") Board of Directors ("Board") approved construction of the 268 MW E.A. Gilbert Generating Unit ("Gilbert") at the Spurlock Power Station in Mason County, Kentucky, for purposes of securing an economical long-term source of wholesale power for EKPC's 16 member-owners;

Whereas, On August 14, 2001, the EKPC Board approved a loan filing with the Rural Utilities Service ("RUS") for \$410,000,000 to finance Gilbert and related transmission facilities; and on April 8, 2003, this loan application was amended to increase the amount to \$434,000,000;

Whereas, RUS has informed EKPC that its approval of the loan package is conditioned on extension of the Wholesale Power Contracts ("WPC") through 2041;

Whereas, The proposed amendment provides, for the first time, some flexibility to the member-owners' current obligation to secure all of their system power supply needs from EKPC;

Whereas, RUS has agreed to consider opportunities for member-owners outside the percentage limitations contained in Amendment No. 3 on a case-by-case basis; to make every effort to work with member-owners and EKPC to convert any member-owner's WPC, as amended, to a partial requirements contract with 24 months;

Whereas, RUS financing is the least cost option for Gilbert; and

Whereas, Management and the Operations, Services and Support Committee recommend approval; now, therefore, be it

Resolved, That the EKPC Board approves Amendment No. 3 to the WPC, as attached, subject to RUS review and approval;

Resolved, That the EKPC Board commits to making every effort to work with member-owners and RUS to convert any member-owner's WPC, as amended, to a partial requirements contract within 24 months; and

Resolved, That the EKPC Board requests that each of its member-owner cooperatives approve and execute Amendment No. 3 at their next board meeting.

AMENDMENT NO. 3 TO WHOLESALE POWER CONTRACT
BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND

This Agreement dated the _____ day of _____, 2003, amends the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. (hereinafter "Seller") and _____ (hereinafter "Member") as follows:

I. Numerical Section 1 of the Wholesale Power Contract shall be amended and restated to read in its entirety as follows:

1. General - The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which shall be required to serve the Member's load, including all electric power and energy required for the operation of the Member's system. Notwithstanding the foregoing, the Member shall have the option, from time to time, with notice to the Seller, to receive electric power and energy, from persons other than the Seller, or from facilities owned or leased by the Member, provided that the aggregate amount of all members' elections (measured in megawatts in 15-minute intervals) so obtained under this paragraph shall not exceed five percent (5%) of the rolling average of Seller's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member from time to time, as provided herein and further provided that no Member shall receive more than fifteen percent (15%) of the rolling average of its coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the 3 twelve

month periods immediately preceding any election by the Member from time to time, as provided herein.

For any election made or cancelled under this Section, the following provisions shall apply:

a. During any calendar year, the Member may make or cancel any such election or elections by giving at least 90 days' notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or less, in the annual aggregate.

b. During any calendar year, the Member may make or cancel any such election or elections by giving at least 18 months or greater notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or more, in the annual aggregate

Upon the effective date of the Member's cancellation of any such election under this Agreement, the load or loads shall be governed by the all requirements obligations of the Seller and the Member in this Section, and notice of same shall be provided to the Rural Utilities Service ("RUS") by the member. Such loads which are transferred to Seller's all-requirements obligations shall not thereafter be switched by Member to a different power supplier.

c. Should any such election by Member involve the acquisition of new service territory currently served by another power supplier or municipal utility, Member shall provide evidence to Seller and RUS in the new Load Purchase Agreement that the acquired territory must be served by the current power supplier as a condition of the acquisition of the new load.

Seller will provide transmission, substation, and ancillary services without

discrimination or adverse distinction with regard to rates, terms of service or availability of such service as between power supplies under paragraphs above and Member will pay charges therefore to Seller. Seller also agrees to allow, at Member's sole cost and expense, such additional interconnection as may be reasonably required to provide such capacity and energy as contemplated in the above paragraphs.

Member will be solely responsible for all additional cost associated with the exercise of elections under the above paragraphs including but not limited to administrative, scheduling, transmission tariff and any penalties, charges and costs, imposed by the Midwest Independent System Operator ("MISO") or other authorities.

II. Section 10 of the Wholesale Power Contract shall be restated as Section 11 and new Section 10 and Section 11 shall read in their entirety as follows:

10. Retail Competition - Seller and its subsidiaries, shall not, during the term of this contract, without the consent of the Member, (i) sell or offer to sell electric power or energy at retail within the Member's assigned or expanded geographic area, if any, established by applicable laws or regulations or (ii) provide or offer to provide retail electric service to any person which is a customer of the Member.

11. Term – This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2041, and thereafter until terminated by either party's giving to the other not less than six months' written notice of its intention to terminate. Subject to the provisions of Section 1 hereof, service hereunder and the obligation of the Member to pay therefore shall commence upon completion of the facilities necessary to provide service.

Executed the day and year first above mentioned.

EAST KENTUCKY POWER
COOPERATIVE, INC.

BY: _____

ITS: _____

ATTEST, SECRETARY

BY: _____

ITS: _____

ATTEST, SECRETARY

(H:Legal/misc/amend-3-wpc)



April 9, 2004

VIA FEDERAL EXPRESS

Mr. Victor T. Vu
Rural Utilities Service
Stop 1568
1400 Independence Ave. SW
Washington, DC 20250-1566

Re: Wholesale Power Contract Amendment No. 3
and Board Resolution from EKPC and its
Sixteen Members

Dear Victor:

Enclosed are three executed originals of Amendment No. 3 to the Wholesale Power Contract, along with copies of appropriate resolutions from EKPC and its 16 members authorizing same.

After execution by the RUS Administrator, or her designee, please return two originals to me, and I will assure that each of our member systems receives an original for its files.

Sincerely yours,



Dale W. Henley
General Counsel

dwh/lm
enclosure
c: Roy M. Palk

(H:\legal\dwhletters-dwh-vu-4-9)

bc: Dave James
Frank Oliva ✓

**FROM THE MINUTE BOOK OF PROCEEDINGS
OF THE BOARD OF DIRECTORS OF
EAST KENTUCKY POWER COOPERATIVE, INC.**

At a regular meeting of the Board of Directors of East Kentucky Power Cooperative, Inc. held at the Headquarters Building, 4775 Lexington Road, located in Winchester, Kentucky, on Tuesday, December 9, 2003, at 9:30 a. m., EST, the following business was transacted:

After review of the applicable information, a motion was made by Fred Brown, seconded by Mike Adams, and, there being no further discussion, passed, with Rick Stephens and Lonnie Vice requesting that their "no" votes be recorded, to approve the following:

Whereas, The Rural Utilities Service ("RUS") has approved loan funds of \$433,863,000.00 for the Gilbert Generating Unit ("Gilbert") conditioned on extension of the Wholesale Power Contracts ("WPCs") through December 31, 2040 by all member-owners;

Whereas, This Board of Directors ("Board") approved Amendment No. 3 to the WPCs ("Amendment") at the October 2003 Board meeting, and regards same as a policy, rule or regulation for purposes of Section 1.04. Termination of Membership of EKPC's Bylaws;

Whereas, The Board officers have concluded that all member-owners must execute the Amendment not later than December 31, 2003, in order to protect this least-cost financing option offered by RUS; and

Whereas, The Board officers and the Operations, Services & Support Committee recommend that any member-owner failing to execute the Amendment by December 31, 2003, must indemnify, hold harmless and otherwise be responsible to East Kentucky Power Cooperative, Inc. ("EKPC") and other member-owners for any additional cost associated with alternative financing to that presently offered by RUS for Gilbert; now, therefore, be it

Resolved, That the Board regards the Amendment as a policy, rule or regulation for purposes of By-Law interpretation;

Resolved, That all member-owners execute the Amendment by not later than December 31, 2003; and

Resolved, That any member-owner failing to execute the Amendment by December 31, 2003, shall indemnify, hold harmless and otherwise be responsible to EKPC, and other member-owners, for any additional cost associated with alternative financing to that presently offered by RUS for Gilbert.

The foregoing is a true and exact copy of a resolution passed at a meeting called pursuant to proper notice at which a quorum was present and which now appears in the Minute Book of Proceedings of the Board of Directors of the Cooperative, and said resolution has not been rescinded or modified.

Witness my hand and seal this 9th day of December, 2003.

A handwritten signature in cursive script that reads "Sam Penn". The signature is written in black ink and is positioned to the right of the witness text.

Sam Penn, Secretary

Corporate Seal

WHOLESALE POWER CONTRACTS

<u>Cooperative</u>	<u>Date of Original Contract</u>	<u>Amendment/Date</u>
Big Sandy RECC	10/01/64	#1 – 12/03/76 #2 – 04/01/80 Supp. – 07/17/98 #3 – 10/17/03 #4 - 5/12/09
Blue Grass ECC	10/01/64	#1 – 12/03/76 #2 – 04/01/80 Supp. – 07/16/98 #3 – 10/16/03 #4 - 5/12/09
Clark EC	08/25/64	#1 – 11/23/76 #2 – 03/25/80 Supp. – 08/25/98 #3 – 10/17/03 #4 - 5/12/09
Cumberland Valley E	10/01/64	#1 – 11/18/76 #2 – 03/13/80 Supp. – 07/16/98 #3 – 11/11/03 #4 - 5/12/09
Farmers RECC	10/01/64	#1 – 12/03/76 #2 – 03/13/80 Supp. – 08/21/98 #3 – 10/23/03 #4 - 5/12/09
Fleming-Mason EC	10/01/64	#1 – 11/11/76 #2 – 03/13/80 Supp. – 07/31/98 #3 – 11/13/03 #4 - 5/12/09
Fox Creek RECC	10/01/64	#1 – 11/02/76 #2 – 03/13/80

Grayson RECC	10/01/64	#1 – 12/03/76 #2 – 03/28/80 Supp. – 07/31/98 #3 – 11/21/03 #4 - 7/14/09
Harrison RECC	10/01/64	#1 – 12/03/76 #2 – 03/21/80 Supp. – 08/26/98
Inter-County ECC	10/01/64	#1 – 11/01/76 #2 – 03/31/80 Supp. – 07/10/98 #3 – 10/14/03 #4 - 5/12/09
Jackson EC	10/01/64	#1 – 12/03/76 #2 – 03/14/80 Supp. – 08/14/98 #3 – 11/14/03 #4 - 5/12/09
Licking Valley RECC	10/01/64	#1 – 12/03/76 #2 – 03/20/80 Supp. – 07/16/98 #3 – 10/16/03 #4 - 5/12/09
Nolin RECC	10/01/64	#1 – 11/03/76 #2 – 03/14/80 Supp. – 07/20/98 #3 – 11/05/03
Owen EC	10/01/64	#1 – 10/28/76 #2 – 03/21/80 Supp. – 07/23/98 #3 – 10/23/03 #4 - 5/12/09
Salt River ECC	10/01/64	#1 – 11/01/76 #2 – 03/27/80 Supp. – 07/22/98 #3 – 10/17/03 #4 - 5/12/09

Shelby EC	10/01/64	#1 – 10/28/76 #2 – 03/27/80 Supp. – 07/23/98 #3 – 10/23/03 #4 - 5/12/09
South Kentucky RECC	10/01/64	#1 – 10/21/76 #2 – 03/20/80 Supp. – 08/13/98 #3 – 11/13/03 #4 - 5/12/09
Taylor County RECC	10/01/64	#1 – 11/05/76 #2 – 03/07/80 Supp. – 07/02/98 #3 – 11/06/03 #4 - 5/12/09

(H:legal/misc-wpcdates)

Charles Lile

From: Jim Lamb
Sent: Thursday, May 22, 2008 1:34 PM
To: Charles Lile
Subject: RE: Board Policy 305

Thanks.

-----Original Message-----

From: Charles Lile
Sent: Thursday, May 22, 2008 11:23 AM
To: Jim Lamb
Subject: RE: Board Policy 305

Jim,

Your questions about the definitions of "peak demand" and "peak" in Amendment No. 3 are technical questions, not legal ones. I can't help you interpret the amendment beyond the terms used, you will simply need to use reasonable definitions for EKPC's circumstances. Unless you are considering some proposals which would possibly exceed the stated limits, it may not be necessary to define the terms so precisely. Any disputes about the proper calculation of the limits would be resolved by RUS.

As for your question about the second paragraph in Sec. 1 (b), my interpretation of the language is that loads which are returned to the all-requirements contract status, after having been served under an election for alternative power supply, are no longer eligible for a future election. This would not prohibit the subject member system from utilizing the terms of the Amendment for such an election for other loads.

Charles A. Lile
EKPC Legal
859 745-9380
charles.lile@ekpc.coop

-----Original Message-----

From: Jim Lamb
Sent: Wednesday, May 21, 2008 4:16 PM
To: Charles Lile
Subject: Board Policy 305

Charlie, I have read Amendment 3 to our wholesale power contract (the document you sent me earlier) and it deals with member systems procuring power supply from a source other than EKPC. I have a couple of questions to help me understand things.

1) The amendment talks about EKPC peak demand. As you know, EK can measure peak demand either at the substation or at the busbar. The former excludes transmission loss and the latter includes transmission loss. Is the amendment referring to peak demand at the substation or at the busbar?

2) I assume that peak means actual peak, whether Gallatin Steel is being served on the peak 15 minute period or not. Is that a good assumption?

3) Is the paragraph after 1(b) saying that should a member system who is using another power supplier return that portion to EKPC, they must in the future stay with EKPC? Is this a one strike and you're out concept?

As always, thanks very much.

Charles Lile

From: Jim Lamb
Sent: Wednesday, May 21, 2008 4:21 PM
To: David Smart
Cc: Charles Lile
Subject: Board Policy 305

David,

Board Policy 305 describes the allocation procedure for non EKPC power supply. The policy references an Allocation Committee. The copy of the policy that I have is dated March 2004. This Allocation Committee may or may not have ever met, but if it has met, I would like to get the meeting minutes. Charlie has told me that he is not familiar with this Committee, and I doubt that anybody is familiar with it to be honest. I understand that Della may be the only source for this, and she of course is out. If necessary, I am happy to wait until Della is back.

Any help would be gratefully appreciated.

Charles Lile

From: Charles Lile
Sent: Thursday, May 22, 2008 11:23 AM
To: Jim Lamb
Subject: RE: Board Policy 305

Jim,

Your questions about the definitions of "peak demand" and "peak" in Amendment No. 3 are technical questions, not legal ones. I can't help you interpret the amendment beyond the terms used, you will simply need to use reasonable definitions for EKPC's circumstances. Unless you are considering some proposals which would possibly exceed the stated limits, it may not be necessary to define the terms so precisely. Any disputes about the proper calculation of the limits would be resolved by RUS.

As for your question about the second paragraph in Sec. 1 (b), my interpretation of the language is that loads which are returned to the all-requirements contract status, after having been served under an election for alternative power supply, are no longer eligible for a future election. This would not prohibit the subject member system from utilizing the terms of the Amendment for such an election for other loads.

Charles A. Lile
EKPC Legal
859 745-9380
charles.lile@ekpc.coop

-----Original Message-----

From: Jim Lamb
Sent: Wednesday, May 21, 2008 4:16 PM
To: Charles Lile
Subject: Board Policy 305

Charlie, I have read Amendment 3 to our wholesale power contract (the document you sent me earlier) and it deals with member systems procuring power supply from a source other than EKPC. I have a couple of questions to help me understand things.

- 1) The amendment talks about EKPC peak demand. As you know, EK can measure peak demand either at the substation or at the busbar. The former excludes transmission loss and the latter includes transmission loss. Is the amendment referring to peak demand at the substation or at the busbar?
- 2) I assume that peak means actual peak, whether Gallatin Steel is being served on the peak 15 minute period or not. Is that a good assumption?
- 3) Is the paragraph after 1(b) saying that should a member system who is using another power supplier return that portion to EKPC, they must in the future stay with EKPC? Is this a one strike and you're out concept?

As always, thanks very much.

Charles Lile

From: Jim Lamb
Sent: Wednesday, April 16, 2008 2:20 PM
To: Charles Lile
Cc: Julie Tucker; David Smart
Subject: RE: Question About Policy 305

Thanks.

-----Original Message-----

From: Charles Lile
Sent: Wednesday, April 16, 2008 2:19 PM
To: Jim Lamb
Cc: Julie Tucker; David Smart
Subject: RE: Question About Policy 305

Jim,

Board Policy No. 305 was not created to deal with partial requirements, which is a specific term used by RUS. EKPC does not have partial requirements Wholesale Power Contracts with its member systems, and RUS approval would be needed to enter such arrangements. The current EKPC WPCs are still all-requirements contracts with a limited amount of flexibility for member systems to buy or produce small amounts of their own power supply.

Regarding the Allocation Committee provided for in the policy, this is not a standing committee of the Board, like the other committees that you reference. It is subject to Board Policy No. 105, by reference, and Sec. 4 D of Policy No. 305 sets out the requirements for the election of officers. I don't know if this committee is currently constituted, or if it has been active in recent years.

Charles A. Lile
EKPC Legal
859 745-9380
charles.lile@ekpc.coop

-----Original Message-----

From: Jim Lamb
Sent: Wednesday, April 16, 2008 1:32 PM
To: David Smart; Charles Lile
Cc: Julie Tucker
Subject: Question About Policy 305

David and Charlie,

Policy 305 deals with partial requirements, which none of our members are taking right now. I don't expect any members will take partial requirements, but members are thinking about distributed generation as a way to avoid our demand charges on peak. DG is also covered by policy 305.

Here's the question - this policy references an Allocation Committee, which I do not believe meets now, and I don't think it has ever met very much. Nonetheless, does this committee need to elect officers, like the 4 committees we have that do meet (audit, fuel, operations, power delivery)?

please advise. thanks very much.

Charles Lile

From: Charles Lile
Sent: Monday, April 14, 2008 10:15 AM
To: Jim Lamb
Cc: David Eames; David Smart; Stacy Barker; Julie Tucker; John Twitchell
Subject: RE: Distributed Generation

Jim,

Amendment No. 3 to the Wholesale Power Contracts between EKPC and the member systems, executed in 2003, allows an EKPC member system to receive power and energy from third parties, or to generate its own power and energy, up to 15% of the rolling average of its highest month coincident peak demand during each of the prior three 12-month periods. The total of such member purchases or self-generation must not exceed 5% of EKPC's highest coincident peak demand, calculated in the same manner, and there are other rules and limitations on member purchases in that amendment. EKPC Board Policy No. 304 further limits member system-owned distributed generation, and Board Policy No. 305 provides a process for the allocation of non-EKPC sourced power acquisitions, including distributed generation, among the member systems.

Charles A. Lile
EKPC Legal
859 745-9380
charles.lile@ekpc.coop

-----Original Message-----

From: John Twitchell
Sent: Sunday, April 13, 2008 9:44 PM
To: Jim Lamb; Charles Lile
Cc: David Eames; David Smart; Stacy Barker; Julie Tucker
Subject: RE: Distributed Generation

Don't we have a 5% rule on member generation?

John R. Twitchell PE
Senior Vice President, G & T Operations
East Kentucky Power Cooperative
859-745-9706 Office
859-595-3133 Cell

-----Original Message-----

From: Jim Lamb
Sent: Sunday, April 13, 2008 4:59 PM
To: Charles Lile
Cc: David Eames; David Smart; John Twitchell; Stacy Barker; Julie Tucker
Subject: Distributed Generation

Charlie,

I have heard from 2 member coops who say that they are serious about installing diesel generators out on their system, on the non EK side of the substation, as a means of reducing their billing demand.

I know that this idea comes up every so often, but I have not been involved in the past. Does our power supply contract with members address this idea? If not, what is your opinion about their ability to do this? Are you aware of any Board policies that deal with distributed generation?

I am personally not opposed to the idea, I just want to know if there is anything on paper that supports it or opposes it.

Thanks very much.

	<p>East Kentucky Power Cooperative</p>
<p>South Kentucky And Its Acquisition Of The Monticello Plant Board – What This Means For EKPC</p> <p>East Kentucky Power Board Of Directors Meeting September 11, 2007</p>	<p>1</p>

<p>MPB is a municipal electric company</p>	<p>East Kentucky Power Cooperative</p>
<ul style="list-style-type: none"> • Approximately 25 MW peak demand and 100,000 MWh • Currently served by TVA <ul style="list-style-type: none"> – MPB has given notice, effective November 2008 • Monticello Plant Board has agreed to be acquired by South Kentucky <ul style="list-style-type: none"> – Subject to voter approval in November 2007 – The intent is to fold MPB into South Kentucky • MPB is somewhat unique <ul style="list-style-type: none"> – South Kentucky surrounds them – MPB is served by TVA while not directly connected to TVA • Should voters not approve the acquisition, MPB will remain an independent municipal electric company <p>Board Meeting September 11, 2007</p>	<p>2</p>

	<p>East Kentucky Power Cooperative</p>
<p>Here Is What All This Means For EKPC</p>	<p>3</p>

<p>Once Monticello voters approve the acquisition, EKPC is prepared to do the following</p>	<p>East Kentucky Power Cooperative</p>
<ul style="list-style-type: none"> • Purchase the Monticello substation from South Kentucky for \$1.2 million, subject to RUS and Board approval • After acquiring MPB, South Kentucky will also purchase the TVA line that goes from EKPC to MPB – EKPC will purchase the line from South Kentucky, subject to RUS and Board approval • Once MPB customers become South Kentucky members, and once the power supply contract between TVA and MPB has expired, EKPC will provide power supply to South Kentucky for its new load at tariff rates <p>Board Meeting September 11, 2007</p>	<p>4</p>

Should voters not approve the acquisition, EKPC is prepared to do the following	East Kentucky Power Cooperative
<ul style="list-style-type: none">• EKPC is willing to make a wholesale sale to South Kentucky equal to MPB's needs. While recognizing the potential regulatory involvement of various bodies, and subject to EKPC Board approval, it is EKPC's intent to price this sale at the same price paid by South Kentucky for native load power supply.• This sale would begin in November 2008, with a term of up to two years<ul style="list-style-type: none">– This commitment was vital to MPB agreeing to the acquisition• Note - None of the terms on the previous slide would apply <p data-bbox="365 968 574 984">Board Meeting September 11, 2007</p>	5

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY)
RURAL ELECTRIC COOPERATIVE)
COOPERATION FOR APPROVAL)
TO PURCHASE THE FIXED ASSETS OF)
THE MONTICELLO ELECTRIC)
PLANT BOARD, MONICELLO, KY)

NOV 05 2007
PUBLIC SERVICE
COMMISSION
CASE NO. 2007-00374

ATTORNEY GENERAL'S
INITIAL REQUEST FOR INFORMATION

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky ("Attorney General"), by and through his Office of Rate Intervention, and submits this Initial Request for Information to South Kentucky Rural Electric Cooperative Corporation ("SKRECC") to be answered in accord with the following:

- (1) In each case where a request seeks data provided in response to a staff request, reference to the appropriate request item will be deemed a satisfactory response.
- (2) Please identify the witness who will be prepared to answer questions concerning each request.
- (3) These requests shall be deemed continuing so as to require further and supplemental responses if the company receives or generates additional information within the scope of these requests between the time of the response and the time of any hearing conducted hereon.

(4) Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

(5) If any request appears confusing, please request clarification directly from the Office of Attorney General.

(6) To the extent that the specific document, workpaper or information as requested does not exist, but a similar document, workpaper or information does exist, provide the similar document, workpaper, or information.

(7) To the extent that any request may be answered by way of a computer printout, please identify each variable contained in the printout which would not be self evident to a person not familiar with the printout.

(8) If the company has objections to any request on the grounds that the requested information is proprietary in nature, or for any other reason, please notify the Office of the Attorney General as soon as possible.

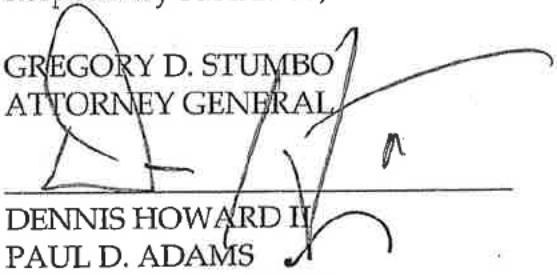
(9) For any document withheld on the basis of privilege, state the following: date; author; addressee; indicated or blind copies; all persons to whom distributed, shown, or explained; and, the nature and legal basis for the privilege asserted.

(10) In the event any document called for has been destroyed or transferred beyond the control of the company, please state: the identity of the person by whom it

was destroyed or transferred, and the person authorizing the destruction or transfer; the time, place, and method of destruction or transfer; and, the reason(s) for its destruction or transfer. If destroyed or disposed of by operation of a retention policy, state the retention policy.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL



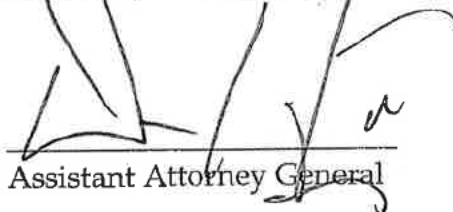
DENNIS HOWARD II
PAUL D. ADAMS
LAWRENCE W. COOK
ASSISTANT ATTORNEYS GENERAL
FRANKFORT KY 40601-8204
(502) 696-5453
FAX: (502) 573-8315
dennis.howard@ag.ky.gov

CERTIFICATE OF SERVICE AND NOTICE OF FILING

I hereby give notice that this the 5th day of November, 2007, I hand-delivered the original and ten copies of the foregoing Attorney General's Initial Request for Information with the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601, certify that this same day I have served the parties by mailing a true copy of same, postage prepaid, to:

Honorable Darrell Saunders
Attorney for SKRECC
700 Master Street
P.O. Box 1324
Corbin, Kentucky 40702, and

Alan Anderson
Manager
SKRECC
P. O. Box 910
Somerset, KY 42502-0910


Assistant Attorney General

ATTORNEY GENERAL'S INITIAL
REQUEST FOR INFORMATION
TO SOUTH KENTUCKY RECC
Case No. 2007-00374

DEFINITIONS

For purposes of this document, the following definitions shall apply:

The term "personnel" shall include employees, agents, directors, officers, principals, management, partners, members, agents, stockholders, sole proprietors, or contractors.

The phrase "financial or pecuniary interest" shall include (but is not limited to) any employment or the holding of any contract of any type or sort.

1. Did SKRECC perform a due diligence report, examination, review, or study of any type or sort prior to its decision to purchase the fixed assets of Monticello Electric Plant Board in Monticello, Kentucky?
2. If the response to question number one, above, is "yes," please provide copies of any and all such information, together with any and all information in any way related to such reports, examinations, reviews, or studies.
3. If the response to question number one, above, is "no," explain in detail why not.
4. Did the City of Monticello perform a due diligence report, examination, review, or study of any type or sort prior to its decision to purchase the fixed assets of Monticello Electric Plant Board in Monticello, Kentucky?
5. If the response to question number four, above, is "yes," please provide copies of any all such information, together with any and all information in any way related to such reports, examinations, reviews, or studies.
6. If the response to question number four, above, is "no," explain in detail why not.
7. Was SKRECC involved in any competitive bidding process or auction by the City of Monticello and / or the Monticello Electric Plant Board prior to SKRECC submitting its proposal to purchase Monticello?

8. Has SKRECC been involved in any competitive bidding process or auction by the City of Monticello and / or the Monticello Electric Plant Board prior to SKRECC submitting its proposal to purchase Monticello?
9. Describe in detail the potential ramifications for SKRECC ratepayers if the procedures employed by the City of Monticello and / or the Monticello Electric Plant Board for the proposed purchase of its electrical utility assets are found to be contrary to Kentucky law.
10. In the opinion of SKRECC, what is the fair market value of the fixed assets of the Monticello Electric Plant Board?
11. Please identify the names and titles of the SKRECC'S personnel and agents who participated in the due diligence examinations, reviews, or studies of any type or sort.
12. Please identify the names and titles of the City of Monticello and / or the Monticello Electric Plant Board personnel and agents who participated in the due diligence examinations, reviews, or studies of any type or sort.
13. Please identify the names and titles of the SKRECC'S personnel and agents who participated in the offer to purchase the fixed assets of the Monticello Electric Plant Board.
14. Please identify the names and titles of the Monticello personnel and agents who participated in the offer to purchase the fixed assets of the Monticello Electric Plant Board.
15. As part of the due diligence report, did SKRECC consider whether the City of Monticello and / or the Monticello Electric Plant Board had complied with any and all legal requirements that may affect the sale of the fixed assets of Monticello Electric Plant Board? Explain in detail.
16. Please state whether any current or former SKRECC employees or members of SKRECC's Board of Directors are or ever were employees, board members, partners, or members of any other business entity or organization. Identify each such individual, the name of the business entity or organization, and the title of their position.
17. Please disclose whether any SKRECC personnel presently have, or ever have had any financial or pecuniary interest of any type or sort in the City of

Monticello, and / or the Monticello Electric Plant Board. For each such interest, provide full and complete details.

18. Please disclose whether any personnel of the City of Monticello and / or the Monticello Electric Plant Board have, or ever have had any financial or pecuniary interest of any type or sort in SKRECC. For each such interest, provide full and complete details.
19. Please disclose whether any current or former personnel of the City of Monticello and / or the Monticello Electric Plant Board conduct, or ever have conducted business transactions of any type or sort with businesses owned by the personnel of SKRECC. For each such business transaction, provide full and complete details.
20. Please disclose whether any personnel of SKRECC conduct, or ever have conducted, business transactions of any type or sort with businesses owned by the personnel of the City of Monticello and / or the Monticello Electric Plant Board. For each such business transaction, provide full and complete details.
21. Please state whether any relative, by blood or marriage, of SKRECC's personnel holds, will hold or has ever held any type or sort of position, whether as employee, officer, board member, contractor or consultant, with the City of Monticello and / or the Monticello Electric Plant Board. For each such position, provide full and complete details.
22. Please state whether any relative, by blood or marriage, of the personnel of the City of Monticello and / or the Monticello Electric Plant Board holds, will hold, or has ever held any type or sort of position, whether as employee, officer, board member, contractor or consultant, with SKRECC. For each such position, provide full and complete details.
23. Does SKRECC currently maintain, or has it ever maintained, any contracts with vendors whose principals are in any manner related, by blood or marriage, to the personnel of the City of Monticello and / or the Monticello Electric Plant Board? If yes:
 - a) Please provide copies of any such contract, and a breakdown of how much money was spent per contract per year for the last ten (5) calendar years; and

- b) Please state whether the contracts were awarded pursuant to a bid process, and if so, provide specifics of that bid process.
24. Does SKRECC have any anti-nepotism policies in place? If so, provide copies of any and all such policies, and/or memoranda referring to such policies.
 25. Does SKRECC employ, or has it ever employed, any relatives (by blood or marriage) of any City of Monticello and / or the Monticello Electric Plant Board personnel? If so, provide full and complete details.
 26. Describe, in detail, any and all financial inducements that SKRECC offered, or that the personnel of the City of Monticello and / or the Monticello Electric Plant Board demanded or requested during the course of negotiations leading to the proposed purchase that is the subject of the instant filing.
 27. Did the contract for the proposed purchase that is the subject of the instant filing have any other consideration of any type or sort not stated in the contract?
 28. Please provide unredacted copies of minutes, notes, memoranda, or any and all other documents of any type or sort, regardless of the media in which they are stored, regarding meetings between personnel of SKRECC and the City of Monticello and / or the Monticello Electric Plant Board in which the proposed was discussed.
 29. Describe, in complete detail, how the City of Monticello and / or the Monticello Electric Plant Board decided that the consideration offered by SKRECC for the proposed purchase was "good and sufficient," as described on page one of the "PURCHASE AND SALES AGREEMENT."
 30. Describe, in complete detail, what the City of Monticello and / or the Monticello Electric Plant Board intend to do with the proceeds of the proposed sale.
 31. Describe, in full and complete detail, the ramifications of the proposed purchase upon SKRECC's existing rate payers. Also, please answer the following:
 - (a) Does SKRECC intend to ask its existing ratepayers to pay for the proposed purchase? If so, what benefit(s) will the existing rate base acquire as a result of the purchase?

- (b) Does SKRECC intend to file a rate case to recoup its costs? If so, will SKRECC seek to establish a regulatory asset to recoup the costs of the proposed transaction?
 - (c) Will SKRECC request financing from the RUS to fund the purchase? If so, state in complete detail the cost to ratepayers for that financing.
 - (d) The proposed "PURCHASE AND SALES AGREEMENT" calls for amortizing the purchase over 30 years at 4.75% interest per annum. State, in current dollars, the total amount of interest that SKRECC's ratepayers will be paying over the 30 year amortization.
 - (e) Reference SKRECC's response to PSC 2-4. SKRECC therein references the "financing option sponsored by the City of Monticello," and that SKRECC "has selected the City of Monticello financing option." SKRECC's response further states that it has provided the required information in the original application. State exactly where in the original application the financing option selected by the City of Monticello is referenced. If it is not contained therein, provide full and complete details, including copies of any and all relevant documents, communications, or studies of any type or sort.
32. Provide complete justification for retaining the current superintendent and the complete board of the Monticello Electric Plant Board in an advisory capacity, at their full salary, for a period of two years from the date the transaction is completed. Also, please answer the following:
- (a) How will SKRECC's ratepayers be impacted? Describe in complete detail how SKRECC's ratepayers will benefit from retaining both the superintendent and board at full salary for two years? If there is any real benefit, could the benefit not be achieved by retaining solely the superintendent?
 - (b) Describe in complete detail the full range of issues the existing Monticello Electric Plant Board will be advising SKRECC about for two years.
 - (c) State how and why the offer to retain the full board of Monticello Electric Plant Board was not an inducement to approve the proposed purchase.
 - (d) Justify fully paying complete salaries of both the superintendent and the advisory board when they will not have any responsibility for operating the Monticello system after SKRECC assumes control.
33. Provide complete justification for offering all employees of the Monticello Electric Plant Board continued employment at SKRECC, at their full salary or greater. Also, please answer the following:

- (a) How will SKRECC's ratepayers be impacted? Describe in complete detail how SKRECC's ratepayers will benefit from offering to retain the complete staff of the Monticello Electric Plant Board.
 - (b) Describe in complete detail the full range of responsibilities of the existing Monticello Electric Plant Board employees will be undertaking on behalf of SKRECC.
 - (c) To what extent will the offer to retain all Monticello Electric Plant Board employees result in duplication of services? Explain in detail.
 - (d) Provide the number of MEPB employees to date. Does SKRECC have current vacancies? If so, does the number of vacancies equal the number of MEPB employees SKRECC will hire?
34. State in complete detail how SKRECC first proposed to purchase the Monticello Electric Plant Board, and the circumstances in which it first suggested the contemplated transaction.
35. Reference application exhibit A, page 2, number 11 (c).
- (a) Did SKRECC have plans to build an office building in or near the City of Monticello before the transaction which is the subject of the instant filing was contemplated? If so, please provide details of the office building.
 - (b) If not, would SKRECC agree that the acquisition of the MEPB office building is only a potential benefit to ratepayers, and not an actual benefit?
 - (c) Describe in detail the necessity for the acquisition of this building.
 - (d) Would SKRECC be willing to sell the building if it is not necessary?
 - (e) If not, why not?
36. Describe in detail any and all efforts the City of Monticello and / or the Monticello Electric Plant Board took to advise its constituents and customers regarding the proposed sale and the ramifications thereof.
37. Provide any and all studies and reports of any type or sort describing the rate impact of the proposed transaction on existing customers of the Monticello Electric Plant Board.
38. Identify any and relationships (whether personal or business) between SKRECC and / or between SKRECC's personnel and the following individuals: (a) Mack Butler; (b) Gary Dishman; (c) Dan Daffron; (d) Mike Anderson; and (e) Kevin R. Mullins.

39. Describe in detail the financial interest the City of Monticello and / or the Monticello Electric Plant Board has in NetPower, LLC.
40. State whether SKRECC, or any of its personnel, maintain financial or pecuniary interest of any type or sort in: (a) NetPower, LLC; (b) MBC Internet, Inc.; and / or (c) MBC Consulting, Inc. If so, provide full and complete details.
41. Confirm that the Kentucky Secretary of State administratively dissolved NetPower, LLC on November 1, 2007.
42. With regard to numbered paragraph 16 of the "PURCHASE AND SALES AGREEMENT," describe how SKRECC intends to fulfill the covenants stated therein with an entity that no longer exists.
43. State how many customers NetPower, LLC had prior to being administratively dissolved.
44. Identify what entity or entities are providing service to former NetPower customers, and to what entity NetPower customers are sending their payments for services rendered.
45. State how and when SKRECC intends to achieve rate parity with its existing customers and the customers of the Monticello Electric Plant Board.
46. To what extent was the value of the interest of City of Monticello and / or the Monticello Electric Plant Board in NetPower taken into consideration in deriving the final proposed purchase price? Provide full details.
47. Reference SKRECC's response to PSC 2-3, p. 29 of 57. This page, which appears to be a print out of an apparent Power Point presentation, indicates that Kentucky Utilities may have submitted the lowest bid for wholesale power. Explain in detail why Monticello Electric Plant Board did not pursue this option, as opposed to accepting SKRECC's unsolicited bid to purchase the electric assets of MEPB.

11-7-07 Voters approve RECC acquisition of Monticello plant

COMMONWEALTH JOURNAL

By CHRIS HARRIS, CJ Staff Writer
Commonwealth Journal

The South Kentucky Rural Electric Cooperative Corporation (SKRECC) will be expanding its service territory, following Tuesday's vote in Wayne County.

Monticello voters approved SKRECC to acquire the Monticello Electric Plant, opening the door to 3,500 new consumers in that community. Though SKRECC currently serves around 9,000 customers in Wayne County, the service area surrounds that served by the Monticello plant.

Those in favor voted over twice as strong as the opposition, as 874 were for the buyout, versus 428 against.

The Tennessee Valley Authority (TVA) currently supplied electricity to Monticello, and will be purchased at least through the next year. Federal regulations prohibit SKRECC from buying more power from the TVA than would be used by the Wayne County seat.

Acquisition talks began when the Monticello Electric Plant Board sent out requests for proposals to buy power. SKRECC will pay the City of Monticello \$686,000 in annual payments over a 30-year period, as it becomes only the second town the cooperative serves (the other is Albany).

State law mandates that such a purchase go through several steps, including being voted on by the city council and then a public vote.

Allen Anderson, CEO of SKRECC, called it a "great victory," noting that this had been the realization of a plan that began back in 2003.

"We had a huge group of supporters," he said. "We ere very pleased with the results. They speak highly of (SKRECC)."

Anderson said that as it was, Monticello was "on a little island" without the support services SKRECC offers and will be able to effectively and immediately provide.

"It will be an easy transition," he said. "This will be good for (SKRECC) because it's serving a town, and I think it will be good for the town because they were like a hole in the doughnut. I think it will be good for everybody."

11-4-07 Possible sale of power system to co-op criticized

HERALD LEADER

By Bill Estep And John Stamper

MONTICELLO --jstamper@herald-leader.com

Controversy has surfaced in the possible sale of Monticello's electric system to a utility, with a lobbying group arguing the potential transfer has been handled improperly and would mean higher rates for customers if approved.

City voters will decide Tuesday whether to sell the system, which has 3,400 customers, to South Kentucky Rural Electric Cooperative Corporation, which serves more than 62,000 customers in 11 Kentucky and two Tennessee counties.

A consultant concluded the cooperative's rates were higher than those in Monticello and so residents would pay more by switching to the co-op.

Officials of the Monticello system, however, said that 2006 snapshot of rates didn't consider factors such as a financial penalty to stay with the city's current electricity provider, and the benefits of belonging to a larger system like the cooperative.

"We felt like this was best for our customers and the community as a whole," Mike Anderson, chairman of the Monticello Electric Plant Board, said of selling to the co-op.

Even if voters approve the sale, the state Public Service Commission will have the final say on letting the cooperative buy the local power system.

The road to the potential sale, not a common occurrence, started several years ago.

The city has bought power for years from the Tennessee Valley Authority. Anderson and Gary Dishman, superintendent of the Monticello system, said that after a number of TVA rate increases through the years, the city council began pushing the electric board in 2003 to look for another supplier.

The board notified TVA it would not renew its contract and later sought proposals from utilities to sell power to the system. Instead, South Kentucky Rural Electric, whose service area surrounds Monticello, offered to buy the system.

Officials cite benefits

The sale would have advantages for Monticello residents and for the cooperative and its customers, officials from both systems say.

For Monticello, the advantages include the security of belonging to a larger system with more clout to bargain for electricity rates and with greater resources, such as more employees and better access to contractors to help get power back on quickly after a big outage, Dishman said.

Joining the bigger system also would get around the problem of Monticello being hemmed in. If it continues to stand alone, flat revenue means the system would someday have to raise rates to cover rising operating costs, Dishman said.

Anderson said the sale would be a cash windfall for the city. The South Kentucky cooperative would pay \$4.68 million for the electric system.

The payments would come over 30 years with interest, meaning the city would get \$7.8 million over the life of the deal to use for economic development, street repair and other services, according to documents filed with the PSC.

For the cooperative, the benefits of buying Monticello's power grid include adding customers and getting a new office in town, the co-op said in a state filing.

If the sale is approved, Dishman and the five board members of the Monticello system would become advisers to the co-op for at least two years at their current salaries. Board members make \$200 a month.

There didn't seem to be much opposition to the sale until recently. But after obtaining the sales contract and other documents during a lawsuit, the Municipal Electric Power Association of Kentucky, a lobbying group, took out a full page advertisement in the Oct. 31 edition of The Wayne County Outlook urging voters to reject the sale.

Debating the details

Monticello's engineer compared rates for the two systems in November 2006 and found that customers would pay more by switching to the co-op, according to a document the Municipal Electric Power Association got. The average monthly residential bill under Monticello's rates at the time was \$112.79, compared with \$129.16 under the cooperative's rates, according to the analysis.

The power association also requested an opinion from the state attorney general's office about how the proposed sale has been handled. The opinion indicated there should have been an opportunity for competitive bids for the electric system; the electric board did not follow that law, said Annette C. DuPont-Ewing, executive director of the association.

DuPont-Ewing said the \$4.68 million price is too low. The Berea electric system sold for an amount equal to \$1,800 per customer two years ago, she said; a similar amount in Monticello would mean a sale price of \$6.1 million.

"I don't understand how anyone could have signed it," DuPont-Ewing said.

DuPont-Ewing said the association's interest in the sale is in protecting Monticello's citizens.

Allen Anderson, president and CEO of the co-op, said MEPAC fears if the Monticello deal goes through, it could spark a domino effect that would take members from the group.

As to the sale price, Dishman said TVA makes a monthly calculation of the depreciated value of the system, and local officials considered that a good measure. When the board decided to sell, that figure was about \$3.7 million.

Anderson said that's about what the co-op first offered. The Monticello board countered with an offer \$1 million higher, and the co-op agreed, he said. Anderson said it had three appraisals done on different parts of the Monticello system, which helped establish an appropriate price range.

As for rates, the Monticello officials said that issue is not as clear cut as the ad denouncing the sale suggests.

The November 2006 comparison did not factor in a penalty TVA said it will charge Monticello if the sale doesn't go through and the city keeps buying power from that utility. Local officials figured the charge would amount to \$4 million over about four years, Dishman said.

And since the electric board agreed to sell, TVA has begun planning a rate increase of 6 percent to 9 percent.

Dishman said that while electricity rates will likely go up for all suppliers, it appears that when the city's contract with TVA runs out in November 2008, the co-op's rates will be competitive.

And Dishman said the electric board feels it has handled the potential sale properly under the law.

If voters or the PSC say no to the sale, the Monticello electric board would have to re-negotiate with TVA or look for another supplier, though Dishman said the city might not have much bargaining power. The board doesn't want to be a "mom and pop store in a Wal-Mart world," he said.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTH KENTUCKY RURAL)
ELECTRIC COOPERATIVE CORPORATION)
FOR APPROVAL TO PURCHASE THE FIXED) CASE NO. 2007-00374
ASSETS OF THE MONTICELLO ELECTRIC)
PLANT BOARD, MONTICELLO, KY)

COMMISSION STAFF'S SECOND DATA REQUEST TO
SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

South Kentucky Rural Electric Cooperative Corporation ("South Kentucky"), pursuant to 807 KAR 5:001, is requested to file with the Commission the original and six copies of the following information, with a copy to all parties of record. The information requested herein is due on or before October 26, 2007. Responses to requests for information shall be appropriately bound, tabbed and indexed. Each response shall include the name of the witness responsible for responding to the questions related to the information provided.

Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, shall be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

South Kentucky shall make timely amendment to any prior responses if it obtains information which indicates that the response was incorrect when made or, though

correct when made, is now incorrect in any material respect. For any requests to which South Kentucky fails or refuses to furnish all or part of the requested information, South Kentucky shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

Careful attention should be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request. When applicable, the requested information shall be separately provided for total company operations and jurisdictional operations.

1. Refer to the response to the Commission Staff's First Data Request dated September 14, 2007 ("Staff's First Request"), Item 4. In most comparisons, the rates charged by Monticello Electric Plant Board ("Monticello") are less than the corresponding rates charged by South Kentucky .

a. Have Monticello's customers been made aware of the increase in rates that will occur when they are charged South Kentucky's rates? If yes, state when and how this increase was made known to them.

b. For each Monticello customer class listed in the response to Item 4, calculate average monthly bills using the current Monticello and comparable South Kentucky rates. Base the calculated bills on the most currently available average customer class usage. Show all components used to determine the total bill. Include all riders, surcharges, fees, and applicable taxes.

2. East Kentucky Power Cooperative, Inc. ("EKPC") has pending before the Commission an application to increase its wholesale power rates, which will result in an

increase in the rates of South Kentucky. Has any of the information presented to Monticello's customers acknowledged this pending rate case? Explain the response.

3. Refer to the response to the Staff's First Request, Item 6.

a. Refer to page 4 of 21.

(1) Provide copies of any sections of South Kentucky's Annual Report that discuss the acquisition of Monticello.

(2) Provide the minutes of the 2007 South Kentucky Annual Meeting and copies of the remarks made by Allen Anderson.

(3) State the total number in attendance at the 2007 South Kentucky Annual Meeting and indicate how many attendees were customers of Monticello.

(4) Provide samples of the special presentations referenced for the month of July.

b. Page 19 of 21 appears to be a flyer that was distributed to Monticello's customers and states that, "Rates for MEPB customers will be unaffected by the change up to January 2009." However, South Kentucky's response to Item 13 states that it will place the Monticello customers into South Kentucky rate classes in November 2008. Clarify when South Kentucky proposes to change the rates charged to Monticello customers.

c. Page 21 of 21 is an announcement of a public forum concerning the sale of Monticello to South Kentucky that was to be held on September 27, 2007.

(1) Provide the number of attendees at this meeting and summaries of any comments made at the meeting.

(2) Are any further public meetings, discussion groups, or forums planned to be held prior to the November 6, 2007 election? If yes, provide the date of the meeting(s) and the same information as requested in subpart (1) above.

4. Refer to the response to the Staff's First Request, Item 11.

a. The response states that South Kentucky has not yet sought Commission approval for the financing of the Monticello purchase because the arrangements are not final. When does South Kentucky anticipate filing with the Commission an application for approval of financing for this acquisition?

b. The letter presented as Exhibit T to the application implies that there were financing alternatives available to South Kentucky for this acquisition. Describe the financing alternatives that were available to South Kentucky and explain why South Kentucky selected the alternative of a promissory note with the city of Monticello.

c. Concerning the letter in Exhibit T, explain in detail how South Kentucky reached the conclusion that this letter from the U. S. Department of Agriculture – Rural Development constitutes an approval of the transaction among South Kentucky, EKPC, and Monticello.

5. Refer to the response to the Staff's First Request, Item 13.

a. Concerning the response to Item 13(a), is South Kentucky indicating that the transaction will not close prior to December 31, 2007? If no, explain how a material financial transaction occurring prior to year-end can be omitted from South Kentucky's financial statements.

b. Concerning the response to Item 13(c),

(1) In order to continue charging the Monticello customers the existing rates from the date South Kentucky acquires the system until the end of the Tennessee Valley Authority power contract, would South Kentucky adopt the Monticello rates and amend its existing tariffs to include those rates for the customers? Explain the response.

(2) In order to bill the former Monticello customers South Kentucky's then existing rates in November 2008, would South Kentucky file a rate proceeding to move from one tariff to another? Explain the response.

6. Refer to the response to the Staff's First Request, Items 15(b), page 4 of 4, 19(a-b), and 22.

a. The responses in Items 15 and 22 state that South Kentucky intends to record the Monticello acquisition at the purchase price. Is South Kentucky aware that the Uniform System of Accounts for Rural Utilities Service Electric Borrowers ("RUS USoA") requires that, when electric plant constituting an operating unit or system is purchased, the acquired plant is to be recorded at its original cost as well as any accumulated depreciation applicable to the original cost?

b. Using the information provided in Item 19, resubmit the accounting entries that reflect the purchase of the Monticello fixed assets. The entries are to be consistent with the provisions of the RUS USoA.

c. Describe how South Kentucky would propose to amortize any acquisition adjustment that may result from the Monticello acquisition.

7. Refer to the response to the Staff's First Request, Item 16.

a. The response to Item 16(a) states, "How the substation transaction will be financed as [sic] not been determined yet." Explain this statement, given that the

substation transaction refers to the purchase of a substation from South Kentucky by EKPC.

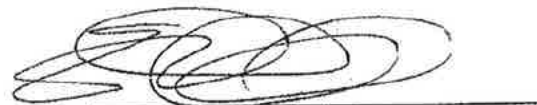
b. Explain why South Kentucky does not plan to use the net proceeds from the sale of the substation to EKPC to pay down the \$4,400,000 debt incurred to acquire the Monticello assets.

8. Refer to the response to the Staff's First Request, Items 18 and 22. Given that South Kentucky is assuming a customer deposit liability and accrued interest liability of \$152,897 and \$9,174, respectively, why did South Kentucky not reflect these liabilities in the proposed journal entry to record the Monticello acquisition?

9. Refer to the response to the Staff's First Request, Item 18(b). What is the status of the RUS lien accommodation and the supplemental lender's approval of the proposed acquisition?

10. Refer to the response to the Staff's First Request, Item 23. Would South Kentucky agree that upon its acquisition of the Monticello customers, South Kentucky will be required to submit new service territory maps to the Commission reflecting the addition of this area to its service territory? Explain the response.

11. Provide the results of the November 6, 2007 election concerning the acquisition of Monticello by South Kentucky no later than November 15, 2007.



Beth O'Donnell
Executive Director
Public Service Commission
P. O. Box 615
Frankfort, KY 40602

DATED: October 12, 2007

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTH KENTUCKY RURAL)	
ELECTRIC COOPERATIVE CORPORATION)	CASE NO.
FOR APPROVAL TO PURCHASE THE FIXED)	2007-00374
ASSETS OF THE MONTICELLO ELECTRIC)	
PLANT BOARD, MONTICELLO, KY)	

FIRST DATA REQUEST OF COMMISSION STAFF TO
SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

South Kentucky Rural Electric Cooperative Corporation ("South Kentucky") is requested, pursuant to 807 KAR 5:001, to file with the Commission the original and 6 copies of the following information, with a copy to all parties of record. The information requested herein is due on or before September 21, 2007. Each copy of the data requested should be placed in a bound volume with each item tabbed. Responses to requests for information shall be appropriately indexed, for example, Item 1(a), Sheet 2 of 6, and shall include the name of the witness responsible for responding to the questions related to the information provided.

Each response shall be under oath or, for representatives of a public or private corporation, a partnership, an association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

South Kentucky shall make timely amendment to any prior response if it obtains information upon the basis of which it knows that the response was incorrect when

made or, though correct when made, is now incorrect in any material respect. For any request to which South Kentucky fails to furnish all or part of the requested information, South Kentucky shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

Careful attention shall be given to copied material to ensure its legibility. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request. When applicable, the requested information shall be provided for total company operations and jurisdictional operations, separately.

1. Provide the following information concerning the customers of the Monticello Electric Plant Board ("MEPB"):

a. The total number of customers and a breakdown of the total by customer class as of July 31, 2007.

b. The most currently available load factor, load duration curves, customer density per mile of distribution line, and other operating and system characteristics of MEPB.

c. The total sales to customers and sales by customer class for the 12 months ending July 31, 2007 and for calendar years 2004, 2005, and 2006.

2. Provide the following information concerning the customers of South Kentucky:

a. The total number of customers and a breakdown of the total by customer class as of July 31, 2007.

b. The most currently available load factor, load duration curves, customer density per mile of distribution line, and other operating and system characteristics of South Kentucky.

c. The total sales to customers and sales by customer class for the 12 months ending July 31, 2007 and for calendar years 2004, 2005, and 2006.

3. If the proposed acquisition takes place, provide the anticipated load factor and customer density per mile of distribution line of the combined MEPB and South Kentucky system. Include all workpapers and assumptions used to determine these estimates.

4. Provide the following information concerning customer rates:

a. Provide the current rates being charged to MEPB customers.

b. Provide a schedule matching the current MEPB rate schedules with the corresponding tariff rates for South Kentucky.

5. Provide copies of any resolutions approved by the South Kentucky Board of Directors related to the proposed transaction.

6. Concerning the notice of the proposed transaction to the customers of MEPB:

a. To date, describe how the customers of MEPB have been notified of the proposed transaction.

b. Have any public meetings, discussion groups, or forums been held to present and explain the proposed transaction?

(1) If yes, provide the dates of each meeting and, if available, the attendance at each meeting and summaries of any comments made at each meeting.

(2) If no, explain in detail why such meetings have not been held.

(3) Are any public meetings, discussion groups, or forums planned to be held prior to the November 6, 2007 election? Explain the response.

7. Explain in detail why South Kentucky is seeking Commission approval of the transaction prior to the November 6, 2007 vote.

8. Concerning the membership of South Kentucky:

a. Has the membership of South Kentucky been informed of the proposed transaction? Explain the response.

b. Was the proposed transaction discussed at South Kentucky's 2007 annual meeting? Explain the response.

c. Has the acquisition of the MEPB assets been submitted to a vote of the membership of South Kentucky?

(1) If yes, provide the results of that vote and indicate how and when the vote was taken.

(2) If no, explain why the proposed transaction did not have to be approved by the membership of South Kentucky.

9. Refer to the Application, page 3. Concerning the purchase of the Monticello distribution substation by East Kentucky Power Cooperative, Inc. ("EKPC")

from South Kentucky, has a formal purchase contract or agreement been negotiated between EKPC and South Kentucky for the purchase of this substation?

- a. If yes, provide copies of the purchase contract or agreement.
- b. If no, indicate when South Kentucky expects the contract will be prepared or explain in detail why a purchase agreement would not be required.

10. Refer to the Application, page 4, where it is stated that EKPC will purchase either from South Kentucky or the Tennessee Valley Authority ("TVA") a 69 kV transmission line at the same price it would cost South Kentucky if the line were purchased from TVA.

- a. State whether South Kentucky or EKPC has contacted TVA regarding the possibility of either party purchasing this 69 kV transmission line and whether TVA is agreeable to selling the line.

- (1) If TVA is willing to sell the line, provide the selling price.

- (2) If TVA has not been contacted, explain why South Kentucky believes TVA would be willing to sell the line.

- b. Explain how the proposed transfer of assets from MEPB to South Kentucky would be affected if South Kentucky or EKPC were unable to purchase the TVA transmission line.

11. Refer to the Application, page 6.

- a. Provide the expected cost of operation for the distribution facilities to be constructed to interconnect the MEPB and South Kentucky systems.

- b. Explain in detail why South Kentucky is not seeking Commission approval of the financing for the proposed transaction, pursuant to KRS 278.300.

12. Refer to the Application, Exhibit A, page 1 of 2. The first reason given for South Kentucky purchasing the assets states that, due to the aging of the electric plant and MEPB not desiring to incur the substantial debt necessary to efficiently provide service to its customers, the sale of the fixed assets was in the customers' best interests.

a. Explain why MEPB would incur substantial debt to efficiently provide service if it did not transfer its assets.

b. Does South Kentucky anticipate incurring additional debt to efficiently provide service to the former MEPB customers? Explain the response in detail.

13. Refer to the Application, Exhibit E.

a. The second paragraph indicates that from the period when South Kentucky acquires ownership of the MEPB fixed assets until November 2008, all reporting, administrative, and accounting functions would be maintained as if MEPB still existed under separate ownership so as to comply with the TVA contract. If the closing occurs prior to December 31, 2007, does South Kentucky plan to reflect the asset transfer in the financial statements included in the 2007 annual report filed with the Commission? Explain the response.

b. The third paragraph states that the MEPB customers will not come under the full control of South Kentucky with full rights of membership until after November 2008.

(1) Define what is meant by "full rights of membership."

(2) Since the funding of the memberships in South Kentucky has been incorporated into the transaction and South Kentucky would be providing service once the transaction closes, explain in detail why the MEPB customers will not have full rights of membership until after November 2008.

c. Concerning the rates South Kentucky will be charging to the MEPB customers between the time the transaction closes and November 2008, explain in detail how South Kentucky proposes to handle these events within its existing tariffs. Include in this response whether South Kentucky believes it will be necessary to file a rate case to change the rates in November 2008.

14. Refer to the Application, Exhibit G, page 3 of 4.

a. Explain how debt issued in September and December 2007 (Notes IA362 and IA363) could have a current balance reported as of May 31, 2007.

b. Explain how it is possible to have interest paid in 2006 for debt issued in 2007 (Notes IA361 and IA362).

15. Refer to the Application, Exhibit I.

a. Provide the statement of operations for the 12 months ending July 31, 2007 and the balance sheet as of July 31, 2007.

b. Provide the effect the transaction would have on South Kentucky's financial statements for the first 2 years following the approval of the transfer. Include all workpapers and assumptions used to prepare the financial statements.

16. Refer to the Application, Exhibits K, L, and M. Exhibit K shows the total amount to be financed is \$4,400,000. In Exhibit L, it is stated that the proceeds from the sale of the distribution substation to EKPC, less the cost of interconnection facilities

anticipated to be \$1,149,000, will be used to offset the initial purchase price paid to MEPB. Exhibit M states the net cost of the purchase of the MEPB fixed assets to be \$4,686,000 less the \$1,200,000 gross proceeds from the distribution substation sale, or \$3,486,000.

a. Explain why the net amount from the sale of the distribution substation was not reflected in the determination of the amount to be financed shown on Exhibit K.

b. Explain why the net cost for the assets shown on Exhibit M includes the \$86,000 in memberships that are to be reimbursed by the city of Monticello, as stated in Exhibit K.

c. Based on the information provided in Exhibits K, L, and M, recalculate the amount to be financed and the estimated net cost of the purchase.

17. Refer to the Application, Exhibit M, page 1 of 2. Provide the current status of each contract listed.

18. Refer to the Application, Exhibit R, the Purchase and Sales Agreement ("Purchase Agreement").

a. Page 2, paragraph 2, of the Purchase Agreement states that the city of Monticello will pay South Kentucky the \$25 membership fee per number of customers served at the date of the sale. Exhibit K of the Application shows the total amount to be \$86,000. Provide the calculation of the \$86,000 and indicate whether this total is subject to change.

b. Page 3, paragraph 5, of the Purchase Agreement describes the mortgage for the purchase of the MEPB fixed assets. Does this financing arrangement

require the approval or consent of either the Rural Utilities Service ("RUS") or South Kentucky's supplement lender? Explain the response.

c. Page 6, paragraph 12, of the Purchase Agreement states South Kentucky intends to offer all employees of MEPB a position with the cooperative with wages at or above the same wages and benefits for similar jobs. Explain why any employees hired by South Kentucky from MEPB would be receiving higher wages or benefits for similar jobs.

d. Page 7, paragraph 14, of the Purchase Agreement describes the situation if the transaction cannot be consummated and closed. It provides that South Kentucky would provide wholesale electricity to MEPB and its customer base for a period of no less than 2 years from November 2008 and at a wholesale rate equal to the wholesale rate charged to South Kentucky.

(1) Explain in detail how South Kentucky, a distribution cooperative, can make wholesale electricity sales. Include citations to applicable statutes and South Kentucky's Articles of Incorporation and Bylaws.

(2) Explain in detail why a wholesale electricity transaction was not arranged with EKPC.

e. Page 8, paragraph 17 of the Purchase Agreement provides that the MEPB board members will serve as an advisory board to South Kentucky and the current superintendent of MEPB would be retained by South Kentucky in an advisory capacity for a minimum period of 2 years with compensation equal to current levels.

(1) Provide the total annual compensation currently paid to the MEPB board.

(2) Provide the total annual compensation currently paid to the superintendent.

(3) Describe in detail the nature and duties of the advisory functions to be provided by the MEPB board and its superintendent.

(4) Explain in detail why it is necessary for either the MEPB board or its superintendent to be retained in an advisory capacity.

(5) Explain why this arrangement is for a minimum of 2 years rather than limited to no more than 2 years.

f. Pages 8 and 9, paragraph 18, of the Purchase Agreement state that the MEPB customer deposit liability would transfer to South Kentucky. Provide the amount of this liability as of July 31, 2007, showing any accrued interest on the deposits separately.

g. Page 9, paragraph 19, of the Purchase Agreement discusses South Kentucky's commitment to community involvement in the Monticello area. Would this community involvement include the provision of services other than the sale of electricity to the city of Monticello at reduced costs or for free? Explain the response in detail.

19. Refer to the Purchase Agreement, Exhibit A. Provide a detailed plant schedule as of July 31, 2007, listing the plant by type of plant and including the following information for the MEPB assets to be purchased:

- a. The original cost of the plant.
- b. The accumulated depreciation for the plant.
- c. The date the plant was placed into service.

- d. The depreciation method utilized.
- e. The useful life and remaining life for the plant.

20. Refer to the Application, Exhibit S. Provide signed copies of the ordinance adopted by the City Council of the city of Monticello.

21. Refer to the Application, Exhibit T. Provide copies of any other correspondence to or from the RUS related to the proposed transaction.

22. Provide the following accounting entries for the books of South Kentucky. The entries should conform to the requirements of the RUS Uniform System of Accounts.

- a. The entries to be made to record the purchase of the MEPB fixed assets. Include all entries associated with the 30-year note and the payment of the memberships.

- b. The entries to be made to record the purchase and subsequent sale of the Monticello substation.

- c. The entries to be made to record the purchase and subsequent sale of the TVA 69 kV transmission line.

- d. Any other entries required to reflect the proposed transaction.

23. Indicate when South Kentucky plans to seek a change in its service territory to reflect the proposed transaction.

DATED: September 14, 2007

cc: Parties of Record


for Beth O'Donnell
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTH KENTUCKY RURAL)
ELECTRIC COOPERATIVE CORPORATION)
FOR APPROVAL TO PURCHASE THE FIXED) CASE NO. 2007-00374
ASSETS OF THE MONTICELLO ELECTRIC)
PLANT BOARD, MONTICELLO, KY)

O R D E R

On August 20, 2007, South Kentucky Rural Electric Cooperative Corporation ("South Kentucky") filed an application seeking approval to purchase the fixed assets of the Monticello Electric Plant Board. On September 13, 2007, the Commission established a procedural schedule in this case.

On its own motion, the Commission finds that, in light of South Kentucky's responses to Commission Staff's initial data requests, the procedural schedule established in our September 13, 2007 Order should be amended to allow additional information to be requested from South Kentucky.

Pursuant to KRS 278.020(6), the Commission further finds that good cause exists to extend the statutory deadline an additional 60 days. The original statutory deadline of October 19, 2007 should be continued until December 18, 2007. A revised procedural schedule is set forth in Appendix A, which is appended hereto and incorporated herein.

IT IS THEREFORE ORDERED that:

1. The procedural schedule set forth in Appendix A, which is appended hereto and incorporated herein, shall be followed and supersedes the schedule established in the Commission's September 13, 2007 Order.
2. The statutory time period in which a final decision must be issued in this case is extended an additional 60 days to December 18, 2007.
3. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

Done at Frankfort, Kentucky, this 4th day of October, 2007.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00374 DATED October 4, 2007

All supplemental requests for information to South Kentucky
shall be filed no later than 10/12/07

South Kentucky shall file responses to supplemental
requests for information no later than..... 10/26/07

All parties shall file comments, if any, no later than..... 11/15/07

Commission decision due no later than..... 12/18/07

8-24-07 South Ky. RECC primed for purchase of Monticello Electric Plant Board COMMONWEALTH JOURNAL

By BILL MARDIS Editor Emeritus

If voters in Monticello approve, South Kentucky RECC (SKRECC) will acquire Monticello Electric Plant Board and serve its 3,500 consumers in Monticello.

Allen Anderson, CEO of SKRECC, said the issue will be on the November 6 general election ballot. Anderson said both the board of the Monticello utility and Monticello City Council have unanimously approved the acquisition. Monticello Electric Plant Board is owned by the city of Monticello.

SKRECC currently serves Wayne County. The cooperative's service area completely surrounds the area served by Monticello Electric Plant Board. Anderson said SKRECC has about 9,000 customers in Wayne County.

Tennessee Valley Authority (TVA) supplies electricity to Monticello. SKRECC is one of 16 electric cooperatives served by East Kentucky Power Cooperative, based in Winchester. SKRECC currently has about 62,000 customers in 13 counties, including Pulaski and 10 other counties in Kentucky and two in Tennessee.

If SKRECC is successful in buying Monticello Electric Plant Board, TVA power now used in Monticello would be purchased at least through November 2008, Anderson said. Federal regulations would prevent SKRECC from buying more power from TVA than would be used by the city of Monticello.

Anderson emphasized that East Kentucky Power Cooperative has sufficient generating capacity to add Monticello's 3,500 consumers to its service area.

"The Monticello plant load is about 25 megawatts," Anderson said. "This is equivalent to four or five industrial loads (plants)."

East Kentucky Power Cooperative is beefing up its generating capacity. Two new generating facilities are being added. One unit at the Spurlock plant near Maysville is scheduled to go on line in 2009. Another generating unit is in the beginning stages at the Smith power plant at Trapp, Ky. During the current heat wave, East Kentucky Power is generating an average of 2,100 megawatts a day.

Anderson indicated that acquisition talks were initiated when Monticello Electric Plant Board sent out requests for proposals to buy power. The contract with TVA allows it pull out with a five-year notice. Anderson said the plant board gave notice to TVA in November 2003 that it wanted out of the contract.

According to Anderson, Monticello Electric Plant Board has some concerns about its electric supply. The system has only one substation and one transmission line coming in from TVA, he noted.

“They felt they were on an island by themselves,” Anderson observed.

“We have an office in Wayne County with a 12-member staff. About a half mile away, Monticello Electric Plant Board has an office with 12 staff members,” related Anderson.

“We were planning to put in a new substation in the area. When we got to talking, they needed some things and we needed some things,” Anderson continued. “Rather than reply to their request for proposals (for power), we told them we were interested in talking about acquisition,” he recalled.

Anderson said the acquisition has some advantages for SKRECC. He said SKRECC’s office in Wayne County is old and Monticello Electric Plant Board has a new office. He indicated that SKRECC, in case of acquisition, would occupy the newer Monticello office space at a savings of about \$2 million it would cost to build a new office complex. Also, he said SKRECC would consider selling the substation in Monticello to East Kentucky Power Cooperative to recover some of the cost of acquisition.

If the acquisition is consummated, SKRECC will pay the city of Monticello \$4,686,000. The amount would be in annual payments over a 30 year period.

Anderson said the city of Monticello currently does not get revenue from the electric plant board. He said the payments would mean extra revenue for the city, allowing it to do many things without raising taxes.

The dozen or so employees of the Monticello Electric Plant Board have been guaranteed an opportunity to work with SKRECC if the acquisition takes place, Anderson said. Some of the employees are eligible to retire, he noted.

“With 156 employees, (SKRECC) is at an all-time low,” Anderson said, adding: “We need them (Monticello Electric Plant Board workers).”

A public meeting on the issue is planned September 27 at Wayne County Park to explain the acquisition proposal and answer questions, Anderson said.

Monticello Mayor Kenneth Catron predicts a 70 to 75 percent approval by voters in the city.

“We’re like the top of a coffee cup,” said Catron, obviously referring to being surrounded by the SKRECC service area. “Our equipment is getting old ... it just makes good common sense to sell.”

Catron pointed out than only registered voters in the city who are users of power from Monticello Electric Plant Board are eligible to vote in the referendum. Some residents of the city are currently served by SKRECC and would not be eligible to vote.

August 6, 2007

Mr. Allen Anderson
President and CEO
South Kentucky RECC
925-929 N. Main Street
Somerset, KY 42503

Dear Allen:

I am in receipt of Jim Adkins' letter on behalf of South Kentucky Rural Electric Cooperative (South Kentucky) relating to its purchase of the City of Monticello's (Monticello) electric system. East Kentucky Power Cooperative (EKPC) believes that this transaction will make South Kentucky a stronger cooperative, and will ultimately do the same for EKPC. I would like to summarize at a high level EKPC's support for South Kentucky as they move forward.

Once, as expected, Monticello voters approve this transaction, EKPC is prepared to do the following:

1. EKPC will purchase the Monticello substation from South Kentucky for the price paid by South Kentucky (estimated to be \$1.2 million), subject to RUS and EKPC Board approval.
2. It is EKPC's understanding that South Kentucky will also purchase TVA's 69kV transmission line – EKPC will purchase the line from South Kentucky at the same price paid by South Kentucky, subject to EKPC's due diligence evaluation of the line's condition, and RUS and EKPC Board approval. EKPC believes that it is important for us to work with South Kentucky in drafting its letter offering to purchase the line from TVA.
3. Once Monticello's customers become South Kentucky members, and once the power supply contract between TVA and Monticello has expired, EKPC will provide power supply to South Kentucky for its new load at EKPC tariff rates, with no distinction in price from any other EKPC member system load.

In the unlikely event that Monticello is not acquired by South Kentucky, EKPC is prepared to do the following for up to two years from the time the power supply contract between Monticello and TVA expires.

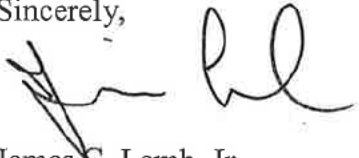
Mr. Allen Anderson
Page Two
August 6, 2007

4. EKPC is willing to make a wholesale sale to South Kentucky equal to Monticello's needs. While recognizing the potential regulatory involvement of various bodies, and subject to EKPC Board approval, it is EKPC's intent to price this sale to South Kentucky as the same rate described in number 3 above. EKPC believes that this will allow Monticello to experience the same wholesale price as South Kentucky, from EKPC's perspective.

EKPC will update its Board on this matter in August and September, and will make every effort to have necessary Board approvals in October. There is also a meeting scheduled on August 7 between EKPC and South Kentucky, the purpose of which is to develop the details involved in this complex transaction.

I would like to emphasize that EKPC intends to fully support South Kentucky as they proceed with the City of Monticello purchase. If you have questions or comments, please give me a call.

Sincerely,



James C. Lamb, Jr.
Senior Vice President, Power Supply

JCL:wk

c: Bob Marshall
David Smart

bc: Charlie Lile
Sherman Goodpaster
David Eames
John Twitchell
Stacy Barker
Rick Drury
Mary Jane Warner
Darrin Adams
Sally Witt

Charles Lile

From: Jim Lamb
Sent: Sunday, July 22, 2007 1:33 PM
To: Roger Cowden; Charles Lile; Sherman Goodpaster
Subject: FW: South Kentucky and Monticello



South Kentucky has
offered to ...

Roger, Charlie, Sherman -

since David is out of the office, I need your help on the attached.

-----Original Message-----

From: David Smart
Sent: Sunday, July 22, 2007 1:30 PM
To: Jim Lamb
Subject: Out of Office AutoReply: South Kentucky and Monticello

I will be out of the office from Monday, July 23, 2007. until Wednesday, August 1, 2007. If you need assistance, please contact Terri Combs at terri.combs@ekpc.coop. Otherwise, I will respond to your email when I return.

South Kentucky has offered to purchase the City of Monticello's municipal electric system. The offer has been approved by city officials, and is awaiting voter approval in November. While nobody knows how the voters will act, the general view is that the purchase will take place.

South Kentucky is purchasing a substation from Monticello and a 69 kV transmission line from TVA – they would like to sell both of them to EK.

Jim Adkins has been working with South Kentucky on this – about a month ago Jim sent EK a letter that had 4 questions. I have not yet responded to the letter, but am in process of doing so – each question is paraphrased below with Lamb's comments and a proposed answer to Jim.

1. What will EK pay South Kentucky for the substation?

South Kentucky has offered Monticello \$1.2 million. Rick Drury and his staff have looked at the site and the equipment, and can reasonably come up with a value of \$1.1 million. Based on Rick's work, I am comfortable with EK purchasing the substation for \$1.2 million.

2. Once South Kentucky purchases the transmission line from TVA, will EK purchase the line from South Kentucky at their cost?

Rick has had EK personnel check the line – based on their look, I am comfortable answering yes to this question. TVA says they will sell the line to South Kentucky for around \$317,000. There is a possible issue here – Tom Hayes is checking into any property issues relating to the line. While he hasn't found any serious problems yet, this work is ongoing. South Kentucky is fine with EK helping them draft their letter to TVA, which I believe is a necessity.

3. Once South Kentucky purchases the municipal, and once the municipal customers become South Kentucky members, will EK serve the ex-Monticello customers at tariff rates?

My answer to Jim will be yes. Once Monticello customers become South Kentucky members, EK will provide price its power to South Kentucky the same as other South Kentucky members.

4. In the event that Monticello voters do not approve the purchase, Monticello will be without a power supplier, as they have given notice to TVA. Should this happen, will EK make a wholesale sale to South Kentucky for the Monticello load, and at what price?

My answer to Jim will be that in this event (believed to be unlikely), EK will make a wholesale sale to South Kentucky, for them to re-sell to Monticello. EK will price this wholesale sale at South Kentucky's average all-in price to South Kentucky's tariff load.

Here is how I see this effort going forward –

- End of July – EK responds to Jim Adkins' letter
- August Bd Meeting – Lamb makes a short presentation on Monticello / South Kentucky / EK

Here are some things that are not clear –

- On 1 and 2 above, can EK borrow the money from RUS?
- South Kentucky is going to the PSC on all this, including EK's answers to 1-4 above. Should EK make a separate visit to the PSC, should EK tag along with South Kentucky, should EK wait for the PSC, or does EK not have to discuss any of this with the PSC?
- What type of EK Board resolution is needed on this?

Charles Lile

From: Charles Lile
Sent: Tuesday, January 23, 2007 9:46 AM
To: Sherman Goodpaster
Subject: FW: PSC letter

Charles Lile
EKPC Legal
859 745-9380
charles.lile@ekpc.coop

-----Original Message-----

From: Bob Marshall
Sent: Tuesday, January 23, 2007 8:54 AM
To: Charles Lile; David Eames; Dale Henley; John Twitchell; Jim Lamb
Cc: eaanderson@skrecc.com
Subject: FW: PSC letter

Talked to Allan and this was their initial step. Allan still agrees an informal conference is a good idea but wants to see how the PSC responds to the set of questions attached. Allan plans to keep us in the loop. Bob

From: Allen Anderson [mailto:eaanderson@skrecc.com]
Sent: Tuesday, January 23, 2007 8:42 AM
To: Bob Marshall
Subject: FW: PSC letter

2nd attempt

Allen Anderson

President & CEO
South Kentucky RECC
PO Box 910
Somerset, KY 42502
Phone: 606-678-4121 Extension 4123
Fax: 606-679-8279
Email: eaanderson@skrecc.com
Visit our Website at www.skrecc.com

From: Allen Anderson
Sent: Friday, January 19, 2007 4:42 PM
To: 'Bob Marshall'; 'Jim Lamb'
Cc: Management Team; Amy Acton
Subject: FW: PSC letter

Bob and Jim,

Here is the letter from our attorney to the PSC. This is how Anita Mitchell at the PSC advised our attorney to start this process I will keep you informed of the answers and we will want you to be a party of any future discussions

1/23/2007

with the PSC.

Thanks,

Allen Anderson

President & CEO
South Kentucky RECC
PO Box 910
Somerset, KY 42502
Phone: 606-678-4121 Extension 4123
Fax: 606-679-8279
Email: eaanderson@skrecc.com
Visit our Website at www.skrecc.com

From: Darrell L. Saunders [<mailto:dls@darrellsaunders.com>]
Sent: Friday, January 19, 2007 4:33 PM
To: Allen Anderson
Subject: PSC letter

Darrell L. Saunders, PSC
700 Master Street
P.O. Box 1324
Corbin, KY 40701
(606) 523-1370 - Phone
(606) 523-1372 - Fax

DARRELL L. SAUNDERS, P.S.C.

ATTORNEY AT LAW
700 MASTER STREET
P.O. BOX 1324
CORBIN, KENTUCKY 40702
PHONE (606) 523-1370
FAX (606) 523-1372

January 17, 2007

Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

RE: South Kentucky Rural Electric Cooperative
Corporation

Dear Sir/Madam:

I represent South Kentucky Rural Electric Cooperative Corporation (South Kentucky) and send this letter for advisory opinions on two issues which may affect South Kentucky in the near future.

South Kentucky hopes to acquire the assets of the Monticello Electric Plant Board which was organized pursuant to the Kentucky TVA Act, KRS 96.550 to 96.900. The sale must be submitted for a vote at the November, 2007 general election. The Plant Board has terminated its power contract with TVA and desires assurances from South Kentucky that it will supply power to the Plant Board through 2010 even if the sale is rejected by the voters. This requirement is necessitated by the 10 month delay until the matter can be submitted to the voters. If the sale is not successful, the Plant Board believes it will have insufficient time to secure a long term power contract to take effect in 2008 when it will not start looking for one until November, 2007.

South Kentucky seeks the P.S.C.'s opinion regarding the following questions:

1. Does South Kentucky require P.S.C. approval to acquire the assets of the Monticello Plant Board and operate the system purchased as its own?
2. Does South Kentucky require P.S.C. approval to supply power to the Monticello Electric Plant Board through its power supplier, East Kentucky Power Cooperative, without a purchase of its assets in the event the voters do not approve the sale?
3. If the answer to either or both of the above questions is yes, how would you suggest we proceed to acquire P.S.C. approval?

Page 2

Thank you for your assistance. If I may provide any further information, please contact me.

Yours truly,

A handwritten signature in black ink, appearing to read "Darrell L. Saunders". The signature is written in a cursive style with a large, stylized initial "D".

Darrell L. Saunders

DLS: mw

cc: Allen Anderson

Charles Lile

From: Sherman Goodpaster
Sent: Wednesday, January 17, 2007 8:32 AM
To: Linda Neavill; Roger Cowden; Charles Lile
Cc: Dale Henley
Subject: RE: memo-skrecc.doc - attached legal issues relating to So. Ky. RECC and City of Monticello. Please review the attachment and let me know if you have any suggestions or additions. Thanks.

Dale,

I think you've captured the issues well, and I also agree with Charlie's comments. It could be argued that any new increment of generation, or transmission for that matter, that is needed to serve the wholesale load in scenario 2, whether the load is SKRECC or Monticello itself, is at least partially a merchant plant or line. That would create a whole new set of issues, not the least of which would be compliance with the merchant siting act and other PSC issues.

Also, in scenario 2 we need to think how we would price the power and firm transmission to either SKRECC or Monticello. Would we use embedded pricing and let all 16 members pick up the tab, or use incremental pricing as we did with Warren?

Please Note That My Cell Phone Number Has Changed to 859-227-3600

Sherman Goodpaster III
Senior Corporate Counsel
East Kentucky Power Cooperative
4775 Lexington Road
Winchester, Ky 40391
859-745-9375(Voice)
859-744-6008(Fax)
859-227-3600(Cell)
sherman.goodpaster@ekpc.coop

-----Original Message-----

From: Linda Neavill
Sent: Monday, January 15, 2007 2:48 PM
To: Sherman Goodpaster; Roger Cowden; Charles Lile
Cc: Dale Henley
Subject: memo-skrecc.doc - attached legal issues relating to So. Ky. RECC and City of Monticello. Please review the attachment and let me know if you have any suggestions or additions. Thanks.

Legal Department

Memo

Confidential

To: File
From: Dale Henley
Date: 1/15/2007
Re: Legal Issues-SKRECC and City of Monticello

-
1. Scenario One - Residents vote to sell the municipal system to SKRECC, and, thereafter, become individual members of SKRECC.
 - RUS/PSC Approvals and RUS financing issues^[1]
 - Any needed transmission by EKPC should not be a problem with prior RUS/PSC approval of the purchase/sale
 - Additional load becomes part of SKRECC's system with power supply through EKPC pursuant to the WPC
 2. Scenario Two - Residents vote "no", and SKRECC becomes municipal's wholesaler of electrical power.
 - RUS/PSC Approvals and RUS financing^[2]
 - Any needed transmission needed by EKPC should not be a problem with prior RUS/PSC approval of the power sale arrangement.
 - Wholesale power supplied by SKRECC to municipal is an "off system sale", and no obligation to supply by EKPC under the WPC.
 - Source of the power supply (EKPC's generation justified for members' requirements, and not for off-system sales).
 - Special contracts and/or tariffs between EKPC and SKRECC; and between SKRECC and the municipal required as to the term, pricing and quantity.
 3. Intangibles
 - Precedent for use by other 15 members going forward.
 - Attitude by other 15 members on doing business with municipals (idea rejected two years ago)
 - Anti-trust issues should present no problem under concept of *single enterprise*, but could be an issue.
 - SKRECC could become FERC jurisdictional for some limited purposes, particularly if it owns transmission (more analysis needed, but is an issue for SKRECC, and not really for EKPC).

(H:legal/dhltrs-memo-skrecc)

^[1] RE Act beneficiary issues resolved, i.e. rural vs. urban, as well as Kentucky territorial law issues, if any.

^[2] Ibid.

Charles Lile

From: Dale Henley
Sent: Tuesday, January 16, 2007 10:44 AM
To: Charles Lile
Subject: RE: memo-skrecc.doc - attached legal issues relating to So. Ky. RECC and City of Monticello.
 Please review the attachment and let me know if you have any suggestions or additions. Thanks.

Don't disagree but you may remember that EK took the position a few years back that it would not interfere with these loads if the member wanted the opportunity. This raised the anti-trust issue, i.e. EK agreeing to back-off in preference for its members whose rates could be higher. Appreciate your concerns, especially timing issues. Jim Lamb wants a board resolution next month which I will try to head off until such time as all of this becomes clearer.

-----Original Message-----

From: Charles Lile
Sent: Tuesday, January 16, 2007 10:33 AM
To: Dale Henley
Cc: Linda Neavill; Sherman Goodpaster; Roger Cowden
Subject: RE: memo-skrecc.doc - attached legal issues relating to So. Ky. RECC and City of Monticello.
 Please review the attachment and let me know if you have any suggestions or additions. Thanks.

Dale,

Under the "intangibles" for scenario 2, you may want to address the issue of the role of SKRECC in that scenario. If the only reason that power is being supplied to Monticello through EK is to replace TVA, after the referendum to sell the system to SKRECC fails, there would be no clear reason for SKRECC to be a party to the strictly wholesale power supply transaction. That would eliminate contracts or tariffs between EK and SKRECC, and between SKRECC and Monticello, although an RUS-approved contract between EK and Monticello would almost certainly be needed. This raises the question of what current commitment does Monticello expect from EK about the contingent future power supply, concerning term, price, transmission, other services, etc. It could take well beyond November to work out the terms of such a power supply arrangement and to get the necessary approvals. Alternatively, is SKRECC planning to make the power supply guarantee to Monticello itself, with the risk of finding other sources of power, if EK does not agree to commit or cannot obtain needed approvals?

Another intangible factor in scenario 2 is the potential for complications in future EKPC rate or generation certificate cases from the use of system-justified resources for an off-system sale.

Charles Lile
 EKPC Legal
 859 745-9380
 charles.lile@ekpc.coop

-----Original Message-----

From: Linda Neavill
Sent: Monday, January 15, 2007 2:48 PM
To: Sherman Goodpaster; Roger Cowden; Charles Lile
Cc: Dale Henley
Subject: memo-skrecc.doc - attached legal issues relating to So. Ky. RECC and City of Monticello. Please review the attachment and let me know if you have any suggestions or additions. Thanks.

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 - Source of the power supply (EKPC's generation justified for members' requirements, and not for off-system sales).
 - Special contracts and/or tariffs between EKPC and SKRECC; and between SKRECC and the municipal required as to the term, pricing and quantity.
 3. Intangibles
 - Precedent for use by other 15 members going forward.
 - Attitude by other 15 members on doing business with municipals (idea rejected two years ago)
 - Anti-trust issues should present no problem under concept of *single*

enterprise, but could be an issue.

- SKRECC could become FERC jurisdictional for some limited purposes, particularly if it owns transmission (more analysis needed, but is an issue for SKRECC, and not really for EKPC).

(H:legal/dhltrs-memo-skrecc)

^[1] RE Act beneficiary issues resolved, i.e. rural vs. urban, as well as Kentucky territorial law issues, if any.

^[2] *ibid.*

Charles Lile

From: Dale Henley
Sent: Wednesday, January 10, 2007 12:10 PM
To: Sherman Goodpaster; Charles Lile
Subject: FW: Monticello Plant Board

-----Original Message-----

From: Jim Lamb
Sent: Wednesday, January 10, 2007 11:03 AM
To: Bob Marshall; Claudia Embs
Cc: David Eames; Dale Henley; John Twitchell
Subject: RE: Monticello Plant Board

I think we need to let Allen know what we intend to do and talk to him after the meeting - I would not have him in this meeting.

-----Original Message-----

From: Bob Marshall
Sent: Wednesday, January 10, 2007 10:27 AM
To: Jim Lamb; Claudia Embs
Cc: David Eames; Dale Henley; John Twitchell
Subject: RE: Monticello Plant Board

Lets set up. Should we not include Allan Anderson in these discussions. Bob

From: Jim Lamb
Sent: Wednesday, January 10, 2007 9:41 AM
To: Claudia Embs
Cc: Bob Marshall; David Eames; Dale Henley; John Twitchell
Subject: Monticello Plant Board

Claudia,

Please set up a one hour meeting with Bob, Dave, Dale, John, and myself to discuss South Kentucky and their acquisiton of the Monticello Plant Board. I would like to discuss the following concept.

At our February Board meeting, EKPC should pass a resolution supporting South Kentucky's effort in this regard, and, should voters not approve the measure in November, EKPC should express its willingness to sell a block of power at wholesale to South Kentucky, who would then resell it to the city.

I would like to discuss the issue, but also get into the details of such a resolution. I would like to have this meeting sometime between now and next Friday (19th), so as to have time to move ahead with Board items.

If you have comments or questions, please let me know. Thanks.

Charles Lile

From: Jim Lamb
Sent: Tuesday, August 29, 2006 7:33 AM
To: Dale Henley; Charles Lile
Cc: Roy Palk; Sally Witt; Darrin Adams; David Eames; Bill Bosta
Subject: South Kentucky and Monticello Municipal

Dale and Charlie,

Allen Anderson called me last week with several questions. They are responding to Monticello's RFP for power supply. Some of the questions I was able to answer, but several I was not.

Attached is a summary of some of the key questions that Allen has - as you will see they have to do with Monticello's existing contract with TVA.

Please review the attached and give me your thoughts about what to tell Allen. Please copy Darrin and Sally as I will be out of the office until Tuesday Sept 5.

Thank you very much. If you have questions or comments, please let me, Darrin, or Sally know.



The City of
Monticello municip...

*Document to RUS
that load must be
served by another
supplier (SIC may
be able to show this
only through 2008)*

The City of Monticello municipal utility has a contract to purchase TVA power – they gave notice to TVA in 2003, but with the 5 year window, it will be 2008 until Monticello is no longer purchasing from TVA. Monticello has issued an RFP that is very broad based.

South Kentucky plans to respond to the RFP. They intend to make a bid not just to step into TVA's shoes as Monticello's power supplier, South Kentucky intends to make a bid for all the assets of the municipal. South Kentucky has in mind a friendly takeover of Monticello.

South Kentucky has several consultants in the field doing asset valuation. Jim Adkins is also advising them, most likely on issues regarding the Commission and EK.

Should South Kentucky be successful, there will be some interesting issues.

South Kentucky will own Monticello's distribution substation.

- They have indicated that they don't particularly want to own the muni's substation, and have said they would like for EKPC to buy it.
- If EK doesn't buy the substation, South Kentucky has said that they would like to contract with EKPC for O&M, just as EK does with the Dravo substation.

South Kentucky will have taken over a company who is still under a power supply contract with TVA.

- Although Monticello is under contract until 2008, the muni and South Kentucky will want to get together sooner than that. South Kentucky, therefore, is faced with Monticello's contract with TVA. Is that a problem under the EK/South Kentucky power supply arrangement?
- South Kentucky sees several options here – they have talked to me numerous times about their right to take 5% of power supply from someone else. Is the 5% concept a solution for South Kentucky? That is, can they opt out of using EK for Monticello's power supply, at least until the TVA contract with Monticello expires?
- South Kentucky may also be interested in contracting with KU for Monticello's power supply once the TVA contract expires. South Kentucky may also be interested in contracting with KU for the max 5% of power supply, fyi.

South Kentucky would like to have our answers to all this on Tuesday September 5. Darrin Adams and Sally Witt are working on this for Planning.

Charles Lile

Subject: Updated: Telephone Conversation with Chris Perry
Location: Chairman's Conference Room
Start: Mon 4/30/2007 4:00 PM
End: Mon 4/30/2007 5:00 PM
Show Time As: Tentative
Recurrence: (none)
Meeting Status: Not yet responded
Required Attendees: Jim Lamb; Gary Crawford; John Twitchell; David Smart; Charles Lile; Bill Bosta; Bill Prather; Julie Tucker; David Eames; \$Chairmans Conference Room

*Longtime customer on
standard rate.
Perry, new FM CEO, does
not know if this is possible.
Conflict w/ EK policy, absent
Board approval; likely to
be considered rate discrimination*

NOTE - New Time (Changed from 1 pm to 4 pm).

Jim Lamb asked me to schedule a meeting with you all to review the below write up.

The meeting has been scheduled for Monday, 4/30/07, at 4 pm, in Chairman's Conference Room. The meeting should take no longer than an hour.

Please mark your calendars and plan to attend.

Thanks,
Wanda

April 13, 2007 Telephone Conversation With Chris Perry

Chris related to me that a large industrial customer (Guardian) had been talking to him about how high Fleming-Mason's price was.

1. Guardian asked Chris whether Fleming-Mason could buy power from anyone other than EK. Chris told Guardian no (but through partial requirements Fleming-Mason can in fact buy from someone else).
2. Guardian then asked whether EKPC would wheel power through from a third party, for Guardian. Chris said that he didn't know. I'm pretty sure that EK doesn't have to do it, but what about if EK was willing to?

I am going to set up a meeting to discuss the above 2 points, in preparation for a meeting with Fleming-Mason and Guardian in early May.

AMENDMENT NO. 3 TO WHOLESALE POWER CONTRACT
BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND
BIG SANDY RURAL ELECTRIC COOPERATIVE CORPORATION

This Agreement dated the 17th day of OCTOBER, 2003, amends the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. (hereinafter "Seller") and Big Sandy Rural Electric Cooperative Corporation (hereinafter "Member") as follows:

I. Numerical Section 1 of the Wholesale Power Contract shall be amended and restated to read in its entirety as follows:

1. General - The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which shall be required to serve the Member's load, including all electric power and energy required for the operation of the Member's system. Notwithstanding the foregoing, the Member shall have the option, from time to time, with notice to the Seller, to receive electric power and energy, from persons other than the Seller, or from facilities owned or leased by the Member, provided that the aggregate amount of all members' elections (measured in megawatts in 15-minute intervals) so obtained under this paragraph shall not exceed five percent (5%) of the rolling average of Seller's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member from time to time, as provided herein and further provided that no Member shall receive more than fifteen percent (15%) of the rolling average of its coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the 3 twelve

month periods immediately preceding any election by the Member from time to time, as provided herein.

For any election made or cancelled under this Section, the following provisions shall apply:

a. During any calendar year, the Member may make or cancel any such election or elections by giving at least 90 days' notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or less, in the annual aggregate.

b. During any calendar year, the Member may make or cancel any such election or elections by giving at least 18 months or greater notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or more, in the annual aggregate

Upon the effective date of the Member's cancellation of any such election under this Agreement, the load or loads shall be governed by the all requirements obligations of the Seller and the Member in this Section, and notice of same shall be provided to the Rural Utilities Service ("RUS") by the member. Such loads which are transferred to Seller's all-requirements obligations shall not thereafter be switched by Member to a different power supplier.

c. Should any such election by Member involve the acquisition of new service territory currently served by another power supplier or municipal utility, Member shall provide evidence to Seller and RUS in the new Load Purchase Agreement that the acquired territory must be served by the current power supplier as a condition of the acquisition of the new load.

Seller will provide transmission, substation, and ancillary services without

discrimination or adverse distinction with regard to rates, terms of service or availability of such service as between power supplies under paragraphs above and Member will pay charges therefore to Seller. Seller also agrees to allow, at Member's sole cost and expense, such additional interconnection as may be reasonably required to provide such capacity and energy as contemplated in the above paragraphs.

Member will be solely responsible for all additional cost associated with the exercise of elections under the above paragraphs including but not limited to administrative, scheduling, transmission tariff and any penalties, charges and costs, imposed by the Midwest Independent System Operator ("MISO") or other authorities.

II. Section 10 of the Wholesale Power Contract shall be restated as Section 11 and new Section 10 and Section 11 shall read in their entirety as follows:

10. Retail Competition - Seller and its subsidiaries, shall not, during the term of this contract, without the consent of the Member, (i) sell or offer to sell electric power or energy at retail within the Member's assigned or expanded geographic area, if any, established by applicable laws or regulations or (ii) provide or offer to provide retail electric service to any person which is a customer of the Member.

11. Term - This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2041, and thereafter until terminated by either party's giving to the other not less than six months' written notice of its intention to terminate. Subject to the provisions of Section 1 hereof, service hereunder and the obligation of the Member to pay therefore shall commence upon completion of the facilities necessary to provide service.

Executed the day and year first above mentioned.

EAST KENTUCKY POWER
COOPERATIVE, INC.

BY: *Dino Toland*

CHAIRMAN OF THE BOARD
ITS: _____

Sam Lenn
ATTEST, SECRETARY

Big Sandy Rural Electric
Cooperative Corporation

BY: *John E. Shepherd*

ITS: Chairman of the Board

Joe Harris
ATTEST, SECRETARY

(H:Legal/misc/amend-3-wpc)

EAST KENTUCKY POWER COOPERATIVE

Policy No. 305

March 9, 2004

ALLOCATION PROCEDURES FOR NON-EKPC-SOURCED
POWER ACQUISITIONS UNDER WHOLESALE POWER
CONTRACT AMENDMENT NUMBER 3

I. BACKGROUND

Amendment Number 3 to the Wholesale Power Contract between East Kentucky Power Cooperative ("EKPC") and its member systems allows each member system executing the Amendment to purchase or otherwise acquire power and energy from non-EKPC sources up to a maximum of 15% of the member system's 3-year rolling average peak load (the "15% Option"), provided that the total of all such non-EKPC acquisitions by all member systems does not exceed 5% of EKPC's 3-year rolling average peak load (the "5% Cap").

II. OBJECTIVE

The objective of this Board Policy is to provide a reasonable mechanism to allocate the 5% Cap among the member systems so that those member systems with specific, identifiable projects that would be facilitated by the use of the 15% Option can proceed in a timely manner.

III. CONTENT

- A. An Allocation Pool is hereby created which will be made up of the combined total of the unused portions of each member system's load ratio share of the 5% Cap, as hereinafter set out.
- B. An Allocation Committee is hereby created as hereinafter set out which will administer the allocation of the unused portions of the member systems' load ratio share of the 5% Cap in the Allocation Pool to requesting eligible member systems.
- C. (1) As soon as is reasonably possible, but no later than 90 days after either the adoption of this Board Policy or the execution of Amendment Number 3 of the Wholesale Power Contract, whichever is later, each member system shall submit to the Allocation Committee a detailed, written plan of its intended use of its 15% Option (the "Plan"). Each Plan shall include the following:

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- a) Whether or not the member system intends to use all or any portion of its load ratio share of the 5% Cap within 6 months of the date of submittal of the Plan;
 - b) How much of its load ratio share of the 5% Cap the member system intends to use;
 - c) A detailed description of the specific use to which it will be put;
 - d) The anticipated time frame within which the use will occur;
 - e) Any contracts or other agreements executed with respect to such use, and if none, the status of negotiations for such contracts or agreements and the anticipated date of execution thereof; and
 - f) Any other information that may be requested by the Allocation Committee.
- (2) A member system may immediately proceed to utilize that portion of its load ratio share of the 5% cap identified in its Plan.
 - (3) If a member system's Plan reveals that the member system does not intend to use any or all of its load ratio share of the 5% Cap, then the unused portion will be placed in the Allocation Pool.
 - (4) If, within 6 months from the submittal of its Plan, a member system does not use the portion of its load ratio share of the 5% Cap as stated in the Plan, or, if reasonable progress, in the determination of the Allocation Committee, has not been made by the member system toward such use, then that portion of the 5% Cap will be placed in the Allocation Pool.
 - (5) The Allocation Committee may require periodic progress reports with respect to such use at intervals of the Committee's determination.
- D. (1) At any time after submittal of its Plan, a member system who desires an initial allocation or an allocation of more than its load ratio share of the 5% Cap, shall submit a written request to the Allocation Committee, which request shall contain the same type of information as required by Paragraphs III(C)(1)(a-f) hereof.

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- (2) The Committee shall determine whether to grant such a request by majority vote.
 - (3) If, within 6 months from the granting of any such request by the Committee, a member system has not used the allocation, or if reasonable progress, in the determination of the Committee, has not been made toward such use, then the allocation shall be returned to the Allocation Pool.
- E. Any new member of EKPC admitted by the EKPC Board of Directors ("Board") shall have the same rights as existing members with respect to the 15% Option and 5% Cap upon execution by the new member of the Wholesale Power Contract including Amendment Number 3. The new member shall submit a Plan within 90 days of its execution of the Wholesale Power Contract.
- F. The use of 15% Option shall be limited to the following:
- 1) Service of new load acquired by a member system and which was not part of the member's traditionally recognized service territory as certified by the Kentucky Public Service Commission pursuant to KRS 278.017.
 - 2) Distributed Generation projects owned by a member system.
 - 3) Other uses as established by the Board.
- G. A member may exceed the 15% Option only upon approval of the Board and RUS. Any request by a member system to so exceed its 15% Option shall be made in writing to the Allocation Committee and shall include all relevant information and justifications for such request. The Committee shall have the authority to request any additional information or documentation it feels is necessary or advisable. The Committee shall review and consider the request and make a recommendation to the full Board for action.
- H. Any determination or decision of the Allocation Committee may be reviewed by the Board at the request and upon the motion of any director and the Board may affirm, overturn or modify such determination or decision in its discretion.

IV. ORGANIZATIONAL RELATIONSHIPS

- A. The Allocation Committee shall report directly to the Board.
- B. The Allocation Committee shall have 5 members, 3 of which shall be managers, presidents or CEO's of member systems, 1 of which shall be a regular director of the Board, and 1 of which shall be an employee or other representative of EKPC. The members shall be appointed by the Chairman of the Board with the advice and consent of the other officers of the Board and in consultation with the President and CEO in accordance with Board Policy 105 and shall serve at the pleasure of the Board.
- C. The Committee is a continuing one, except for the EKPC representative, and the term of each member shall run for one year, coincident with the term of the Chairman of the Board, or until his successor is appointed. Appointments of committee members shall be staggered so that no more than two members leave the Committee each year. No member shall serve more than 4 consecutive years except that the term of the EKPC representative shall be indefinite.
- D. The Committee shall annually elect a Chairman, Vice-Chairman and Secretary. Minutes of each meeting shall be kept. The Chairmen of other Board Committees or any Board officer shall not be Chairman of the Allocation Committee.
- E. Meetings of the Committee shall be held at the call of the Committee Chairman, the Chairman of the Board, or at the call of three members of the Committee when there are items or other issues for consideration by the Committee. The time, location and agenda of the meeting shall be set in the notice.

278.170 Discrimination as to rates or service -- Free or reduced rate services.

- (1) No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.
- (2) Any utility may grant free or reduced rate service to its officers, agents, or employees, and may exchange free or reduced rate service with other utilities for the benefit of the officers, agents, and employees of both utilities. Any utility may grant free or reduced rate service to the United States, to charitable and eleemosynary institutions, and to persons engaged in charitable and eleemosynary work, and may grant free or reduced rate service for the purpose of providing relief in case of flood, epidemic, pestilence, or other calamity. The terms "officers" and "employees," as used in this subsection, include furloughed, pensioned, and superannuated officers and employees, and persons who have become disabled or infirm in the service of the utility. Notice must be given to the commission and its agreement obtained for such reduced rate service except in case of an emergency, in which case the commission shall be notified at least five (5) days after the service is rendered.
- (3) Upon obtaining commission approval of a tariff setting forth terms and conditions of service the commission deems necessary, a utility as defined in KRS 278.010(3)(d) may grant free or reduced rate service for the purpose of fighting fires or training firefighters to any city, county, urban-county, charter county, fire protection district, or volunteer fire protection district. Any tariff under this section shall require the water user to maintain estimates of the amount of water used for fire protection and training, and to report this water usage to the utility on a regular basis.
- (4) The commission may determine any question of fact arising under this section.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 141, sec. 2, effective July 15, 1996. -- Amended 1982 Ky. Acts ch. 82, sec. 21, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 23, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 11, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-32.

6/4/04

EAST KENTUCKY POWER COOPERATIVE, INC.

BYLAWS

ARTICLE I

MEMBERS AND MEMBERSHIP

Section 1.01. Requirements for Membership. Any natural person, firm, corporation or body politic so authorized by KRS 279.090 shall be eligible for membership in the Corporation by:

- (a) executing a written application for membership therein;
- (b) paying a membership fee as hereinafter specified;
- (c) agreeing to comply with and be bound by the Articles of Incorporation of the Cooperative and these Bylaws and any amendments thereto and such rules and regulations as may from time to time be adopted by the Board of Directors;
- (d) agreeing to use electric energy furnished by the Cooperative when such electric energy shall be available through its facilities;

provided, however, that no such person, firm, corporation or body politic shall become a member of this Cooperative unless and until he has been accepted for membership by the Board of Directors or by the members of the Cooperative. At each meeting of the members, all applications received more than ninety (90) days prior to such meeting and which have not been accepted by the Board of Directors shall be submitted by the Board of Directors to such meeting of the members, and subject to compliance by the applicant with the conditions set forth in subdivisions (a), (b), (c) and (d) of this section, such application for membership may be accepted by a vote of the members at such meeting.

Section 1.02. Membership Fee. The membership fee shall be One Hundred Dollars (\$100.00).

Section 1.03. Transfer of Membership. Membership in the Cooperative and certificates representing such membership shall not be transferred, except that membership may be vested in a corporate successor to a member corporation provided the successor is eligible to membership and pays such membership fee, if any, as shall be determined by resolution of the Board of Directors. Upon cessation of existence, expulsion or withdrawal of a member the membership of such member shall terminate, and the certificate of membership of such member shall be surrendered forthwith to the Cooperative.

Section 1.04. Termination of Membership. The Board of Directors of the Cooperative may, by the affirmative vote of not less than two-thirds (2/3) of the regular directors, either voting themselves or being represented by alternate directors acting in a regular director's absence, expel any member who shall have violated or refused to comply with any of the provisions of the Articles of Incorporation or Bylaws of the Cooperative or any policies, rules or regulations of the board of Directors. The Board of Directors may at any regular or special meeting thereof, determine that any member it finds has ceased to have met the membership requirements as set forth in Chapter 279 of the Kentucky Revised Statutes, has withdrawn from membership in the cooperative. Any member so expelled or determined to have withdrawn from membership may reapply pursuant to Section 1.01 and be reinstated as a member by a vote of the members at any annual or special meeting of the members. The action of the members with respect to any such reinstatement shall be final.

Section 1.05. Effect of Termination. Termination of membership in any manner shall not release the member from the obligations or liabilities of such member to the Cooperative.

Section 1.06. Purchase of Electric Energy. Each member shall purchase electric energy from the Cooperative and shall pay therefor monthly at rates which shall from time to time be fixed by the Board of Directors. It is expressly understood that amounts paid for electric energy in excess of the cost of service are furnished by members as capital and each member shall be credited with the capital so furnished as provided as these bylaws. Each member shall pay all amounts owed by it to the Cooperative as and when the same shall become due and payable.

Section 1.07. Refund of Membership Fee. In case of withdrawal or termination of membership in any manner, the Cooperative shall repay to the member the amount of the membership fee paid in cash by him, provided, however, that the Cooperative shall deduct from the amount of the membership fee the amount of any debts or obligations owing from the member to the Cooperative.

ARTICLE II

RIGHTS AND LIABILITIES OF MEMBERS

Section 2.01. Property Interest of Members. The assets of the Cooperative in the process of dissolution shall be applied and distributed as follows:

- (1) All liabilities and obligations of the Cooperative shall be paid, satisfied and discharged, or adequate provision shall be made therefore;
- (2) Assets held by the Cooperative upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements; and

APPENDIX

INTERPRETATION AND ENFORCEMENT OF RUS ALL-REQUIREMENTS WHOLESALE POWER CONTRACTS

by Barrett K. Hawks
and
Dorothy B. Franzoni©

Introduction

Regulatory incentives and technological advances have increased the number and type of generation facilities that are capable of producing electricity at costs below the average embedded costs of most G&Ts, while competitive pressures have led some distribution cooperatives to want to utilize such generation in favor of that provided by their G&T supplier. These distribution cooperatives and their counsel have put forth a number of misdirected arguments in an attempt to support the proposition that distribution cooperatives may use power supply sources other than their G&T in a variety of circumstances not expressly provided for in their RUS wholesale power contracts. We have encountered and analyzed these arguments both in our representation of G&T clients and our involvement in industry activities. For a number of fundamental reasons, explained below, none of the arguments we have encountered has a solid legal foundation. Consequently, we thought it might be useful to advancing the dialogue on these issues to summarize our research and analysis.

In doing so, we do not mean to suggest that distribution cooperatives should forever be wedded to their G&T supplier(s). Rather, we mean to demonstrate the all-encompassing nature of the RUS form of wholesale power contract, and, hopefully, to advance the dialogue within the industry beyond fruitless consideration of ways to thwart the existing contract to a point of consideration of what amendments ought to be considered. If distribution cooperatives engage in a practice of ad hoc, uncoordinated efforts to take advantage of less expensive power supply sources, in the end they will weaken, rather than strengthen, the competitive position of all cooperatives in the industry. On the other hand, recognition of responsibility for costs incurred in reliance on the existing form of contract and consideration of how best to deal with the future is likely to produce outcomes which strengthen the industry.

**Four Fundamental Reasons that Ad Hoc, Uncoordinated
Departures from Existing RUS All-Requirements Arrangements
Constitute a Breach of Contract**

1. **The G&T's right to be the distribution cooperative's *exclusive* supplier provides essential consideration for the contract.**

Both at common law and under the Uniform Commercial Code, a requirements contract is simply an agreement by the buyer to buy his good faith requirements of goods or other things exclusively from the seller. E.g., Stacks v. F & S Petroleum Co., 6 Ark. App. 327, 330, 641 S.W.2d 726, 727 (1982). The agreement of the buyer to buy exclusively from the seller is an essential element of the contract because it provides the necessary quid pro quo for the seller's obligation to invest in plant and raw materials sufficient to meet the buyer's requirements. Billings Cottonseed, Inc. v. Albany Oil Mill, Inc., 173 Ga. App. 825, 827, 328 S.E.2d 426, 429-30 (1985). "Absent such a commitment, the requirements contract fails for [lack] of consideration." Mid-South Packers, Inc. v. Shoney's, Inc., 761 F.2d 1117, 1121 (5th Cir. 1985).

Where an agreement gives the buyer the discretion to determine how and when it may purchase from the seller and allows the buyer to purchase from a source other than the seller, the agreement is a "one-way street" under which the seller must be ready to deliver but the purchaser is not obligated to buy. Billings Cottonseed, 173 Ga. App. at 827, 328 S.E.2d at 429. Thus, the courts have repeatedly held that "requirements" are more than the subjective needs or wants of the purchaser. Empire Gas Corp. v. American Bakeries Co., 840 F.2d 1333, 1339 (7th Cir. 1988); see also Tornello v. United States, 681 F.2d 756, 769 (Ct. Cl. 1982) (stating that a promise to buy such quantity of goods "as may be desired" or as the buyer "may want" is no consideration); Texas Co. v. Pensacola Maritime Corp., 279 F. 19, 23 (5th Cir. 1922) (holding that an all-requirements undertaking is "not a mere undertaking to buy what plaintiff might desire").

2. **The requirements that are the subject of the typical RUS wholesale power contract are expressly measured by the aggregate power and energy demands of the distribution cooperative's customers.**

The typical RUS wholesale power contract provides that the member shall purchase from the G&T "all electric power and energy which the member shall require for the operation of the member's system." (emphasis added.) The distribution cooperative's system exists and operates to meet the aggregate power demands of its

customers. Thus, when analyzing what requirements need to be met exclusively through purchases from the G&T or what requirements might be subject to "good faith variations," one must look to the aggregate power demands of the customers of the distribution cooperative. See Tri-State Generation & Transmission Ass'n v. Shoshone River Power, Inc., 874 F.2d 1346, 1358 (10th Cir. 1989) ("[I]t is quite clear from the all-requirements contract that the requirements of Shoshone's members were the subject matter of the parties' contract.").

3 Self-generation or use of other power suppliers not expressly authorized in the contract does not constitute a good faith variation in requirements.

Courts have held that variations in requirements in connection with an all-requirements contract are permitted when they resulted from factors outside of the purchasing party's control or from good faith business decisions unrelated to alternate ways of obtaining the goods or things in question. See Neofotistos v. Harvard Brewing Co., 341 Mass. 684, 689, 171 N.E.2d 865, 868 (1961) ("If business conditions . . . resulted in reducing the defendant's requirements . . . far below the approximate estimate, that is the misfortune of the plaintiff.") (internal quotation marks omitted). However, good faith variations do not include diminutions based on the purchaser's finding a better deal from a third-party supplier for the product that is the subject of the all-requirements contract. See R.A. Weaver & Assoc. v. Asphalt Constr., Inc., 587 F.2d 1315, 1322 (D.C. Cir. 1978) ("[A] good faith criterion prevents parties from unreasonably taking advantage of market fluctuations by escaping their contractual obligations"). Rather, to meet the good faith requirement, reductions in purchases from the seller must result from business factors that themselves reduce the purchaser's need for the product. Compare Northern Ind. Pub. Serv. Co. v. Colorado Westmoreland, Inc., 667 F. Supp. 613, 634 (N.D. Ind. 1987) (finding a good faith variation where utility reduced operations of coal-fired generating unit, and thus reduced purchases under all-requirements coal contract for that unit, based on its ability to lower overall costs by increasing operation of other generating units), aff'd without op., 845 F.2d 1024 (7th Cir. 1988) with Shoshone, 874 F.2d at 1360 (finding no good faith reduction in requirements where distribution cooperative voluntarily sold its assets and the right to serve its customers at a time when its customers' requirements for electric power and energy continued unabated.)

The Seventh Circuit's analysis of the "good faith" requirement in Empire Gas Corp. is instructive. In that case, Empire Gas entered into an all-requirements contract to supply the equipment necessary to convert the American Bakeries Company's delivery fleet to propane use and the propane necessary to operate the fleet thereafter. American Bakeries never ordered any equipment or propane, apparently having decided

within days of entering into the contract not to convert the fleet. Empire Gas brought suit and won a jury verdict of \$3,254,963 in lost profits. 840 F.2d at 1335.

On appeal, American Bakeries unsuccessfully argued that its decision not to go forward was simply a "good faith" reduction in its requirements. After noting that there is no single definition of "good faith" applicable to all-requirements contracts, the Seventh Circuit gave examples of what would and would not have been a "good faith" reduction by American Bakeries.

Clearly, American Bakeries was acting in bad faith if during the contract period it bought propane conversion units from anyone other than Empire Gas, or made its own units, or reduced its purchases because it wanted to hurt Empire Gas. . . . Equally clearly, it was not acting in bad faith if it had a business reason for deciding not to convert that was independent of the terms of the contract or any other aspect of its relationship with Empire Gas, such as a drop in the demand for its bakery products that led it to reduce or abandon its fleet of delivery trucks.

Id. at 1339 (emphasis added).

The court continued by stating that it was a harder case where there was no stated reason for American Bakeries' abandonment of its conversion plans. Id. However, the court found that the "essential ingredient of good faith in the case of the buyer's reducing his estimated requirements is that he not merely have had second thoughts about the terms of the contract and want to get out of it." Id. at 1340-41. Based on the record, the court affirmed the jury's verdict, concluding that no reasonable jury could have failed to find bad faith. Id. at 1341.

The holdings in Empire Gas Corp. and the other cases referenced above comport with the fundamental principle of contract law that every contract contains an implied covenant that one party may not act to deprive the other of the benefit of his bargain and thus a party cannot avoid the terms of a contract simply because a better deal can be found elsewhere. E.g., Neal-Cooper Grain Co. v. Texas Gulf Sulphur Co., 508 F.2d 283, 293-94 (7th Cir. 1974) ("The fact that performance has become economically burdensome or unattractive is not sufficient for performance to be excused. . . . We will not allow a party to a contract to escape a bad bargain merely because it is burdensome").

4. **Unauthorized self-generation or use of alternative power supplies is likely to harm important federal interests - specifically, RUS's interest in having its loans to the G&T repaid.**

The RUS all-requirements contracts provide the vast majority of a G&T's revenues, and thus provide the essential security for the G&T's RUS loans and other long-term financings secured under the shared mortgage. RUS has explained the need for and the purpose of the all-requirements wholesale power contracts as follows:

G&Ts are owned and controlled by their members and are merely the means by which the members generate and transmit electric power for themselves rather than purchasing power and transmission service from another source. As a financial matter, the structure is intended to and does operate as basically one organization with the financial strength of the G&T resting on the retail sales of the distribution members.

Wholesale Contracts for the Purchase and Sale of Electric Power and Energy, 55 Fed. Reg. 38930-31 (1990) (proposed rule).

The fact that the RUS wholesale power contracts provide the revenue stream from which billions of dollars of government debt is to be repaid has been emphasized by the courts. See, e.g., Shoshone, 874 F.2d at 1359 ("The all-requirements contracts which form [a G&T] system are not simple requirements contracts but rather interdependent, joint and mutual contracts with a common purpose of securing the REA loans and thereby effectuating the REA policy . . ."); United States v. Coosa Valley Elec. Coop., No. 85-C-0515-S, 1986 WL 11270 at *6 (N.D. Ala. Feb. 5, 1986) (noting that a finding of invalidity of the all-requirements wholesale power contracts would undermine the security for the entire RUS program and jeopardize fulfillment of federal rural electric policy); see also Alabama Power Co. v. Alabama Elec. Coop., Inc., 394 F.2d 672, 677 (5th Cir.), cert. denied, 393 U.S. 1000 (1968); Greensboro Lumber Co. v. Georgia Power Co., 844 F.2d 1538 (11th Cir. 1988); United States v. Southwestern Elec. Coop., Inc., 663 F.Supp. 538 (S.D. Ill. 1987); Upper Mo. G&T Elec. Coop., Inc. v. McCone Elec. Coop., Inc., 503 P.2d 1001 (Mont. 1972).

Courts have also consistently concluded that the interdependent nature of the relationship among a G&T and its members heightens the importance of holding each member strictly responsible for meeting its end of the bargain. See, e.g., Shoshone, 874 F.2d at 1359 (reasoning that "the case law dealing with run-of-the-mill requirements contracts between private parties is not dispositive" when analyzing the parties' obligations under an RUS wholesale power contract); Rural Elec. Convenience Coop. Co.

v. Soyland Power Coop., Inc., 606 N.E.2d 1269, 1271 (Ill. App. Ct. 1992) (concluding that "because of the special relationship of the three cooperatives involved, their bylaws, and the [wholesale power contract], rules otherwise possibly [permitting a member to avoid its wholesale power contract obligations] were not applicable here."), appeal denied, 616 N.E.2d 347 (Ill. 1993).

The typical G&T was formed when its members joined together to purchase or generate power at a lower cost than the aggregate cost to members of purchasing power on their own. To obtain REA loans and otherwise to ensure that all members would pay their appropriate share of the long-term and short-term costs associated with generating and obtaining the needed amounts of energy, each member agreed to a number of restrictive but mutually beneficial conditions of membership, including entering into an all-requirements contract. See Shoshone, 874 F.2d at 1355. Because the revenue from these all-requirements contracts provides the cornerstone of the security for the RUS loans, the term of the contracts necessarily coincided with the term of the loans - in most cases, 30 years or more.

While an economic analysis is beyond the scope of this paper, it seems likely that unauthorized self-generation or use of other power suppliers, even if only to meet peaking needs and load growth, would result in a shifting of costs to the G&T's other members. The typical RUS wholesale power contract obligates each member to pay rates in an amount sufficient, together with all other member and non-member revenues, to meet all of the G&T's costs. As the all-requirements supplier, the G&T is obligated to build and generate or purchase sufficient capacity and energy to meet all members' requirements. The long construction periods for generating resources, especially baseload resources, and the long term of the typical RUS wholesale power contract, have required G&Ts to begin to build or commit to purchase capacity many years before the time when their members project they need it. Thus, in many cases, by the time a member decides to meet its peaking or load growth requirements through an alternative source of supply, the G&T has already incurred costs to have in place the capacity required to meet those same peaking or load growth requirements. If the member does not purchase to meet those requirements from the G&T, the G&T's other members, who remain obligated to pay all of the G&T's costs, will have to make up the difference.

Permitting a member, at the expense of other members, to avoid paying for its share of capacity purchased by the G&T in part to meet that member's needs violates the basic equality principles of a cooperative. Also, in the long run, member avoidance of wholesale power contract obligations will likely undermine the stability of the G&T. The wholesale power contracts were necessary to fund the long-term arrangements under which the capacity and energy for the needs of all members were to be met. If one member could seek a better deal for power than provided under the wholesale power

contract, others likely would follow the same path, potentially leaving the G&T with insufficient funds to pay its long-term obligations.

All of this does not lead inexorably to the conclusion that distribution cooperatives must live out the remaining 10-20 or more year terms of their wholesale power contracts before being able to take advantage of the numerous power supply alternatives available. So long as the members of a G&T can agree to arrangements that provide for payment in full for their G&T's existing capacity and power purchase commitments, members may be freed to pursue many different power supply options, but only by amendments to the contract.

**Analysis of Arguments Made in Favor of Departures from
the All-Requirements Obligation**

Argument: *A reasonable business decision to use a cheaper source of supply is not a violation of the distribution cooperative's good faith obligation.*

Some distribution cooperatives and their counsel have argued that member generation or use of other power suppliers not expressly authorized in the contract is a "good faith" variation because, given the current pressures to reduce rates for industrial consumers, the member is simply making a good faith, reasonable business decision to use a lower cost source of supply. This analysis is based on the faulty premise that use of such alternate sources produces a bona fide decrease in the member's requirements. However, because there is no reduction in the aggregate demand for energy from the member's retail customers --there is no bona fide reduction in the member's requirements vis-a-vis the G&T.

In addition, this argument ignores the precedent cited above which stands for the proposition that, under an all-requirements contract, one cannot purchase from another seller (or self-generate the product) simply because the deal under the all-requirements contract is not as favorable as the alternative. Several cases have been cited in support of the proposition that member generation or use of other power suppliers in circumstances where industry conditions beyond the member's control have created cheaper alternatives could constitute a "good faith" reduction in requirements. However, the facts of each case are distinguishable from the situation where a member, without the consent of its G&T and RUS, chooses to use some other source of power supply:

In re United Cigar Stores Co. of America, 72 F.2d 673 (2d Cir.), cert. denied, 293 U.S. 617 (1934). In this case, Cigar Stores agreed to buy all of its requirements for ice cream from Consolidated. Cigar Stores thereafter filed for bankruptcy

and Consolidated (through its successor in interest) filed a claim. The court held that there was no valid claim because this had been a "good faith" reduction in requirements -- there was no evidence that Cigar Stores had filed for bankruptcy in a bad faith attempt to avoid the contract. This case is not analogous because it did not involve a situation where Cigar Stores sought to make its own ice cream or buy from another supplier at lower cost.

HML Corp. v. General Foods Corp., 365 F.2d 77 (3d Cir. 1966). In this case, the court held that a purchaser's decision to stop marketing salad dressing did not violate an all-requirements contract for the supply of the salad dressing because there was no evidence of bad faith reasons for the business decision to stop the marketing. This case is not analogous because it did not involve an effort by the salad dressing purchaser to make its own dressing or purchase it from another supplier because the contract price was too high.

Southwest National Gas Co. v. Oklahoma Portland Cement Co., 102 F.2d 630 (10th Cir. 1939). In this case, the court held that there was no violation of an all-requirements contract for gas where the purchaser reduced its requirements when it replaced an old boiler with a modern, more efficient boiler. This case is not analogous because a member would not be reducing requirements through increasing efficiency in energy use, but would be meeting a portion of its system's energy requirements through another source.

Argument: *Exceptions expressly set forth in the contracts can be construed broadly to include other suppliers not mentioned.*

Another line of argument that distribution cooperatives and their counsel have put forth is that an allowance for one alternative source of power (identified by name in the contract) may be interpreted to embrace other alternative sources of power. For example, if a particular contract permits purchases of power from Supplier X, capped at a specific kW amount, one argument we have encountered runs that the contract permits an exception up to the capped amount, so that if sufficient power is not available from Supplier X, that member could purchase up to the capped amount from Supplier Y. This interpretation is contrary to well-established principles of contract interpretation, as it

would contradict and render superfluous the explicit limitation as to source found in the contract. RESTATEMENT (SECOND) OF CONTRACTS § 203 (1981) (An interpretation of a contract "which gives a reasonable, lawful and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful or of no effect."); see also, e.g., Alaska State Hous. Auth. v. Sipary, 668 P.2d 824, 827 (Alaska 1983) (rejecting an interpretation of a settlement agreement which would have rendered one provision superfluous); Ceci v. National Indem. Co., 622 A.2d 545, 550 (Conn. 1993) (basing its holding that a reference in an insurance policy to family members of the insured, which was a closely-held corporation, meant that the policy was intended to cover family members of the sole shareholder, on the principle that parties do not ordinarily insert meaningless provisions into contracts and thus each provision must be given operative effect). If an exemption does not specifically state that a member is entitled to purchase a certain amount of power and energy from sources other than its G&T (or use similar language), nothing in a typical RUS wholesale power contract suggests that members are free to substitute one source for another, or "fill the gap" if a permitted supplier cannot supply the full capped amount.

Argument: Purchases from alternative power suppliers by a subsidiary do not violate the RUS wholesale power contract.

Some counsel have theorized that providing retail electric service to customers through a subsidiary, which purchases capacity and energy to meet those customers' requirements outside of the wholesale power contract, does not constitute a breach of the contract. There are several reasons why use of a subsidiary is not a valid means to avoid the all-requirements contract obligation. Given that any such subsidiary would be capitalized by the parent distribution cooperative, would likely be operated by employees of the distribution cooperative, would be using the distribution cooperative's facilities to deliver power and energy to customers and would be taking advantage of opportunities that would otherwise have been opportunities for the distribution cooperative, the use of a subsidiary in this context amounts to nothing more than the distribution cooperative using an alter ego to do what it is prohibited from doing itself. Further, in rejecting the argument that a distribution cooperative's requirements are reduced to zero when it voluntarily ceases to do business, and sells all of its assets and service territory to a neighboring utility, the Shoshone court based its holding on the principle that distribution cooperatives have an obligation to maintain their requirements throughout the term of the contract. Shoshone, 874 F.2d at 1360. Surely this principle would apply to "transferring" customers and opportunities to compete for new business to a subsidiary.

Argument: *The parties course of performance can amount to a mutual departure from or a waiver of the all-requirements obligation.*


Some distribution cooperatives and their counsel have argued that the all-requirements obligation under their contract has been modified by the G&T's and the distribution cooperative's mutual departure from the express terms of the contract or by G&T's waiver of full performance by the distribution cooperative. In addition, if a distribution cooperative were to self-generate or use other suppliers to meet a portion of its requirements, after which the G&T failed to object and the distribution cooperative materially changed its position in reliance on the G&T's asserted waiver, the distribution cooperative may have some basis for an argument that the G&T is estopped from requiring that the self generation or use of another power supplier cease.

For several reasons, it is likely that only in the rarest of circumstances would a court uphold claims of mutual departure, waiver or estoppel. As between the G&T and a distribution cooperative, any departure found to have been mutually agreed to * will likely be construed narrowly, as are exceptions to the all-requirements obligation expressly set forth in the contract. Also, waiver by a G&T in one context does not amount to a blanket waiver of the all-requirements obligation. Furthermore, while arguments of mutual departure, waiver or estoppel advanced in favor of a distribution cooperative's use of alternative power suppliers may in limited circumstances have merit as between the distribution cooperative and its G&T, departures from the terms of the contracts are not binding on RUS unless it knowingly participates. Given the important federal interests involved and the direct effect of departures by one member on the other members of the G&T, courts will probably not lightly conclude that the circumstances presented support claims of mutual departure, waiver or estoppel.

Conclusion

The conclusion that the present form of contract allows for few, if any, exceptions to full requirements purchases from the G&T does not support the proposition that all requirements contracts should be the model for the future. The forces of competition have become so strong that the practical sustainability of such an inflexible arrangement among a G&T and its members even over the next ten years is highly questionable. Pressures to eliminate regulatory barriers to wholesale and retail competition are gaining considerable support. These economic forces may overwhelm the legal barriers to changes. Perhaps one of the best things most G&Ts and their * members can do to ensure their survival in the new competitive era is to work together now to amend their wholesale power contract arrangements to permit access to the same range of options available to their competitors.

INTEROFFICE MEMORANDUM

TO: DALE HENLEY
FROM: SHERMAN GOODPASTER 
SUBJECT: PURCHASES OF IOU FACILITIES BY DISTRIBUTION
COOPERATIVES
DATE: 6/3/2003

The purpose of this memo is to provide a summary of my efforts to determine how many times, and under what circumstances, distribution cooperatives have purchased facilities from investor-owned or municipal utilities. To try to get a handle on this, I have communicated with attorneys representing 29 G&Ts, two of which, John Ward and Christine Ryan, having done work for distribution cooperatives acquiring IOU facilities. I have also spoken with Terry Brady at RUS and Dave Mohr at NRECA. I will proceed to try to distill all of this down into some kind of reasonably concise decipherable form.

The bottom line is I've found eleven identifiable instances where distribution cooperatives have purchased some or all of the facilities of an IOU. I will briefly list all eleven and identify the issues relevant to our situation.

1. In 1994, Tri-County Electric Cooperative, a member of Allegheny Electric Cooperative, a G&T, purchased a small electric company serving the city of Wellsboro, PA. In order to get around problems with the wholesale power contract, Tri-County formed a wholly-owned subsidiary which actually purchased the IOU. That kept the IOU from becoming a part of Tri-County "system" and allowed the power supply to be handled outside of the wholesale power contract. The power supplier for the new company continues to be First Energy.
2. Tri-County and Clavrack REC, in 1999, purchased Citizens Electric Company. This was handled the same way as the Wellsboro acquisition except that the subsidiary formed was jointly owned by Tri-County and Clavrack. The power supplier for the new company continued to be Pennsylvania Power and Light.
3. Vermont Electric Cooperative announced last month that it has reached agreement to buy the Vermont Electric Division of Citizens Communication. Vermont Electric's website states that the Cooperative is "debt-free" which would apparently mean that Vermont Electric is not an RUS borrower. Also the power suppliers for Vermont Electric Cooperative are ISO-New England, Verco (Vermont Electric Company), Central Vermont Public Service, and Green

Mountain Power. There is no mention of a G&T which would indicate that there were no issues associated with a wholesale power contract.

4. A few years ago a cooperative in Iowa purchased the assets of a small IOU, but the power supply was handled by the G&T through the existing wholesale power contract. The lender did, however, require a first lien on the purchased assets which in turn necessitated a lien accommodation from RUS. Since there was no wholesale power contract, RUS did in fact grant the lien accommodation.
5. Some thirty years ago LePlata Electric Cooperative, which was then a member of Colorado-Ute purchased assets from Western Colorado Power. The agreement that was worked out also transferred the generation assets of Western Colorado to Colorado-Ute which handled the power supply to the new members under the wholesale power contract.
6. In 1990 United Power, a member of Tri-State acquired assets of Plat Valley IOU and again in 1993 acquired assets from the City of Brighton. According to Bob Temmer, counsel with Tri-State, this involved a swap of territories before the state PSC and also the sale of generation assets. Again the G&T got the generation asset and the power supply to the new members was handled through the wholesale power contract.
7. Earlier this year it was announced that Pedernales Electric Cooperative had reached agreement with AEP to purchase some of AEP's distribution facilities adjacent to Pedernales' service territory. According to Pedernales' website its power supplier is LCRA (Lower Colorado River Authority). There is no indication that Pedernales is a member of any G&T so there would be no issues with the wholesale power contract involved here.
8. A couple of years ago, Kauai Electric Cooperative in Hawaii bought the assets of Citizens Electric on the island of Kauai. Generation assets were also included in this purchase, and there was no G&T or wholesale power contract issues involved.
9. In 1998 Flathead Electric Cooperative in Montana purchased assets from PacifiCorp. Flathead was a Class D member of Basin but had no wholesale power contract with Basin. This is the transaction where the power supplier, PacifiCorp, was pricing its power at market rates which rose drastically increasing all of Flathead's member rates by 50%. Flathead did manage to avoid bankruptcy but apparently is now struggling to reacquire some semblance of financial stability. Also there was member revolts which lead to the dismissal of management and a turnover in the Board of Directors.
10. Midwest Energy Cooperative in Kansas purchased some customers and assets from Westar recently. However, Midwest Energy was not a member of a G&T, and therefore there were no wholesale power contract issues.

11. A member of Hoosier purchased distribution facilities serving a Naval Depot on the Ohio River, but this is being served under the wholesale power contract.

As you can see I have been able to uncover no instance where a distribution member of a G&T has purchased IOU assets and kept the IOU as a power supplier for the new customers. To my knowledge RUS has never approved any amendment to the wholesale power contract that would allow for such an arrangement. In fact, Herald Haun of Kansas Electric Power has a member who recently requested this type of amendment from RUS and was flatly turned down. Terry Brady of RUS, without identifying two cooperatives, did acknowledge that a certain request has recently been made but was turned down with instructions to restructure the transaction to avoid any amendment to the wholesale power contract. Terry also advised that the only way RUS would consider such a transaction would be in one of two situations. The first, the creation of a subsidiary by the distribution coop which actually purchased and own the distribution assets as was done in the Pennsylvania and Flathead situations listed above. The other would be to have the G&T acquire any generation assets that were part of the transaction or become the nominal purchaser of the power supply from the IOU for resale to the distribution cooperative for the new customers. In the first instance the wholesale power contract is essentially bypassed and in the second instance the power furnished would be under the wholesale power contract.

Other than those specific instances listed above, there appear to have been no actual purchase transactions between a Coop and an IOU in recent years. There have been several territory swaps in various areas of the Country but these were not outright purchase transactions. It seems that in several areas in the Country there has been some amount of talk of entering into these types of transaction but nothing has been formalized. In some instances this talk has progressed to actual discussions with IOUs, but again, nothing has materialized.

I did speak with Christine Ryan who represents Tex-La Electric Cooperative and Northeast Texas Electric Cooperative as well as several distribution cooperatives, and she has recently done some investigative research for a distribution client interested in entering into one of these transactions. She advised that there are several issues she has identified that are paramount to the success of such a transaction both from a distribution standpoint as well as the G&T standpoint. The chief of these issues appears to be the Act Beneficiary question. Are the new consumers Act Beneficiaries under the Rural Electrification Act? This issue revolves around whether the population density in the area to be acquired is under the threshold limited required to be beneficiary under the Act. Some Urban and even Suburban areas do not meet this criterion. This was reinforced by Dave Mohr at NRECA who advised that RUS is becoming more sensitive to this issue since these questions are being raised more often in Congress and in the Press. The other issues identified by Christine are more mundane but no less important. These relate to warranty/suitability for the intended purpose; indemnification; prior existing or potential claims; and a guarantee that the facilities have been properly maintained.

I hope this gets us started in the right direction. As you can see, there are ways to accomplish what our members are currently proposing. However, an amendment to the wholesale power contract to allow an outside power supplier does not appear to be one of them.

copy: Executive Staff

Federal Register

Friday
September 21, 1990

Part IV

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1717

Wholesale Contracts for the Purchase
and Sale of Electric Power and Energy;
Proposed Rule

the financial support of the members for the operations of the G&T. These contracts are relied upon by the Administrator in meeting the requirements of section 4 of the RE Act (7 U.S.C. 904).

Section 4 of the RE Act (7 U.S.C. 904) commits to the discretion of the Administrator the adequacy of security for loans made or guaranteed by REA. It has been the practice of every REA Administrator since 1950 to require as a condition for making or guaranteeing G&T loans pursuant to the RE Act, that the G&T shall obtain long-term contracts with its members obligating them to purchase all of their electric requirements to the extent that the G&T shall have power and energy available. The purpose of this requirement is to assure that the G&T will have a market for the power generated and transmitted by the REA-assisted facilities and thus be able to repay the loan. Thus the term of the contract is typically set to cover the period from the date of the first advance of funds by REA on the loan to the date that the last payment is due to be made on the loan, i.e. a date 35 years from the date of the last advance on the G&T loan. Accordingly, the contracts are often referred to as "35-year contracts" but are more accurately referred to as "life-of-loan contracts."

Life-of-loan contracts also provide assurance to REA that electric distribution borrowers will have an adequate source of reasonably priced dependable power with which to generate retail sales that will provide the primary source or revenue for repaying their own obligations to REA.

The practice of using life-of-loan, all-requirements contracts in the REA electric program is established by REA in the exercise of the REA Administrator's power and obligation under section 4 of the RE Act (7 U.S.C. 904) to obtain adequate security for the loan and to assure repayment within the time agreed upon.

REA last promulgated the above policy concerning wholesale power contracts on April 24, 1969 when it issued Bulletin 111-1 superseding a similar bulletin on the subject which had been issued on July 29, 1957. The REA form of wholesale power contract entitled "Wholesale Power Contract—Federated Cooperative," (REA Form 444) and related supplement (REA Form 444a) were last officially revised in June of 1960. The structure of approximately 60 G&T's and their approximately 600 distribution member cooperatives is based on contracts very similar or identical to REA Forms 444 and 444a.

During the 1951 hearings before a Senate Subcommittee of the Committee

on Appropriations, the all-requirements agreements were characterized by the REA Administrator as the principal security for REA loans and as tantamount to a guarantee. See Hearings before the Senate Subcommittee of the Committee on Appropriations on Agricultural Appropriations for 1951, 81st Cong., 2d Sess., pp. 1342 *et seq.* The complete text of a typical all-requirements contract was also placed into the record of those hearings at page 1409.

REA life-of-loan, all-requirements contracts have been repeatedly upheld by Federal and state courts in a series of decisions beginning in 1968. See for example: *Alabama Power Co. v. Alabama Electric Cooperative, Inc.*, 394 F.2d 672, cert. denied, 393 U.S. 1000 (1968); *Tri-State Generation and Transmission Assoc., Inc. v. Shoshone River Power, Inc.*, 874 F.2d 1348 (10th Cir. 1989); *Greensboro Lumber Co. v. Georgia Power Co.*, 844 F.2d 1538 (11th Cir. 1988); *United States v. Southwestern Electric Coop.*, 863 F.Supp. 538 (S.D.Ill. 1987); and *Upper Missouri G&T Electric Coop. Inc. v. McCone Electric Coop. Inc.*, 503 P.2d 1001 (Mont.S.C. 1972). The holdings of those decisions are being ratified and confirmed by the proposed rule.

In recent years the costs of many G&T's have escalated significantly and, in some cases, have caused serious financial problems for the G&T and its members. At the beginning of fiscal year 1988, REA and 11 financial troubled electric borrowers who had received more than \$7 billion in REA financial assistance.¹ As the costs of power from their G&T has risen, some distribution cooperatives have tried to sell their assets to neighboring investor-owned utilities, or to void their long-term contracts with their G&T in order to obtain power more cheaply from neighboring utilities. The withdrawal of any distribution cooperative from the G&T's system necessarily shifts the fixed costs of the electricity (represented by the debt service) to the other members of the G&T and raises the possibility of default with potentially disastrous results for the system.²

¹ Rural Electrification Administration, United States Department of Agriculture, *Report of the Administrator—Fiscal Year 1988*, (Washington, DC: USDA, 1989), 4, see generally, Congressional Research Service, The Library of Congress, *Rural Electric Cooperative Defaults: Origins, Current Status, and Legislative Implications*, (Washington, DC: LOC 1988), (#88-865 E).

² *Fuchs v. Rural Electric Convenience Cooperative, Inc.*, 858 F.2d 1210, 1212-1213 (7th Cir. 1988).

These repeated assaults on the REA life-of-loan, all-requirements contract, although unsuccessful, have proved costly to the rural electrification program. REA and the U.S. Department of Justice have had to commit substantial amounts of fiscal and staff resources in recent years to defending the all-requirements contract. Furthermore, these repeated assaults, coupled with defaults and bankruptcies by some borrowers, recently prompted one nationally known rating agency to downgrade several G&T's credit ratings and to place the National Rural Utilities Cooperative Finance Corporation, a private, not-for-profit cooperative association which serves as a source of additional financing for its members to supplement REA loans, on credit watch with negative implications and later downgrade its credit rating.³ Ultimately, the resultant increased borrowing costs being incurred by these organizations are paid for by virtually all RE Act beneficiaries in the form of increased electric rates and hinder the Congressional policy that these electric systems be encouraged and assisted to satisfy their credit needs from their own organizations and other sources at reasonable rates and terms.

REA believes that by modifying its standard form of wholesale power contract to make explicit certain key features which courts have found to be implicit and by reaffirming the critical importance of such contracts to the continuing success of the REA program, REA can discourage unnecessary litigation, conserve government and borrower resources, and help to restore investor confidence in the G&T structure. REA also notes that the existing forms were last revised in 1960 and therefore REA is taking this opportunity to make certain editorial improvements and revisions.

The principal changes to "REA Forms 444 and 444a (rev. 6-60)" are as follows:

1. The recitals have been extensively revised to express in words several critical concepts that have previously been the unexpressed but implied intent of all interested parties as to the nature and purpose of their commitments. The recitals make it clear that the contract is the keystone of the G&T cooperative power-supply arrangement and as such is being relied upon by REA and also by

³ Robert R. Edmiston, "Credit Check: An investment banker tells what investors like and dislike about rural electric loans," *Rural Electrification*, November 1989, 28.

Bartell Nyberg, "Ute troubles generate shock wave: Wall Street questions viability of rural electric financing program," *Denver Post*, June 11, 1989, 1H.

CFR 2.23: Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. A new subpart J consisting of §§ 1717.450 through 1717.459 is added to read as follows:

Subpart J—Wholesale Contracts for the Purchase or Sale of Electric Power and Energy

- Sec.
1717.450 Purpose.
1717.451 Policy.
1717.452 Definitions and Rules of Construction.
1717.453 Administrator's Approval of Power Supply Arrangements Necessary.
1717.454 Power Supply Contracts with Power Supply Borrowers.
1717.455 Other Power Supply Contracts.
1717.456 Method for Requesting REA Approvals Required Under this Subpart.
1717.457 Rights of Other Lenders.
1717.458 Forms.
1717.459 Existing Contracts.
Appendix A to Subpart J—Wholesale Power Contract—Federated Cooperative.

Subpart J—Wholesale Contracts for the Purchase and Sale of Electric Power and Energy

§ 1717.450 Purpose.

This subpart contains the general regulations of REA regarding wholesale power contracts which are necessary to meet the requirements of section 4 of the RE Act (7 U.S.C. 904) that the Administrator obtain adequate security for loans and to assure repayment within the time agreed. This subpart also contains general regulations for administering provisions in REA loan documents which require that the effectiveness of any contract entered into by a borrower for the sale or purchase at wholesale of electric power or energy with which to operate its system be made subject to REA approval.

§ 1717.451 Policy

(a) It is the general policy of REA to require, as a condition of making or guaranteeing any loan to a power supply borrower pursuant to the RE Act, or to approving major transactions being undertaken by a power supply borrower, that:

(1) The power supply borrower shall first obtain contracts with its members obligating them to purchase all of their electric requirements from the power supply borrower;

(2) Such contracts be assigned and pledged as security for REA loans and other obligations secured under the REA mortgage, and

(3) Such contracts continue until such loans and obligations have been repaid in full.

(b) Standardization of the form of such contracts facilitates the administration of this national policy.

§ 1717.452 Definitions and rules of construction.

(a) *Definitions.* For the purpose of this subpart:

Administrator means the Administrator of REA.

Borrower means a corporation engaged, or intending to become engaged, in the generation, transmission or distribution of electricity that has outstanding obligations to REA as a result of loans or guarantees made pursuant to the RE Act.

Loan means a loan which has been made, insured or guaranteed by REA pursuant to the RE Act.

Loan Documents means, collectively, the REA mortgage and any agreement between a borrower and REA providing for or otherwise concerning one or more REA loans.

Power Supply Borrower means a borrower engaged in the wholesale of electric power and energy to distribution members pursuant to REA-approved power supply contracts.

Power Supply Contract means any contract entered into by a borrower for the sale or purchase, at wholesale, of electric energy with which to operate its system.

RE ACT means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA Mortgage means, collectively, all instruments creating a lien on or security interest in the borrower's assets in connection with REA loans.

(b) *Rules of construction.* Unless the context shall otherwise indicate, the terms defined in § 1717.452(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," "hereunder," and words of similar import refer to this subparagraph as a whole. "Includes" and "including" are not limiting and "or" is not exclusive.

§ 1717.453 Administrator's approval of power supply arrangements necessary.

No borrower shall execute any:

- (a) Power supply contract;
- (b) Interconnection agreement;
- (c) Interchange agreement;
- (d) Wheeling agreement;
- (e) Similar agreement; or
- (f) Any amendment to paragraph (a), (b), (c), (d) or (e) of this section unless the same has been made expressly subject to REA approval or has been

reviewed and approved by REA in writing prior to execution.

This requirement applies regardless of whether or not the borrower is a seller or purchaser of the services to be furnished under any of the foregoing contracts or agreements, and regardless of whether or not a Federal power agency is a party to any of them.

§ 1717.454 Power supply contracts with power supply borrowers.

Generally, power supply contracts entered into between power supply borrowers and their members should:

(a) Be consistent with the purchased power needs of the borrowers;

(b) Provide for the security requirements of loans secured under the REA mortgage; and

(c) Be in substantially the form prescribed from time to time by REA pursuant to § 1717.458 of this subpart, with only such minor modifications and revisions as the Administrator in his discretion may approve and as are not inconsistent with § 1717.451(a) and § 1717.451(b).

§ 1717.455 Other power supply contracts.

Power supply contracts entered into with any supplier not owned or controlled by REA-financed borrowers should:

(a) Provide for an adequate present and future supply of high quality service, including points of delivery;

(b) Provide for termination of the contract upon due notice in the event of a rate increase or other change in the contract not in the interest of the borrower, but with adequate assurance of continued supply until an alternative source can be secured;

(c) Be free of restrictive provisions with respect to the availability or use of power;

(d) Be for terms appropriate to the borrowers' anticipated needs and afford reasonable protection of consumer rates and interests;

(e) Be otherwise consistent with loan security requirements; and

(f) In cases where prior REA approval has not been obtained, contain provisions making them effective only upon the approval of the Administrator or his designated representative.

§ 1717.456 Method for requesting REA approvals required under this subpart.

Borrowers requesting REA approvals required under § 1717.453 should submit the following information to the REA Area Director having jurisdiction over the borrower:

(a) Three copies of the executed document for which approval is sought;

Appendix H to Subpart J—Wholesale Power Contract—Federated Cooperative

WHOLESALE POWER CONTRACT - FEDERATED COOPERATIVE

AGREEMENT made as of _____ between _____, a corporation organized and existing under the laws of the State of _____ (the "Seller") and _____, its successors and assigns, a corporation organized and existing under the laws of the State of _____, (the "Member").

WHEREAS, the Seller proposes to construct, or has constructed, an electric generating plant(s) or transmission system or both, and may purchase or otherwise obtain, or has purchased or otherwise obtained electric power and energy for the purpose, among others, of supplying electric power and energy to borrowers of loans made or guaranteed by the United States of America (the "Government") acting through the Administrator (the "Administrator") of the Rural Electrification Administration ("REA") which are or may become members of the Seller; and

WHEREAS, the Seller has entered into or is about to enter into agreements for the sale of electric power and energy similar in form and substance to this Agreement in order to further the purposes of the Rural Electrification Act of 1936, as amended (7 U.S.C. § 901 et seq.) (the "Rural Electrification Act") as required by regulations of the REA pursuant to 7 CFR 1717 Subpart J, with other members and may enter into similar agreements with other such borrowers who may become members; and

WHEREAS, the Member desires to purchase from the Seller, and the Seller desires to sell, electric power and energy from the Seller on terms and conditions herein set forth; and

WHEREAS, in reliance upon the commitments of the Seller herein set forth, the Member is entering into this Agreement and the Member acknowledges by entering into this Agreement that the Seller (i) has obtained and will obtain financing, (ii) has invested and will in the future invest in plant and facilities, (iii) has developed and will continue to develop an organizational structure, management team and staff, (iv) has engaged and will continue to engage in planning, and (v) has made and will continue to make commitments relating to long-term power supply arrangements, all on the basis of the cash flow produced by this Agreement and similar agreements between the Seller and its other members; and

Member at the point(s) of delivery. The point(s) of delivery, delivery voltage and initial capacity shall be as set forth in "Electric Characteristics and Delivery Points Schedule A," attached hereto and made a part hereof. The Member agrees that the characteristics and delivery points on such Schedule A may be revised to include such other point or points as may be agreed upon by the Seller and the Member by an appropriate amendment to such Schedule A; provided, however that no such revision shall be effective unless approved in writing by the Administrator.

3. **Substation.** The _____ shall install, own, and maintain the necessary substation equipment at the point(s) of connection. The _____ shall own and maintain switching and protective equipment which may be reasonably necessary to enable the Member to take and use the electric power and energy hereunder and to protect the system of the Seller. Meters and metering equipment shall be furnished, maintained and read by the Seller at each delivery point. Unless the Seller and the Member shall mutually agree upon an alternative location, meters and metering equipment shall be located at the point of delivery on the low voltage side of such transforming equipment.

4. **Rate.** (a) The Member shall pay the Seller for all electric power and energy furnished hereunder at the rate and on the conditions set forth in "Rate Schedule B," attached hereto and made a part hereof.

(b) The Board of Directors of the Seller at such intervals as it shall deem appropriate, but in any event not less frequently than once in each year, shall review the rate for electric power and energy furnished hereunder and under similar agreements with the other members and, if necessary, shall revise such rate so that it shall produce revenues which shall be sufficient, but only sufficient, with the revenues of the Seller from all other sources, (i) to meet the cost of the operation and maintenance (including without limitation, replacements, rents, fuel, insurance, depreciation and amortization, taxes and administrative and general overhead expenses) of the generating plant(s), transmission system and related facilities of the Seller, (ii) to meet the cost of any power and energy purchased for resale by the Seller, (iii) to meet the cost of transmission service, (iv) to make required payments on account of principal and interest on the Notes and on all other indebtedness of the Seller, (v) to assure compliance with the terms of all contracts, mortgages, security agreements, pledges and other obligations undertaken by the Seller in order to acquire, construct, operate or maintain the system of the Seller, and (vi) to provide for the establishment and maintenance of reasonable margins and reserves. The preceding clauses (i) through (vi) are hereinafter collectively referred to as the Seller's "Revenue Requirements." The Seller shall cause a notice in writing to be given to the Member and to the other members of the Seller and to the Administrator which shall set out all the proposed revisions of the rate with the effective date thereof, which shall be not less than thirty (30) nor more than forty-five (45) days after the date of the notice, and shall set forth the basis upon which the rate is proposed to be adjusted

Seller during the preceding calendar year times the past due amounts on the Notes.

The Administrator may levy Special Assessments from time to time in the manner described above as often as he may, in his discretion, deem necessary to assure that the Notes are repaid in accordance with their respective terms. The Member acknowledges that the Administrator and other holders of the Notes shall have the right to offset the Member's Special Assessment against any assets of the Member in their possession. The Member's obligations under this paragraph are in addition to its other obligations under this Agreement, are absolute, unconditional and irrevocable so long as any of the Notes remain outstanding.

7. **Meter Readings and Payment of Bills.** The Seller shall read meters monthly. Electric power and energy furnished hereunder shall be paid for at the office of the Seller in _____ monthly within fifteen (15) days after the bill therefor is mailed to the Member. If the Member shall fail to pay any such bill within such fifteen-day period, the Seller may discontinue delivery of electric power and energy hereunder upon fifteen (15) days' written notice to the Member of its intention so to do.

8. **Meter Testing and Billing Adjustment.** The Seller shall test and calibrate meters by comparison with accurate standards at intervals of twelve (12) months. The Seller shall also make special meter tests at any time at the Member's request. The costs of all tests shall be borne by the Seller; provided, however, that if any special meter test made at the Member's request shall disclose that the meters are recording accurately, the Member shall reimburse the Seller for the cost of such test. Meters registering not more than two percent (2%) above or below normal shall be deemed to be accurate. The readings of any meter which shall have been disclosed by test to be inaccurate shall be corrected for the ninety (90) days previous to such test in accordance with the percentage of inaccuracy found by such test. If any meter shall fail to register for any period, the Member and the Seller shall agree as to the amount of energy furnished during such period and the Seller shall render a bill therefor. The Seller, at its expense, shall promptly adjust, repair or replace any meter that shall have been disclosed by test to be inaccurate or that it learns has failed.

9. **Notice of Meter Reading or Test.** The Seller shall notify the Member in advance of the time of any meter reading or test so that the Member's representative may be present at such meter reading or test.

10. **Right of Access.** Duly authorized representatives of either party hereto shall be permitted to enter the premises of the other party hereto at all reasonable times in order to carry out the provisions hereof.

14. **Assignments.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties, except that this Agreement may not be assigned by either party unless (i) prior consent to such assignment is given in writing both by the other party and the Administrator or (ii) such assignment has been approved by the Administrator in writing and is incident to a merger or consolidation with, or transfer of all or substantially all of the assets of the transferor to, another person or entity which shall, as a part of such succession, assume all the obligations of the transferor under this Agreement. Any assignment made without a consent required hereunder shall be void and of no force or effect as against the non-consenting party and the Administrator. Notwithstanding the foregoing, a party, with the prior written consent of the Administrator and without the other party's consent, may assign and pledge its interests in this Agreement as security for any obligation secured by a mortgage on its system assets without limitation on the right of the mortgagees under such mortgage to further assign this Agreement.

15. **Third Party Beneficiaries.** The Administrator and the other lenders to the Seller are intended third party beneficiaries of this Agreement. However, the consents of such other lenders need not be obtained before amending, revising, or consolidating any of the provisions of this Agreement except in a case where the terms of an agreement between such other lender and the Seller or the Member, as the case may be, expressly require such consent.

16. **Miscellaneous.** The parties recognize that the terms and conditions of this Agreement have been prescribed by the Government in furtherance of the objectives of the Rural Electrification Act. In the event that any other Federal statute or regulation now in effect or subsequently in effect may require the Member to obtain electric power or energy in a manner inconsistent with this Agreement, the Member and the Seller will cooperate in using their best efforts to give full effect to the provisions of this Agreement requiring the Member to purchase and receive from the Seller all electric power and energy which the Member shall require for the operation of the Member's system. Nothing contained in this Agreement shall be construed as a modification or waiver of (i) the right of the Government to preempt state or local laws when authorized to do so under the United States Constitution or any applicable Federal statute, including the Rural Electrification Act, currently in effect or subsequently ratified or enacted or (ii) provisions in any other agreements between the Administrator and the Seller or the Member, as the case may be.

17. **Right of Administrator to Enforce Agreement.** The Seller, the Member and the Administrator agree that (i) if the Member shall fail to comply with any provision of this Agreement, the Seller, or the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of the Member under the provisions of this Agreement and (ii) if the Seller shall fail to comply with any provision of this Agreement, the Member, or the Administrator, if the Administrator so elects,

6-5-02 Copies: Roy Falk
Dale Hanley
Gary Crawford
Frank Alva

POWER PURCHASE CONTRACT

THIS POWER PURCHASE CONTRACT (this "**Agreement**") is entered into effective as of January 1, 1999, between Great River Energy, a Minnesota cooperative corporation ("**GRE**"), and Wright-Hennepin Cooperative Electric Association, a Minnesota cooperative corporation (the "**Member**"). All capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings set forth in Appendix A attached hereto.

RECITALS

Formation of GRE. GRE has been formed by Cooperative Power Association ("**CPA**"), United Power Association ("**UPA**"), and their respective members to, among other things, provide electric power and energy to the members of GRE.

RUS Borrowers. CPA, UPA, GRE, and some of their members are borrowers from the RUS pursuant to the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901-950b.

All-Requirements Contracts. The Member is a member of CPA or UPA, and has been a party to an "all-requirements" member service contract with CPA or an "all-requirements" wholesale power agreement with UPA, as the case may be.

Mutual Benefits. GRE and the Member acknowledge that this Agreement, coupled with the Other Power Purchase Contracts, (i) enables GRE, CPA, and UPA to maintain and obtain financing, and (ii) serves as primary security for loans and loan guarantees made to or for the benefit of GRE, CPA, and UPA

This Agreement. The Member has agreed to enter into this Agreement with GRE as a replacement for its former member service contract with CPA or wholesale power agreement with UPA, as the case may be. This Agreement sets forth the terms and conditions under which GRE will sell, and the Member will purchase, electric power and energy.

In consideration of the mutual agreements set forth in this Agreement, the parties agree as follows:

1. Purchase and Sale Obligations.

1.1 All-Requirements Obligations. Subject to the provisions of Section 1.2, GRE shall sell and deliver to the Member, and the Member shall purchase and receive from GRE, upon the terms and conditions of this Agreement, all electric power and energy that the Member shall require for the operation of the Member's system, except:

1.1.1 PURPA. Electric power and energy that the Member is required to purchase from Persons other than GRE by the Public Utility Regulatory Policies Act of 1978 and regulations thereunder or by Minnesota Statutes Section 216B.164, as any such statute or regulation is amended from time to time;

1.1.2 WAPA. Firm electric power and energy that the Member purchases, directly or indirectly, from WAPA, in amounts not to exceed the amounts of firm electric power and energy the Member is entitled to purchase, directly or indirectly, from WAPA on the date of this Agreement; and

1.1.3 Member Owned or Purchased Power. In addition to the electric power and energy permitted to be purchased pursuant to Sections 1.1.1 and 1.1.2, any electric power and associated energy that the Member may receive (i) from facilities owned or leased by the Member, (ii) from any other Person other than GRE, or (iii) from GRE other than under this Agreement, in an aggregate amount under this Section 1.1.3 at any time not to exceed five percent (5%) of the greatest amount of measured demand of the Member purchased from GRE hereunder, during any month after the date hereof, on the one (1) hour monthly coincident peak of GRE, after adjustment to remove all Interruptible Power of the Member purchased from GRE; provided, however, that the Member must comply with such policies and procedures as GRE shall reasonably establish for the scheduling and receipt of electric power and energy under this Section 1.1.3.

1.2 Fixed Purchase Obligations. If the Member makes the Fixed Purchase Election permitted under Section 1.2.1, then commencing on the Fixed Date (as established pursuant to Section 1.2.2), GRE shall sell and deliver to the Member, and the Member shall purchase and receive from GRE, upon the terms and conditions of this Agreement, the amounts of electric power and energy established pursuant to this Section 1.2. From the date of the Fixed Purchase Election until the Fixed Date, the Member's purchase obligations shall continue to be governed by Section 1.1.

(b.) ~~1.2.1~~ Election. The Member may elect to have its purchase obligations under this Agreement governed by this Section 1.2, rather than by ~~Section 1.1~~, commencing on the Fixed Date by giving GRE irrevocable written notice of such election at any time (a "Fixed Purchase Election"). The notice of such Fixed Purchase Election shall specifically state that it is an election under this Section 1.2.1 and shall otherwise comply with the provisions of Section 1.1.3 and any procedures that GRE shall establish therefor pursuant to Section 1.1.4. *The preceding paragraph*

~~1.2.2~~ Fixed Date. The "Fixed Date" shall be the first May 1 or November 1 that is at least seven hundred thirty (730) days after the date GRE receives the Member's Fixed Purchase Election. *Seller*

~~1.2.3~~ Fixed Amounts of Firm Power and Energy. The amounts of firm electric power and of electric energy to be sold and delivered by GRE and purchased and *Seller*

received by the Member during each calendar month after the Fixed Date shall equal the average amounts of firm electric power and electric energy, respectively, purchased by the Member from ~~GRE~~ ^{Seller} hereunder (or from CPA or UPA, if applicable pursuant to ~~Section 1.2.3.1~~) during the three (3) corresponding calendar months occurring during the thirty-six (36) months immediately preceding the Fixed Date. For purposes of this ~~Section 1.2.3~~, the amount of firm electric power purchased by the Member from ~~GRE~~ ^{Seller} during each calendar month occurring during the thirty-six (36) months immediately preceding the Fixed Date shall be the Member's measured demand for purchases from ~~GRE~~ ^{Seller} for the one ^{fifty} hour coincident peak of ~~GRE~~ ^{Seller} (or CPA or UPA, if applicable pursuant to ~~Section 1.2.3.1~~) during such month, adjusted to remove all Interruptible Power of the Member purchased from ~~GRE~~ ^{Seller}. For example, if a Member's Fixed Date is May 1, 2006, then for each May after the Fixed Date, the amounts of firm electric power and of electric energy to be purchased by the Member pursuant to this ~~Section 1.2.3~~ ^{Section} shall be based on electric power and energy purchased from ~~GRE~~ ^{Seller} for the months of May, 2007, May, 2008, and May, 2009. The amounts of firm electric power and of electric energy for each other calendar month after the Fixed Date (June through April) shall be similarly established.

1.2.3.1 Election Prior to November 2, 1999. If the Member makes a Fixed Purchase Election prior to November 2, 1999, the applicable averages shall be based upon (i) the Member's 1998 purchases from CPA, if the Member is also a member of CPA, or from UPA, if the Member is also a member of UPA, during the applicable months in 1998 (in both cases excluding any WAPA electric power and energy), and (ii) the Member's 1999, 2000, and 2001 purchases from GRE hereunder during the applicable months in 1999, 2000, and 2001.

1.2.3.2 Increase For Unavailable Committed Resources. To the extent there is an Unavailable Committed Resource on the Fixed Date, the fixed monthly amount of firm electric power and of electric energy to be sold and purchased pursuant to this Section 1.2 shall be increased for each calendar month, commencing on the date the Unavailable Committed Resource becomes available to GRE, by (i) in the case of firm electric power, an amount equal to the Member's Capacity Percentage for the applicable month of the MAPP-accredited capability of such Unavailable Committed Resource in such month (adjusted to reflect reductions for reserves and losses) and (ii) in the case of electric energy, an amount equal to the Member's monthly Load Factor for the applicable month applied to the incremental increase in the Member's amount of firm electric power as established in clause (i) multiplied by the number of hours in the applicable month.

1.2.3.3 Firm Purchase. The electric power purchased pursuant to this Section 1.2.3 is considered firm and is intended to be available at all times, even under adverse conditions. GRE shall be responsible for maintaining the capacity reserves necessary to supply such electric power in accordance with the

requirements of MAPP or similar pool or any applicable independent system operator or other similar entity.

1.2.3.4 Monthly Firm Power and Monthly Energy. The amounts of firm electric power and of electric energy established under this Section 1.2.3, as adjusted pursuant to Section 1.2.15, are referred to herein as “**Monthly Firm Power**” and “**Monthly Energy**,” respectively.

1.2.4 Fixed Amounts of Interruptible Electric Power. The amount of Interruptible Power to be sold and delivered by GRE and purchased and received by the Member during each calendar month after the Fixed Date shall be established in the same manner provided in Section 1.2.3 for establishing Monthly Firm Power but applied to the Member’s Interruptible Power and without regard to Section 1.2.3.2. The amount of Interruptible Power established under this Section 1.2.4 is referred to herein as “**Monthly Interruptible Power.**”

1.2.5 Scheduling. The Member’s Monthly Firm Power, Monthly Energy and Monthly Interruptible Power shall be scheduled by GRE and the Member (or, in either case, by a designated representative or agent thereof) on a daily basis consistent with the projected daily load pattern for the Member; provided, however, that (i) the electric power that may be scheduled in any hour during a calendar month may not exceed the sum of the Member’s Monthly Firm Power and Monthly Interruptible Power for such month, (ii) the electric energy that may be scheduled in any GRE Season may not exceed the aggregate of the Member’s Monthly Energy for the three months occurring during such GRE Season, and (iii) the electric energy that may be scheduled in any calendar month may not exceed the Member’s Monthly Energy for such month if to do so would have a material adverse effect on GRE or the other Distribution Members as reasonably determined by GRE. GRE shall have the right at all times to interrupt or require the interruption of any Monthly Interruptible Power in accordance with its applicable policies and procedures.

1.2.6 Failure to Interrupt. In the event that the Member is unwilling or unable to reduce its electric power requirements in any calendar month to an amount no greater than its amount of Monthly Firm Power for such month in response to a request by GRE, the Member shall (i) if such inability is due to a Force Majeure Event affecting the Member, pay to GRE an amount equal to the actual replacement costs to GRE for such excess electric power (including the costs of any GRE self-supplied electric power), or (ii) if due to the Member’s unwillingness or if the Member’s inability is not due to a Force Majeure Event affecting the Member, pay to GRE an amount equal to the greater of (a) one hundred ten percent (110%) of the actual replacement costs to GRE for such excess electric power (including the costs of any GRE self-supplied electric power), or (b) one hundred fifty percent (150%) of the applicable demand charge of GRE for such month multiplied by the amount of such excess electric power. Whether or not caused by a Force Majeure Event affecting the Member, the Member shall also be responsible to pay any penalty, charge or

other cost imposed by MAPP, any other power pool, any independent system operator or any other similar entity on GRE, CPA, UPA, or the Member resulting from the Member's unwillingness or inability to reduce its electric power requirements in response to a request by GRE

1.2.7 Unauthorized Use of Power. In the event that the actual amount of electric power supplied by GRE to the Member on the one-hour coincident peak of GRE exceeds the Member's applicable Monthly Firm Power plus applicable Monthly Interruptible Power (subject to GRE's right to require the interruption thereof) for any calendar month, the Member shall pay GRE for such unauthorized excess electric power at a demand charge equal to the greater of (i) one hundred ten percent (110%) of the actual replacement costs to GRE for such unauthorized excess electric power (including the costs of any GRE self-supplied electric power), or (ii) one hundred fifty percent (150%) of the applicable demand charge for such month. Such charge shall be in addition to any charges assessed pursuant to Section 1.2.6. The Member shall also be responsible to pay any penalty, charge or other cost imposed by MAPP, any other power pool, any independent system operator or any other similar entity on GRE, CPA, UPA, or the Member resulting from the Member's unauthorized use of electric power.

1.2.8 Inadvertent Energy. GRE shall establish policies and procedures to reconcile and collect for differences between electric energy scheduled and electric energy actually taken by the Member.

1.2.9 Obligation to Pay; Payment. The Member shall pay for the amounts of Monthly Firm Power, Monthly Interruptible Power and Monthly Energy to be purchased pursuant to this Section 1.2 whether or not taken, and without regard to the actual requirements of the Member's system. In meeting the foregoing obligation, the Member shall pay for electric energy actually taken during the first two calendar months of each GRE Season, and in the third month of such GRE Season the Member shall pay for all electric energy taken during such month and shall pay for electric energy not taken in the amount, if any, by which the aggregate amounts of the Member's Monthly Energy for the three months of such GRE Season exceed the amount of electric energy actually taken by the Member during such three months

1.2.10 Planning and Related Services. After the Fixed Date, GRE shall have no duty to provide power supply planning or related services to the Member. GRE may offer to provide any or all of such services upon such terms and conditions and at such charges as it may from time to time establish, and the Member may elect to purchase any or all of such services, each in its sole discretion.

1.2.11 Reporting to MAPP. Unless GRE and the Member mutually agree otherwise, each in its sole discretion, GRE shall have no responsibility for, and the Member shall bear full responsibility for, reporting (directly or indirectly) to, and meeting (directly or

indirectly) any reserve and other requirements applicable to the Member under, the MAPP or similar pool or any applicable independent system operator or other similar entity. The Member shall indemnify and hold GRE and its other Distribution Members harmless against all losses suffered by GRE or its other Distribution Members due to or arising from the Member's failure to so report or meet such requirements. Unless GRE and the Member mutually agree otherwise, each in its sole discretion, for any calendar month occurring during a GRE Season, the Member shall be entitled to report to MAPP or similar pool or any applicable independent system operator or other similar entity, as a firm purchase capacity equal to the Member's highest amount of Monthly Firm Power for such GRE Season.

1.2.12 Resale. The Member may sell, exchange, assign, transfer or otherwise dispose of all or any of the Monthly Firm Power, Monthly Interruptible Power and Monthly Energy to any Person, and may enter into an agreement to do any of the foregoing. Neither any such sale, exchange, assignment, transfer or other disposition, nor any breach by a purchaser, assignee, exchangee or transferee with respect to any such sale, exchange, assignment, transfer or other disposition, shall relieve the Member of any of its obligations under this Agreement.

1.2.13 Additional Requirements. After the Fixed Date, GRE shall have no duty to provide the Member's electric power and energy requirements other than the Monthly Firm Power, Monthly Interruptible Power and Monthly Energy. GRE and the Member may agree, each in its sole discretion, for GRE to provide such additional requirements other than under this Agreement.

1.2.14 Return to All-Requirements Obligations. After the Fixed Date, the Member may return to having its purchase and GRE's sale obligations governed by Section 1.1 only upon terms and conditions mutually satisfactory to the Member and GRE, each acting in its sole discretion.

1.2.15 Reduction of Fixed Purchase Obligations. In the event a Fixed Resource (other than (i) a contract or agreement for the purchase of electric power and energy or electric energy with a contract term of five (5) years or less or (ii) a Temporary Substitute Fixed Resource) or any portion thereof becomes a Retired Fixed Resource or upon the substitution of a Permanent Substitute Fixed Resource for a Retired Fixed Resource, the Member may reduce (i) its Monthly Firm Power and Monthly Interruptible Power for each calendar month thereafter by the percentage that the MAPP-accredited capability of such Retired Fixed Resource is of the MAPP-accredited capability of all Fixed Resources (including the Retired Fixed Resource) for such month, and (ii) its Monthly Energy for each calendar month thereafter by the percentage that the electric energy obtained by GRE from such Retired Fixed Resource during the three (3) corresponding months occurring during the immediately preceding thirty-six (36) months is of the total electric energy obtained by GRE from all Fixed Resources (including the Retired Fixed Resource) during such months. The Member may only elect to either (x) maintain all of its Monthly Firm Power, Monthly

Interruptible Power and Monthly Energy at then-existing levels or (y) to reduce all of Monthly Firm Power, Monthly Interruptible Power and Monthly Energy by the full amount of the percentages determined above. As provided in Section 2.6.2, an election under this Section 1.2.15 shall not affect the Member's obligations for all costs, if any, allocated to the Retired Fixed Resource.

2. Rates.

2.1 In General. For calendar year 1999, the Member shall pay GRE for all electric power and energy purchased under this Agreement at rates to be determined by the Board of Directors of CPA, if the Member is also a member of CPA, or UPA, if the Member is also a member of UPA. Commencing January 1, 2000, the Member shall pay GRE for all electric power and energy purchased under this Agreement at rates determined by applying the Rate Formula to budgets effective pursuant to Section 2.2 or 2.3.1, and upon the terms and conditions set forth in this Agreement and in Appendix B attached hereto. The allocation of costs of GRE between (i) production of electric power and energy services and (ii) transmission services as provided for in Appendix B shall at all times be consistent with such allocation as provided therefor in Appendix B of the Transmission Service Contract.

2.2 Budget; Revenue Requirements. The Board of Directors of GRE annually shall adopt a budget for the succeeding calendar year (commencing with calendar year 2000) that includes estimates of (i) all costs and other obligations and liabilities of GRE and (ii) all sales of electric power and energy by GRE. Such budget shall be established so that, when the Rate Formula is applied thereto, GRE's rates for electric power and energy hereunder and under the Other Power Purchase Contracts will produce revenues which shall be sufficient, but only sufficient, with the revenues of GRE from all other sources, to meet all costs and other obligations and liabilities paid or incurred by GRE, including: (w) the costs of the operation and maintenance (including fuel, depreciation, replacements, insurance, taxes and administrative and general overhead expenses) of GRE's Resources and related facilities; (x) the payments to be made on account of rentals or leases; (y) the payments to be made on account of principal of and interest on all indebtedness incurred or guaranteed by GRE, and (z) the establishment and maintenance of reasonable financial reserves. Without limiting the generality of the foregoing, the budget and resulting rates shall be sufficient to enable GRE to comply with all financial covenants and other requirements as they may exist from time to time under the GRE Mortgage, the GRE Loan Contract or any other indenture, mortgage, security agreement or contract relating to any indebtedness, guarantee or other financial obligation of GRE. GRE shall provide a copy of such budget to the Member at least forty-five (45) days prior to the beginning of the succeeding calendar year.

2.3 Rate Revisions.

2.3.1 Budget Revisions. If at any time during a calendar year (commencing with calendar year 2000) it becomes apparent that GRE's current rates for electric power and energy for such calendar year no longer will produce revenues that are sufficient, but only

sufficient, with the revenues of GRE from all other sources, to meet all costs and other obligations and liabilities of GRE as provided in Section 2.2, the Board of Directors of GRE shall review the budget for such year and, if necessary, shall revise such budget so that the resulting rates produce such revenues. Any rate revision shall be implemented in a manner that distributes the required increase or decrease appropriately over all months of the applicable calendar year, using retroactive surcharges or credits as necessary, as if such revised rate had been in effect during the entire calendar year. Such revised budget shall not become effective until sixty (60) days after the Member receives a copy of such budget from GRE or at such later date as GRE may specify by written notice to the Member.

2.3.2 Rate Formula Revisions. Appendix B may be revised by GRE, at any time and from time to time; provided, however, (i) except as to those provisions of the Rate Formula that as of the date of this Agreement are expressly subject to modification by the Board of Directors of GRE, GRE shall receive the approval of a Dual Percentage of the Distribution Members; (ii) Appendix B to each of the Other Power Purchase Contracts shall be at all times the same as Appendix B to this Agreement; and (iii) so long as GRE is an RUS Borrower, RUS shall approve such amendment in writing.

2.3.3 Effectiveness of Rate Revisions. Any revised budget from time to time established by the Board of Directors of GRE as provided in Section 2.3.1 or any revised Rate Formula from time to time established by GRE as provided in Section 2.3.2 shall be deemed to be substituted for the then existing budget or Rate Formula, as the case may be, whether or not the Member has approved such revised budget or Rate Formula. The Member shall pay for electric power and energy purchased by it under this Agreement after the effective date of any such revision pursuant to such revised budget or Rate Formula.

2.3.4 1999 Rate Revisions. The rates applicable to the Member during the calendar year 1999 may only be revised upon the approval of the Board of Directors of CPA, if the Member is also a member of CPA, or upon the approval of the Board of Directors of UPA, if the Member is also a member of UPA. No such revision shall be effective unless approved in writing by RUS.

2.4 Special Rates.

2.4.1 1999 Special Rates. For calendar year 1999, all special and incentive rates to be offered by GRE shall be determined by the Board of Directors of CPA, if the Member is also a member of CPA, or UPA, if the Member is also a member of UPA. All such rates shall terminate on December 31, 1999, except for any existing special wholesale rate for electric power and energy provided by GRE to a Distribution Member to provide retail service to a commercial or industrial customer under an arrangement among GRE (or CPA or UPA, if applicable), a Distribution Member and the customer ("**Retail Customer Specific Rates**")

2.4.2 Special Rates After 2000. Commencing January 1, 2000, the Board of Directors of GRE may (i) at any time agree to and offer any Retail Customer Specific Rate through any Distribution Member, without the consent of any other Distribution Member, and (ii) establish special or incentive rates (other than Retail Customer Specific Rates), including demand side management incentive rates (each an "Other Special Rate"), only with the consent of a Dual Percentage of the Distribution Members. All Other Special Rates shall be set forth in Appendix B, and may be modified or terminated only with the consent of a Dual Percentage of the Distribution Members. If the Member has made a Fixed Purchase Election, the amount of electric power and energy of the Member thereafter eligible for each Other Special Rate in effect on the Fixed Date shall be fixed at the time and in the same manner as provided in Section 1.2.3, and shall be reduced in the same manner as provided in Section 1.2.15. Unless otherwise agreed to by GRE in its sole discretion, the Member will be eligible only for Other Special Rates in effect on the Fixed Date, and only for so long as such Other Special Rates remain in effect.

2.5 Costs of Other Member Services. In addition to the sale of electric power and energy hereunder, and the provision of transmission services pursuant to the Transmission Service Contract, GRE may provide other services for the benefit of some or all Distribution Members. For each such service for which the annual cost to GRE exceeds \$250,000 (such as print shop services, engineering services, power requirements studies and oil circuit recloser maintenance), GRE shall separately account for its direct and indirect costs of providing each such service, and shall annually design charges for each such service intended to fully recover such costs from those Distribution Members using such service.

2.6 Allocations to Resources: Payment Responsibilities.

2.6.1 Allocation to Resources. GRE shall at all times provide in Appendix B a methodology by which GRE shall allocate all of its direct and indirect costs and revenues, including administration and general expenses, margins, revenues from the sale of electric power and energy and investment gain and loss, to its unbundled service categories, and all costs and revenues so allocated by GRE to the production of electric power and energy shall be allocated by GRE among all of GRE's Resources and Retired Resources

2.6.2 Resource Responsibility of the Member After Fixing Purchase Obligations If the Member has elected to fix its electric power and energy purchase obligations pursuant to Section 1.2, the rates applicable to the Member pursuant to Appendix B shall take into account all costs and revenues allocated pursuant to Section 2.6.1 to all Fixed Resources and all Retired Fixed Resources (collectively, the "Member's Resource Pool"), and such rates shall not take into account costs and revenues allocated pursuant to Section 2.6.1 to any Future Resource that does not also constitute a Fixed Resource or a Retired Fixed Resource.

2.6.3 Substitute Fixed Resources.

2.6.3.1 Permanent Substitute Fixed Resources. A Permanent Substitute Fixed Resource shall constitute a Fixed Resource if and only if such Permanent Substitute Fixed Resource is approved to by a Dual Percentage of the Distribution Members having cost responsibility under the Power Purchase Contracts for the Related Retired Fixed Resource, and the Member has not elected under Section 1.2.15 to reduce its fixed purchase obligations in connection with the retirement of such Related Retired Fixed Resource or in connection with such Permanent Substitute Fixed Resource.

2.6.3.2 Temporary Substitute Fixed Resources. A Temporary Substitute Fixed Resource shall constitute a Fixed Resource upon designation by the Board of Directors of GRE.

3. Negative Covenants.

3.1 Future Resources. GRE shall not, directly or indirectly, through CPA, UPA, or otherwise, (i) enter into, assume (by operation of law or otherwise) or otherwise acquire a Resource that is an agreement for the purchase of electric power or energy with a duration of longer than five (5) years, or (ii) purchase, commence construction of, enter into a lease of, or otherwise acquire a Resource that is a generation facility, after the date of this Agreement (each, a "Future Resource"), unless:

3.1.1 Member Consent. GRE has obtained the approval for such Future Resource from a Dual Percentage of the All-Requirements Members; ✓

3.1.2 Non-Recourse Purchase Agreement. If such Future Resource is an agreement for the purchase of electric power and energy, such agreement is a Non-Recourse Obligation; ✓

3.1.3 Distribution Member Load Non-Recourse Generation Facility. If such Future Resource is a generation facility and a majority of the capacity of such facility is intended to serve Distribution Members, (i) all Indebtedness incurred by GRE (or CPA or UPA) to finance all or any portion of the capital cost of such Future Resource shall be a Non-Recourse Obligation, (ii) the amounts of GRE's (or CPA's or UPA's) own funds (other than proceeds of Non-Recourse Obligations) provided to cover the capital cost of such Future Resource, together with the aggregate of all of GRE's (or CPA's or UPA's) funds utilized in reliance on this Section 3.1.3 with respect to other Future Resources and all amounts of Investments and capital expenditures made in reliance on Section 3.2.1, at the time such Future Resource is acquired or completed, determined as provided in Section 3.4, do not exceed seventy-five percent (75%) of the Distribution Members' Combined GRE Equity, and (iii) all contracts for the purchase of fuel or fuel transportation for such Future Resource and

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for maintenance or operation of such Future Resource by a party other than GRE, in each case with a term greater than five (5) years, are Non-Recourse Obligations; or

3.1.4 Other Non-Recourse Facility. If such Future Resource is a generating facility and a majority of the capacity of such facility is intended to serve Persons other than Distribution Members, (i) all Indebtedness incurred by GRE (or CPA or UPA) to finance all or any portion of the capital cost of such Future Resource shall be a Non-Recourse Obligation, (ii) the amounts of GRE's (or CPA's or UPA's) own funds (other than proceeds of Non-Recourse Obligations) provided to cover the capital cost of such Future Resource, together with the aggregate of all of GRE's (or CPA's or UPA's) funds utilized in reliance on this Section 3.1.4 with respect to other Future Resources and all amounts of Investments and capital expenditures made in reliance on Section 3.2.2, at the time such Future Resource is acquired or completed, determined as provided in Section 3.4, do not exceed twenty-five percent (25%) of the Distribution Members' Combined GRE Equity, and (iii) all contracts for the purchase of fuel or fuel transportation for such Future Resource and for maintenance or operation of such Future Resource by a party other than GRE, in each case with a term greater than five (5) years, are Non-Recourse Obligations.

3.2 Electric Utility Investments. GRE shall not make, directly or indirectly, through CPA, UPA or otherwise, (i) any Investment (other than for the purpose of cash management in the ordinary course) in any Person engaged in business in the Electric Utility Industry, or (ii) make any capital expenditure for any asset used by GRE (or CPA or UPA) in the Electric Utility Industry (other than capital expenditures for a Future Resource, which shall be governed by Section 3.1), except:

3.2.1 For Distribution Members. Any such Investment that is made in a Person or capital expenditure in an asset primarily providing services or products to the Distribution Members (directly or through GRE, CPA or UPA) and that, together with all such Investments and capital expenditures made in reliance on Section 3.2.1 and all amounts of funds utilized in reliance on Section 3.1.3, in the aggregate amount at the time any such Investment or capital expenditure is made, determined as provided in Section 3.4, do not exceed seventy-five percent (75%) of the Distribution Members' Combined GRE Equity;

3.2.2 For Other Purposes. Any such Investment that is made in a Person or capital expenditure in an asset primarily providing services or products to Persons other than the Distribution Members (directly or through GRE, CPA or UPA) and that, together with all such Investments and capital expenditures made in reliance on Section 3.2.2 and all amounts of funds utilized in reliance on Section 3.1.4, in the aggregate amount at the time any such Investment or capital expenditure is made, determined as provided in Section 3.4, do not exceed twenty-five percent (25%) of the Distribution Members' Combined GRE Equity;

3.2.3 Member Consent. Any such Investment or capital expenditure made with the approval of a Dual Percentage of the Distribution Members; and

3.2.4 Existing Investments. Any such Investment existing as of, or any such capital expenditure made on or before, the date of this Agreement.

3.2.5 Certain Additions, Modifications, Etc. Any such capital expenditure for additions, improvements, repairs, maintenance, upgrades and other modifications to Resources (other than (i) Major Resource Modifications, which shall be governed by this Section 3.2 excluding this Section 3.2.5, and (ii) a new unit added to a Resource, which constitutes a Future Resource and shall be governed by Section 3.1).

3.3 Non-Electric Utility Investments. GRE shall not make, directly or indirectly, through CPA, UPA or otherwise, (i) any Investment (other than for the purpose of cash management in the ordinary course of GRE's business) in any Person engaged in business outside of business in the Electric Utility Industry, or (ii) make any capital expenditure for any asset not used by GRE (or CPA or UPA) in the Electric Utility Industry, except (a) any such capital expenditure for transmission facilities (except generation outlets, which shall be governed by Section 3.2 as a capital expenditure for an asset used in the Electric Utility Industry) and any such capital expenditure made by GRE (or CPA or UPA) in the ordinary course, such as for a headquarters building or vehicles, (b) any such Investment or capital expenditure which, together with all other such Investments and capital expenditures made in reliance on this clause (b), in an aggregate amount at any time, determined as provided in Section 3.4, do not exceed \$5,000,000, and (c) any such Investment or capital expenditure made with the approval of a Dual Percentage of the Distribution Members.

3.4 Determination of Amounts of Investments and Capital Expenditures. The amounts of Investments and capital expenditures at any time used for purposes of any determination of the applicability of Sections 3.1.3, 3.1.4, 3.2.1, 3.2.2 and 3.3(b) shall be equal to, (i) with respect to Investments, the remaining amortized balance of the cash contributions in such Investments, and, with respect to capital expenditures, the net book value of the related assets, all as of the date of such determination.

3.5 GRE Retail Competition. GRE shall not, during the term of this Agreement, without the consent of the Member, (i) sell electric energy at retail within the Member's assigned geographic service area, if any, established by applicable state laws or regulations, as such laws or regulations may be amended or replaced, or (ii) offer to provide retail electric service to any existing customer of the Member.

4. Electric Characteristics; Etc.

4.1 Electric Characteristics. Electric power and energy to be furnished hereunder shall be alternating current, three-phase, sixty-Hertz.

4.2 Measurement. GRE shall at all times set forth in Appendix B the manner in which it shall measure electric power and energy to be furnished hereunder.

4.3 **Delivery.** GRE shall deliver all electric power and energy to be sold and purchased under this Agreement pursuant to the terms and conditions of the Transmission Service Contract.

4.4 **Access.** Duly authorized representatives of either party hereto shall be permitted to enter the premises of the other party hereto at all reasonable times in order to carry out the provisions hereof. The Member shall at all times have reasonable access during business hours to examine the books, records and supporting worksheets and data of GRE as may be appropriate to determine the accuracy of any charges to the Member hereunder, subject to GRE's right to excise or otherwise protect confidential information of GRE or third parties, including other Distribution Members.

4.5 **Continuity of Service.** Except as otherwise agreed, GRE shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy under this Agreement. If the voltage of the power supply shall be reduced, or if the supply of electric power and energy shall fail or be interrupted or become defective through a Force Majeure Event affecting GRE, CPA, or UPA, GRE shall not be liable therefor or for any damages caused thereby.

5. **Metering.**

5.1 **Ownership.** GRE, CPA or UPA shall own and maintain all meters and associated metering equipment located at GRE's or the Member's substations, unless GRE and the Member shall otherwise agree.

5.2 **Readings.** Meter readings shall be made monthly and on dates coordinated with WAPA and other Persons with whom GRE, CPA, UPA, or the Member may be contracting for electric power and energy.

5.3 **Tests.** Each meter shall, by comparison with accurate standards, be tested and calibrated at intervals not to exceed twelve (12) months. If a meter shall be found inaccurate, it shall be restored to an accurate condition or an accurate meter substituted.

5.4 **Accuracy.** The Member shall have the right to request that a special meter test be made at any time. If any test, made at the Member's request, disclosed that the meter tested is registering within two percent (2%) of normal, the Member shall bear the expense of such test. The expense of all other tests shall be borne by GRE.

5.5 **Adjustments.** The results of all tests and calibrations shall be open to examination by the Member, and a report of every test shall be furnished immediately to the Member. Any meter not more than two percent (2%) above or below normal shall be deemed accurate. If, as a result of any test, any meter is found to register in excess of two percent (2%) either above or below normal, the readings of such meter previously taken for billing purposes shall be corrected according to the percentage of inaccuracy so found, but no such correction shall extend beyond the known date of inaccuracy or ninety (90) days previous to the day on which inaccuracy is discovered by such test.

6. Payments.

6.1 Monthly Payments. Electric power and energy purchased hereunder shall be paid for at the office of GRE monthly on or before the last business day of the month after which such power and energy has been furnished. If the Member shall fail to pay any such bill as herein provided, and if default in payment continues for a period of sixty (60) days, GRE may discontinue furnishing of electric power and energy hereunder upon fifteen (15) days written notice to the Member of its intention to do so. Further, the Member shall pay a late payment charge if the bill is not paid on time. The late payment charge shall be the product of the amount of the bill and an annual interest rate equal to the Prime Rate plus two percent (2.0%) applied pro rata for each day late on the basis of a 365-day year.

6.2 Contests of Charges. In the event the Member desires to contest all or any part of the charges submitted by GRE, it shall nevertheless pay the full amount of the charges when due; provided, however, any payment so made shall not constitute a waiver of any right of the Member to contest the correctness of the charge.

7. Certain Rights of RUS. GRE and the Member agree for their benefit and that of RUS that (i) if the Member shall fail to comply with any provision of this Agreement, GRE or RUS shall have the right to enforce the obligations of the Member under the provisions of this Agreement and (ii) if GRE shall fail to comply with any provision of this Agreement, the Member or RUS shall have the right to enforce the obligations of GRE under the provisions of this Agreement. Such enforcement may be by instituting all necessary actions at law or suits in equity, including, without limitation, suits for specific performance. Such rights of RUS to enforce the provisions of this Agreement are in addition to and shall not limit the rights which RUS shall otherwise have as third party beneficiary of this Agreement or pursuant to the assignment and pledge of this Agreement and the payments required to be made hereunder as provided in the GRE Mortgage. RUS shall not, under any circumstance, assume or be bound by the obligations of GRE or the Member under this Agreement except to the extent RUS shall agree in writing to accept and be bound by any such obligations in whole or in part.

8. Term. This Agreement shall become effective only upon approval in writing by RUS and shall remain in effect until December 31, 2020, and shall continue thereafter until terminated by either party giving to the other not less than four (4) years' written notice of its intention to terminate.

9. Limitations on Certain Member Actions.

9.1 Prohibitions on Certain Actions. The Member agrees that, for so long as any of the RUS Notes are outstanding, the Member will not, without the approval in writing of GRE and RUS, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any entity, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired (each a "Restricted Transaction"). The Member acknowledges and agrees that RUS may withhold or condition its consent to a

Restricted Transaction in its sole discretion. GRE will not unreasonably withhold or condition its consent to any such Restricted Transaction. GRE will not withhold or condition its consent except in cases where to do otherwise would result in rate increases for the other Distribution Members or impair the ability of any of GRE, CPA or UPA to repay its secured loans or guaranties in accordance with their terms, or adversely affect system performance in a material way.

9.2 Certain Permitted Actions. Notwithstanding Section 9.1, the Member may take or suffer to be taken any steps for a Restricted Transaction without GRE's consent (but still subject to the approval of the Administrator of RUS) as provided in this Section 9.2:

9.2.1 Payment. So long as the Member shall pay such portion of the indebtedness outstanding under the RUS Notes and all other obligations of GRE, CPA and UPA as shall be reasonably determined by GRE with the prior written consent of RUS and shall otherwise comply with such reasonable terms and conditions as RUS and GRE may require either: (i) to eliminate any adverse effect that such action seems likely to have on the rates of the other Distribution Members, or (ii) to assure that the abilities to repay the RUS Notes and meet all other obligations of GRE, CPA, and UPA in accordance with their terms are not impaired; or

9.2.2 Restricted Transaction with Other Distribution Member. If the Restricted Transaction is with another Distribution Member and the surviving entity in the Restricted Transaction assumes and agrees to perform all of the Member's obligations under this Agreement.

9.3 Requirements of RUS. RUS may require, among other things, that any payment owed under Section 9.2.1 that represents a portion of the indebtedness outstanding under the RUS Notes shall be paid by the Member in a manner necessary to accomplish a defeasance of those obligations in accordance with the loan documents relating thereto, or be paid directly to the holders of the RUS Notes for application by them as prepayments in accordance with the provisions of such documents, or be paid to GRE and held and invested in a manner satisfactory to RUS.

9.4 Certain Remedies. The Member and GRE agree that the failure or threatened failure of the Member to comply with the terms of this Section 9 may cause irreparable injury to GRE and to RUS that cannot properly or adequately be compensated by the mere payment of money. The Member agrees, therefore, that in the event of a breach or threatened breach of this Section 9 by the Member, GRE or RUS, in addition to any other remedies that may be available to it judicially, shall have the right to seek from any competent court a decree enjoining such breach or threatened breach of this Section or providing that the terms of this Section 9 be specifically enforced.

9.5 GRE Procedures Governing Restricted Transactions.

9.5.1 Notice from Member. The Member shall give GRE one hundred eighty (180) days' notice prior to entering into a Restricted Transaction. Such notice shall contain the proposed closing date and material terms of such Restricted Transaction and the

Member's estimate of the extent to which the Restricted Transaction would (i) result in rate increases for the other Distribution Members, (ii) impair the ability of GRE, CPA or UPA to repay its secured loans in accordance with their terms, (iii) adversely affect GRE's system performance in a material way or (iv) materially impair the Member's ability to fulfill its obligations under this Agreement.

9.5.2 Response from GRE. GRE shall respond to the notice given by the Member pursuant to Section 9.5.1 within one hundred twenty (120) days after receipt of such notice. Such response shall either (i) consent to the Restricted Transaction unconditionally or (ii) specify (x) conditions under which consent would be granted, (y) how the Restricted Transaction would result in rate increases for the other Distribution Members, impair the ability of GRE, CPA, or UPA to repay its secured loans or guaranties in accordance with their terms, adversely affect system performance in a material way, or materially impair the Member's ability to fulfill its obligations under this Agreement and (z) the amount and calculation of any payment required by GRE as a condition to its consent, which payment may include the loss of revenue to GRE due to the Restricted Transaction. If GRE fails to respond within such one hundred twenty (120) day period, GRE shall be deemed to have consented unconditionally to the Restricted Transaction (which may still be subject to RUS approval).

9.5.3 Exchange of Information. GRE will provide to the Member, in a timely manner, information reasonably requested by the Member to assist the Member in making the estimates under Section 9.5.1. The Member will provide to GRE, in a timely manner, information reasonably requested by GRE to assist GRE in evaluating the proposed transaction.

10. Assignments.

10.1 General.

10.1.1 Consent Required. This Agreement shall be binding upon and inure to the benefit of the permitted successors and permitted assigns of the parties, except that this Agreement may not be assigned by either party unless prior consent to such assignment is given in writing by the other party and, if either party is an RUS Borrower, RUS. Any assignment made without a consent required hereunder shall be void and of no force or effect as against the non-consenting party. For purposes of this Section 10, the Member and GRE each hereby acknowledge and consent to the present assignment of an interest in this Agreement by GRE pursuant to the GRE Mortgage and by the Member pursuant to any existing mortgage, indenture, security agreement or other contract or agreement securing the indebtedness of the Member (the "Member Mortgage").

10.1.2 No Discharge. No sale, assignment, transfer or other disposition of this Agreement permitted by this Agreement shall release or discharge either party from or otherwise affect its rights or obligations under this Agreement.

1995). Consequently, the parties agree that this Agreement may be assigned to any Person (including any receiver or trustee in bankruptcy) pursuant to this Section 10 without regard to whether or not (i) such Person is a cooperative; (ii) the Board of Directors of such Person, if any, is chosen by a vote in which the Member participates; or (iii) such Person is operated on a not-for-profit basis, provided that rates hereunder continue to be set in accordance with Section 2. Further, no other provision of this Agreement shall restrict the assignment of this Agreement pursuant to this Section 10. In the event an assignment is made by GRE to a Person that is not a cooperative, all provisions of this Agreement requiring approval of any member(s) or of the Board of Directors of GRE shall cease to be applicable, and in such instances such assignee may act in its discretion. References in this Agreement to an assignment of this Agreement shall mean and include either or both of an assignment of rights or a delegation of duties.

11. General.

11.1 Status as Member No Defense. The Member shall not assert as a defense, offset or condition to any of its purchase, payment or other obligations under this Agreement any rights, claims or defenses that the Member may have against GRE due to or arising out of the Member's status as a member of GRE (including any rights, claims or defenses contained in or arising out of the Articles of Incorporation or Bylaws of GRE) or any other relationship between the Member and GRE other than the relationship of purchaser and seller established under this Agreement.

11.2 RUS as Third-Party Beneficiary. GRE and the Member acknowledge and agree that, in providing loans and loan guarantees to CPA or UPA, as the case may be, RUS specifically relied on the agreements and obligations of CPA or UPA and the Member under the member service contract or wholesale power agreement, as the case may be, and, that, in approving the Restructuring Transaction and this Agreement, RUS is specifically relying on the agreements and obligations of GRE and the Member set forth in this Agreement, including, without limitation, the agreement set forth in Section 7. Further, GRE and the Member acknowledge and agree that RUS is a third-party beneficiary of this Agreement.

11.3 RUS Approval No Waiver. The parties hereto hereby acknowledge and agree that the approval by RUS of the Restructuring Transaction and this Agreement shall not in any way constitute or be deemed to be a waiver by RUS of any of its rights, or of any of GRE's, CPA's or UPA's obligations, under any loan and security documents between RUS and GRE, CPA or UPA, or under applicable RUS regulations. The parties further agree that, in the event of a conflict between this Agreement and such RUS loan and security documents or applicable RUS regulations, the terms of such RUS loan and security documents or the applicable regulations shall prevail.

11.4 Procedures. GRE shall establish and maintain policies and procedures providing reasonable and appropriate mechanisms for implementing the provisions of this Agreement (and applicable definitions in Appendix A) relating to:

- (i) the making of a Fixed Purchase Election by the Member under Section 1.2.1;

11.9 Amendments.

11.9.1 General. Subject to Section 11.9.2, this Agreement may be amended by agreement between GRE and the Member, but no such amendment to this Agreement shall be effective unless it is in writing and executed by both parties; provided, however, that changes to Appendix B shall be effective only when made in accordance with Section 2.3.2.

11.9.2 Amendments to Other Agreements. This Agreement and each of the Other Power Purchase Contracts can be amended without the consent of any Distribution Member of GRE other than the Distribution Member that is a party to such agreement; provided, however, that if any Other Power Purchase Contract is amended, GRE must offer to make a corresponding amendment to this Agreement. The Member acknowledges that this Agreement may, as a consequence of the foregoing, be different from any one or more of the Other Power Purchase Contracts.

11.9.3 RUS Approval. So long as either party hereto is an RUS Borrower, no amendment, or waiver or release of performance to this Agreement shall be effective unless it has been approved by RUS.

11.10 Waiver. The failure of any party hereto at any time or times to require performance of any provision of this Agreement shall in no manner affect the right to enforce the same; and no waiver by any party to this Agreement of any provision (or breach of any provision) of this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed or construed either as a further or continuing waiver of any such provision or breach or as a waiver of any other provision (or of a breach of any other provision) of this Agreement.

11.11 Severability. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be unenforceable.

11.12 Governing Law. This Agreement shall be governed by, and construed in accordance with, applicable federal law and, in the absence of controlling federal law, by the laws of the State of Minnesota, except those that would render such choice of law ineffective.

11.13 Notices. Each notice, approval, consent, communication and delivery required or permitted under this Agreement shall be delivered in person, by facsimile transmission, a nationally recognized next business day courier service or first class United States mail to the facsimile numbers or addresses provided below and shall be deemed received (i) if delivered in person, on the date of personal delivery, (ii) if transmitted by facsimile, on the date of telephonic confirmation of receipt, (iii) if sent by a nationally recognized next business day courier service, on the first business day after delivered to such overnight express service, or (iv) if sent by first class United States mail, on the third business day after so mailed.

If to GRE to:

General Manager
Great River Energy
17485 East Highway 10
Elk River, MN 55330
Fax Number: 612/241-2366

with copies to:

General Counsel
Great River Energy
John E. Drawz, Esq.
Fredrikson & Byron, P.A.
1100 International Center
900 Second Avenue South
Minneapolis, MN 55402-3397
Fax Number: 612/347-7077

and General Counsel
Great River Energy
Roger C. Miller, Esq.
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
Fax Number: 612/450-7384

If to the Member, to:

President and CEO
Wright-Hennepin Cooperative Electric Association
6800 Electric Drive
PO Box 330
Rockford, MN 55373-0330
Fax Number: 612/477-3054

with a copy to:

Maun and Simon
2000 Midwest Plaza Building West
801 Nicollet Mall
Minneapolis, MN 55402
Fax Number: 612/904-7424

Either party may, be delivering to the other party a written notice thereof complying with the requirements of this Section 11.13, change its addresses or addressees.

11.14 Recitals. The recitals to this Agreement shall be a part of this Agreement.

11.15 Counterparts. This Agreement may be executed in multiple counterparts to be construed as one.

[Signatures begin on next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

GREAT RIVER ENERGY

By: *Antoine J. Rude*
Name: _____
Its: _____

**WRIGHT-HENNEPIN COOPERATIVE
ELECTRIC ASSOCIATION**

By: *Alvin E. Heinz*
Name: Alvin E. Heinz
Its: Board Chairman

APPENDIX A

DEFINITIONS

All capitalized terms used in this Agreement (including Appendix B) and not otherwise defined shall, unless the context clearly requires otherwise, have the meanings set forth in this Appendix A.

“Agreement” shall be as defined in the first sentence of this Agreement.

“All-Requirements Members” means, collectively, all Distribution Members purchasing electric power and energy from GRE pursuant to Section 1.1 of their respective Power Purchase Contracts and who have not given notice pursuant to Section 1.2.1 of their respective Power Purchase Contracts of their elections to fix their electric power and energy purchase obligations.

“Assignment for Security” shall be as defined in Section 10.2.1.

“Capacity Percentage” means, for any calendar month, the average of the percentages for the three (3) corresponding calendar months occurring during the thirty-six (36) months immediately preceding the Fixed Date that (i) the Member’s measured demand from GRE for the one-hour coincident peak of GRE (or CPA and UPA on a combined basis, if applicable, less WAPA electric power) during such months, adjusted to remove all Interruptible Power of the Member purchased from GRE is of (ii) the measured demand from GRE of all of the Distribution Members for the one-hour coincident peak of GRE (or CPA and UPA on a combined basis, if applicable, less WAPA electric power) during such months, adjusted to remove all Interruptible Power of all of the Distribution Members purchased from GRE.

“CPA” shall be as defined in the first recital of this Agreement.

“Distribution Members” means, collectively, all of the cooperative corporations constituting members of GRE that sell electric energy at retail on the date of this Agreement.

“Distribution Members’ Combined GRE Equity” means the sum of all of the Distribution Members’ equity in GRE, CPA, and UPA.

“Dual Percentage” means the approval of Distribution Members of the applicable group (e.g., All-Requirements Members or all Distribution Members), which approving Distribution Members represent both (i) greater than fifty-five percent (55%) of such applicable group of Distribution Members, with each such Member having a single vote, and (ii) combined aggregate electric energy purchases from GRE during the immediately preceding calendar year greater than forty-five percent (45%) of the combined aggregate electric energy purchases of all Distribution Members of such applicable group during the immediately preceding calendar year.

“Electric Utility Industry” means the ownership or operation of electric generation and related facilities, including plants, mines, fuel sources, pipelines and generation outlets.

“Existing Resource” means any Resource owned, leased or entered into by GRE (or CPA or UPA) on or prior to the date the Member gives notice of its election to fix its electric power and energy purchase obligations pursuant to Section 1.2.1 and that is available to GRE on or prior to the Fixed Date. ✓

“Fixed Date” shall be as defined in Section 1.2.2.

“Fixed Purchase Election” shall be as defined in Section 1.2.1.

“Fixed Resource” means an Existing Resource, a Committed Resource or either a Permanent Substitute Fixed Resource or a Temporary Substitute Fixed Resource constituting a Fixed Resource as provided in Section 2.6.3. ✓

“Force Majeure Event” means, as to any Person, a failure to perform under any provision of this Agreement due to an act of God or the public enemy, or actions of local, state, or federal agencies or bodies, or requirements of pool agreements to which such Person is a party, or because of accident, labor troubles, or any other cause beyond the control of such Person.

“Future Resource” shall be as defined in Section 3.1. ✓

“Government” means the United States of America, acting by and through RUS.

“GRE” means Great River Energy, a Minnesota cooperative corporation.

“GRE Agreements” means the Management Services Agreements, each dated as of January 1, 1999, between GRE and each of CPA and UPA, and the Power Sales Agreements, each dated as of January 1, 1999, between GRE and each of CPA and UPA.

“GRE Loan Contract” means any loan contract, loan agreement, credit agreement or other contract or agreement secured by the GRE Mortgage.

“GRE Mortgage” means any mortgage, indenture, security agreement or other contract or agreement securing any indebtedness, guarantee or other financial obligation of GRE.

“GRE Season” means any one of the following consecutive three-month periods: (i) June, July, and August; (ii) September, October, and November; (iii) December, January and February; and (iv) March, April and May.

"Indebtedness" means:

(1) debt incurred or assumed by GRE for borrowed money or for the acquisition, construction or improvement of property other than goods or services that are acquired in the ordinary course of business of GRE.

(2) lease obligations of GRE that, in accordance with generally accepted accounting principles are shown on the liability side of a balance sheet;

(3) all debt (other than indebtedness otherwise treated as Indebtedness hereunder) for borrowed money or the acquisition, construction or improvement of property or capitalized lease obligations guaranteed, directly or indirectly, in any manner by GRE, or in effect guaranteed, directly or indirectly, by the Seller through an agreement, contingent or otherwise, to purchase any such indebtedness or to advance or supply funds for the payment or purchase of any such indebtedness or to purchase property or services primarily for the purpose of enabling the debtor or seller to make payment of such indebtedness, or to assure the owner of the indebtedness against loss, or to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether or not such property is delivered or such services are rendered), or otherwise; or

(4) any agreement by GRE to purchase or lease power, supplies, property or services primarily for the purpose of enabling a debtor or seller to make payment of debt service on indebtedness, pursuant to which GRE agrees to pay for power, supplies, property or services irrespective of whether or not such power, supplies or property are delivered or such services are rendered.

"Interruptible Power" means any demand of the Member that GRE (or CPA or UPA, if applicable) has the right to interrupt or require to be interrupted.

"Investment" means (i) any direct or indirect purchase or other acquisition by GRE of any beneficial interest in, including stock, partnership interest or other equity securities of, any other Person (including any subsidiary or affiliate of GRE); and (ii) any direct or indirect loan, advance or capital contribution by GRE to any other Person (including any subsidiary or affiliate of GRE), including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business.

"Load Factor" means, for any calendar month, the average of the percentages for the three (3) corresponding calendar months occurring during the thirty-six (36) months immediately preceding the Fixed Date that (i) the average measured demand of the Member purchased from GRE (or CPA or UPA, if applicable, less WAPA electric power) during such months, adjusted to remove all Interruptible Power of the Member purchased from GRE, is of (ii) the measured demand of the Member for the one-hour coincident peak of GRE (or CPA or UPA, if applicable, less WAPA

electric power) during such months, adjusted to remove all Interruptible Power of the Member purchased from GRE.

“Major Resource Modification” means any addition, improvement, repair, maintenance, upgrade or other modification to a Resource that is expected to result in (i) an increase of the MAPP-accredited capability of such Resource by twenty percent (20%) or more or (ii) an extension of the projected useful life of such Resource by twenty (20) years or more, as certified by an independent consulting engineer.

“MAPP” means the Mid-Continent Area Power Pool, and its successors.

“Member” means the cooperative corporation identified as such in the first sentence of this Agreement.

“Member’s Resource Pool” shall be as defined in Section 2.6.2.

“Member Mortgage” shall be as defined in Section 10.1.1.

“Monthly Energy” shall be as defined in Subsection 1.2.3.4.

“Monthly Firm Power” shall be as defined in Section 1.2.3.4.

“Monthly Interruptible Power” shall be as defined in Section 1.2.4.

“Non-Recourse Obligation” means any indebtedness or other obligation, (i) liability for which is limited to (a) specific property of GRE (or CPA or UPA) and (b) the revenues and other rights under separate power supply agreements and (ii) for which there is no recourse, directly or indirectly, to any other property, revenues or agreements of GRE (or CPA or UPA); provided that such indebtedness or other obligation is incurred solely in connection with the acquisition, construction or operation of the property or agreements to which such liability relates.

“Other Power Purchase Contracts” means, collectively, the Power Purchase Contracts, each dated as of January 1, 1999, between GRE and each of the Distribution Members other than the Member.

“Permanent Substitute Fixed Resource” means any Future Resource constituting a generating facility or a contract for the purchase of electric power and energy with a contract term of greater than five (5) years, which is designated by the Board of Directors of GRE to provide substitute electric power and energy for any Retired Fixed Resource.

“Person” means an individual, partnership, limited liability company or partnership, corporation, business trust, joint stock company, cooperative, trust, unincorporated association, joint venture, governmental authority or other entity or whatever nature.

"Power Purchase Contracts" means, collectively, this Agreement and the Other Power Purchase Contracts.

"Prime Rate" means a variable rate of interest per annum equal, on any day, to the rate of interest published on such day in *The Wall Street Journal* as the average prime lending rate for 75% of the United States' 30 largest commercial banks, or if *The Wall Street Journal* or such rate is not published on such day, such rate as last published in *The Wall Street Journal*. In the event *The Wall Street Journal* ceases to publish such rate or an equivalent, the term "Prime Rate" shall be determined by reference to such other regularly published prime rate selected by GRE.

"Rate Formula" means the formula for GRE's rates set forth in Appendix B attached hereto, as Appendix B may be amended from time to time pursuant to Section 2.3.2.

"Related Retired Fixed Resource" means, with respect to any Permanent Substitute Resource, the Retired Fixed Resource, the electric power and energy from which is being replaced by the electric power and energy from such Permanent Substitute Resource.

"Resources" means, collectively, GRE's interest in and to any and all (i) generating facilities, which may be owned (jointly or individually), leased or otherwise acquired, as such facilities may be modified, added to, improved or repaired, and (ii) contracts or other agreements for the purchase of electric power and energy or energy by GRE, including any such facilities or agreements of CPA or UPA as to which GRE has rights pursuant to the GRE Agreements.

"Restricted Transaction" shall be as defined in Section 9.1.

"Restructuring Transaction" means all of the transactions released to or arising out of the formation of GRE and the commencement of its operations.

"Retired Fixed Resource" means any Fixed Resource that has become a Retired Resource.

"Retired Resource" means any Resource or any portion thereof that has terminated or expired, or has been retired, abandoned, sold, leased as lessor pursuant to a capitalized lease, transferred, assigned, or has become permanently inoperable or otherwise permanently unavailable.

"RUS" means the Rural Utilities Service, together with any agency succeeding to the responsibilities of the Rural Utilities Service.

"RUS Borrower" means any Person who has outstanding debt to or guaranteed by RUS or has an obligation that secures a third party's debt to or guaranteed by RUS.

"RUS Notes" means, collectively, the notes of GRE, CPA and UPA payable to the order of the Federal Financing Bank, the payment of which is guaranteed by the Government pursuant to the Rural Electrification Act of 1936, as amended, and to the Government evidencing loans made by the

Government, or evidencing reimbursement obligations to the Government with respect to the Government's guarantee of the payment of certain notes payable to the order of the Federal Financing Bank, and all amendments, supplements, extensive and replacements to, of or for such notes.

"Temporary Substitute Fixed Resource" means any contract for the purchase of electric power and energy with a contract term of five (5) years or less, which is designated by the Board of Directors of GRE to provide substitute electric power and energy for a Retired Fixed Resource or for a Fixed Resource that is temporarily suspended, inoperable, interrupted, curtailed, interfered with or otherwise temporarily unavailable.

"Transmission Service Contract" means the Transmission Service Contract, dated as of January 1, 1999, between GRE and the Member.

"UPA" shall be as defined in the first recital of this Agreement.

"Unavailable Committed Resource" means any Resource owned, leased, entered into or committed to by GRE (or CPA or UPA, as applicable) on or prior to the date the Member gives notice of its Fixed Purchase Election but that is not yet available to GRE on the Fixed Date.

"WAPA" means the Western Area Power Administration, and its successors.

GREAT RIVER ENERGY RATE FORMULA

1.0 Great River Energy's ("GRE") Wholesale Rate

Effective on January 1, 2000, GRE's wholesale rate to the Members for service shall be determined in accordance with the Rate Formula outlined in this Appendix. The Rate Formula is designed to lock in certain key elements of the rate making process, while allowing flexibility in other areas. In order to recognize the dual function that production plant has in providing both capacity and energy, production plant investment and associated plant related expenses shall be classified as fifty percent (50%) Production - Capacity and fifty percent (50%) Production - Energy. Similarly, the High Voltage Direct Current ("HVDC") transmission line and the facilities in the converter stations that serve direct current ("DC") functions shall be classified as fifty percent (50%) Production - Capacity and fifty percent (50%) Production - Energy to reflect their dual role in providing service. The Rate Formula consists of three basic steps:

- Determination of revenue requirements;
- Cost of service ("COS") analysis;
- Rate design.

2.0 Member Revenue Requirements

The Member Revenue Requirements of GRE shall be established annually by the GRE Board of Directors based on the approved Budget for the coming year using the following formula:

Production Operations and Maintenance Expense (Acct. Nos. 500 to 557)	
+ Transmission Operation and Maintenance Expense (Acct. Nos. 560 to 573)	
+ Distribution Operation and Maintenance Expense (Acct. Nos. 580 to 598)	
+ Customer Accounting Expense (Acct. Nos. 901 to 905)	
+ Customer Service and Information Expense (Acct. Nos. 907 to 910)	
+ Sales Expense (Acct. Nos. 911 to 916)	
+ Administrative and General Expense (Acct. Nos. 920 to 932)	
<hr/>	
= Total Operating Expense	

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

- + Property Tax Expense (Acct. Nos. 408.1 and 411)
- + Other Tax Expenses (Acct. Nos. 408.2 to 408.7)
- + Depreciation and Amortization Expense (Acct. Nos. 408.2 to 408.7)
- + Interest Expense (Acct. Nos. 427, 430, 431, and 501)
- + Other Operating Expense (Acct. No. 426)
- +/- Prior Year Adjustments

- = **Gross Revenue Requirements**
- Revenue from Non-Member Capacity and Energy Sales (Acct. Nos. 447, 454, 456)
- Revenue from Non-Member Transmission Service (Acct. Nos. 447, 454, 456)
- Non-Member Ancillary Revenue (Acct. Nos. 445 to 456)
- Other Non-Operating Income - Interest Earnings (Acct. No. 419)
- Other Non-Operating Income - Other¹⁷ (Acct. Nos. 415 and 421)

- = **Adjusted Member Revenue Requirements - Before Margin**
- + Margin Requirements
- + Income Tax Expense

- = **Member Revenue Requirements**

GRE must earn a margin at least sufficient to meet the minimum financial requirements of its lender(s). Margin Requirements shall be established annually by the Board of Directors. Members shall receive patronage capital allocations in accordance with the bylaws in a manner that generally reflects the way that margin requirements are recovered through the rates.

¹⁷ Other non-operating income includes net revenue (revenue less expenses) from such sales of commodities and/or services such as sales of fly ash and gypsum, Refuse Derived Fuel ("RDF") print shop, United Service Group ("USG"), etc.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

3.0 Cost of Service Analysis

The various components of the Member Revenue Requirements shall be allocated to the following service classifications:

- Power Supply ("PS") Services:
 - Production – Capacity.
 - Production – Energy.^{1'}
- Delivery Service:
 - Transmission.^{2'}
 - Distribution Substation.
 - Ancillary Services.

The classification methodology described below is intended to indicate general procedures, assumptions and intent. However, it is expressly recognized that from time to time it may be necessary to modify the classification methodology to reflect the nature of the investments and expenses recorded in certain accounts. The GRE Board of Directors shall have the power to make such modification(s). Such modification(s), however, shall not affect the fifty percent (50%) Production - Capacity, fifty percent (50%) Production - Energy classification of Production Plant or the fifty percent (50%) Production - Capacity, fifty percent (50%) Production - Energy classification of the HVDC transmission facilities.

^{1'} The Production - Energy component shall include all costs associated with the load management system.

^{2'} The Transmission function may be further subdivided in the future if this is required by the Federal Energy Regulatory Commission ("FERC"), the Mid-Continent Area Power Pool ("MAPP"), the Independent System Operator ("ISO") and/or an equivalent organization to which GRE belongs.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

The accounts associated with Plant Investment shall be classified as follows:

<u>Account No.</u>	<u>Description</u>	<u>Allocation Method/Factor</u>
1. Intangible Plant		
301	Organization	Not presently used.
302	Franchises and consents	Not presently used.
303	Miscellaneous intangible plant	In proportion to all plant.
2. Production Plant		
A. Steam Production		
310	Land and land rights	50% PS capacity, 50% PS energy.
311	Structures and improvements	50% PS capacity, 50% PS energy.
312	Boiler plant equipment	50% PS capacity, 50% PS energy.
313	Engines and engine driven generators	50% PS capacity, 50% PS energy.
314	Turbo generator units	50% PS capacity, 50% PS energy.
315	Accessory electric equipment	50% PS capacity, 50% PS energy.
316	Miscellaneous power plant equipment	50% PS capacity, 50% PS energy.
B. Nuclear Production		
320	Land and land rights	Not presently used.
321	Structures and improvements	Not presently used.
322	Reactor plant equipment	Not presently used.
323	Turbo generator units	Not presently used.
324	Accessory electric equipment	Not presently used.
325	Miscellaneous power plant equipment	Not presently used.
C. Hydraulic Production		
330	Land and land rights	Not presently used.
331	Structures and improvements	Not presently used.
332	Reservoirs, dams and waterways	Not presently used.
333	Water wheels, turbines and generators	Not presently used.
334	Accessory electric equipment	Not presently used.
335	Miscellaneous power plant equipment	Not presently used.
336	Roads, railroads and bridges	Not presently used.
D. Other Production		
340	Land and land rights	50% PS capacity, 50% PS energy.
341	Structures and improvements	50% PS capacity, 50% PS energy.
342	Fuel holders, producers and accessories	50% PS capacity, 50% PS energy.
343	Prime movers	50% PS capacity, 50% PS energy.
344	Generators	50% PS capacity, 50% PS energy.
345	Accessory electric equipment	50% PS capacity, 50% PS energy.
346	Miscellaneous power plant equipment	50% PS capacity, 50% PS energy.
3. Transmission Plant		
350	Land and land rights	AC to trans./DC is 50% PS capacity, 50% PS energy.
352	Structures and improvements	AC to trans./DC is 50% PS capacity, 50% PS energy.
353	Station equipment	AC to trans./DC is 50% PS capacity, 50% PS energy.
354	Towers and fixtures	AC to trans./DC is 50% PS capacity, 50% PS energy.
355	Poles and fixtures	AC to trans./DC is 50% PS capacity, 50% PS energy.
356	Overhead conductors and devices	AC to trans./DC is 50% PS capacity, 50% PS energy.
357	Underground conduit	AC to trans./DC is 50% PS capacity, 50% PS energy.
358	Underground conductors and devices	AC to trans./DC is 50% PS capacity, 50% PS energy.
359	Roads and trails	AC to trans./DC is 50% PS capacity, 50% PS energy.
4. Distribution Plant		
360	Land and land rights	100% distribution substation.
361	Structures and improvements	100% distribution substation.
362	Station equipment	100% distribution substation.
363	Storage battery equipment	100% distribution substation.

**GREAT RIVER ENERGY
 RATE FORMULA
 (Continued)**

<u>Account No.</u>	<u>Description</u>	<u>Allocation Method/Factor</u>
364	Poles, towers and fixtures	100% distribution substation.
365	Overhead conductors and devices	100% distribution substation.
366	Underground conduit	100% distribution substation.
367	Underground conductors and devices	100% distribution substation.
368	Line transforms	100% distribution substation.
369	Services	100% distribution substation.
370	Meters	100% distribution substation.
371	Installations on customers' premises	100% distribution substation.
372	Leased property on customers' premises	100% distribution substation.
373	Street lighting and signal systems	100% distribution substation.
5. General Plant		
389	Land and land rights	In proportion to labor expense.
390	Structures and improvements	In proportion to labor expense.
391	Office furniture and equipment	In proportion to labor expense.
392	Transportation equipment	In proportion to labor expense.
393	Stores equipment	In proportion to labor expense.
394	Tools, shop and garage equipment	In proportion to labor expense.
395	Laboratory equipment	In proportion to labor expense.
396	Power operated equipment	In proportion to labor expense.
397	Communication equipment	In proportion to labor expense.
398	Miscellaneous equipment	In proportion to labor expense.
399	Other tangible property	In proportion to labor expense.

The Revenue Requirements accounts shall be classified as follows:

<u>Account No.</u>	<u>Description</u>	<u>Allocation Method/Factor</u>
1. Production		
500-514	Steam O&M	FERC standard method.
546-554	Other O&M	FERC standard method.
555	Purchased Power	In accordance with how billed (i.e., demand charges as capacity, energy charges as energy related).
556	System Control & Dispatch	100% to energy.
2. Transmission		
560	Oper. Super. & Eng.	Prorated by accounts 561 to 564.
561	Load Dispatching	Power supply-energy, and transmission.
562	Station	PS-capacity, PS-energy, and transmission.
563	OH Line	Prorated by accounts 354, 355 and 356.
564	UG Line	Prorated by account 357 and 358.
565	Trans. of Electricity - Others	Power supply and transmission.
566	Misc. Transmission	Prorated by accounts 561-564.
567	Rents	Prorated by accounts 561 to 564.
568	Main Super. & Eng.	Prorated by accounts 561 to 564.
569	Main Structures	Prorated by account 352.
570	Main Station Equipment	Power supply-capacity, power supply-energy, and transmission.
571	Main OH Lines	Prorated by accounts 354, 355 and 356.
572	Main UG Lines	Prorated by accounts 357 and 358.
573	Main Misc. Trans. Plant	Prorated by accounts 569 to 572.

**GREAT RIVER ENERGY
 RATE FORMULA
 (Continued)**

<u>Account No.</u>	<u>Description</u>	<u>Allocation Method/Factor</u>
<u>3. Distribution</u>		
580	Oper. Super. & Eng.	Power supply energy and distribution substation.
581	Load Dispatching	Not presently used.
582	Station	Not presently used.
583	OH Line	Not presently used.
584	UG Line	Not presently used.
351	Street Light & Signal System	Not presently used.
586	Meters	Not presently used.
587	Customer Installation	Not presently used.
588	Misc. Distribution	Not presently used.
589	Rents	Not presently used.
590	Main Super & Eng.	100% distribution substation.
591	Main. Structures	Not presently used.
592	Main. Station Equipment	100% distribution substation.
593	Main. OH Lines	Not presently used.
594	Main. UG Lines	Not presently used.
595	Main Line Transformer	Not presently used.
596	Main. Street Light & Y Signal	Not presently used.
597	Main Meters	Not presently used.
598	Main. Misc. Dist. Plant	Not presently used.
<u>4. Customer Accounts</u>		
901	Supervision	Not presently used.
902	Meter Reading	Not presently used.
903	Customer Records and Collection	Not presently used.
904	Uncollectible Accounts	Not presently used.
905	Misc. Customer Accounts	Not presently used.
<u>5. Customer Service & Information</u>		
907	Supervision	Not presently used.
908	Customer Assistance	Not presently used.
909	Advertising	100% power supply energy
910	Miscellaneous Service & Information	Not presently used.
<u>6. Sales</u>		
911	Supervision	100% power supply energy.
912	Demo. & Selling	Direct based on programs.
913	Advertising	100% power supply energy.
916	Miscellaneous Sales	100% power supply energy.
<u>7. Administrative & General</u>		
920-935	Administrative and General	In proportion to labor expense.
<u>8. Depreciation</u>		
403	Production	100% power supply capacity.
403	Transmission Substations	Power supply-capacity, power supply-energy, and transmission.
403	Transmission Line	In proportion to plant investment.
403	Distribution Substations	100% distribution substation.
403	Supervisory & Load Control	Not presently used.
403	General	In proportion to general plant investment.
405	Amort. Other	In proportion to plant investment and directly assigned.
407	Amort. Sales/Lease	Not presently used.
428	Amort. Debt Discount & Exp.	In proportion to plant investment and directly assigned.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

<u>Account No.</u>	<u>Description</u>	<u>Allocation Method/Factor</u>
9. Taxes		
408	Plant Related	In proportion to plant investment.
408	Labor Related	In proportion to labor expense.
10. Interest		
11. Other Operating Expense		
12. Prior Year Adjustments		
13. Revenue Credits		
Non-Member Capacity and Energy Sales		
447	Sales for Resale	Direct based on sales.
Non-Member Transmission Service		
447	Sales for Resale	Transmission.
456	Other Electric Revenues	Transmission and directly assigned.
Non-Member Ancillary Service		
447	Sales for Resale	Not presently used.
456	Other Electric Revenue	Not presently used.
Other Non-Operating Income - Interest Earnings		
419	Interest and Dividend Income	Directly assigned and in proportion to production and distribution plant investment.
Other Non-Operating Income - Other		
415	Non-Operating Income - Other	In proportion to production plant.
417	Revenue from Non-utility Operations	In proportion to rate of return on production and distribution.
418	Equity in Subsidiary Companies	In proportion to production plant.
421	Gain/Loss on Disposition of Property	Directly assigned and in proportion to production plant.
424	Other Capital Credits	In proportion to rate of return on production and distribution.
427	Interest Charged to Construction	In proportion to production and distribution plant.
454	Rent from Electric Property	Directly assigned.
14. Return Requirements		
15. Income Tax Expense		

Margin Requirements represents the amount by which revenue exceeds expenses. Margin Requirements shall be established by the Board annually and shall be apportioned to each service classification on the basis of Rate Base. Rate Base represents GRE's investment in the system and is defined as follows:

- Original Cost of Plant in Service
- Accumulated Reserves for Depreciation
- + Construction Work in Progress
- = Net Plant
- + Prepayments
- + Materials and Supplies
- + Fuel Inventory
- + Working Capital
- = Rate Base

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

For example, if the Transmission component of Rate Base represents twenty percent (20%) of Total Rate Base, twenty percent (20%) of Margin Requirements shall be allocated to the Transmission category and recovered through the Transmission Charge.

In the event that one or more Members elect to fix their purchase obligations to GRE, the Power Supply Service categories (Capacity and Energy) shall be further broken down to identify the revenue requirements associated with each power supply resource. The methodology used for this purpose shall be consistent with the methodology stated above. For purposes of this Resource Revenue Requirements breakdown, long-term (greater than five (5) year terms) purchase power arrangements shall be identified individually as separate resources. Short-term (less than five (5) year or less terms) shall be treated as a group.

4.0 Rate Design

4.1 General

GRE's wholesale rate applicable to the member-systems taking power and energy services shall consist of an All-Requirements Rate, Fixed Obligation Rates and Special Rates. All billing units shall will be based on measurements taken at the low voltage side of the distribution substation delivery points. In the case of delivery points not located at a distribution substation, the measurement location and appropriate loss adjustment factors, if any, shall be established by mutual consent of GRE and the Member.

4.2 All-Requirements Rate

In the event that no Member has elected to fix their purchase obligation to GRE, an All-Requirements Rate shall be determined as follows:

1. The Member Revenue Requirements shall be adjusted to reflect the revenue and/or credits attributable to the Special Rates. Revenue realized from sales under the Special Rate programs shall be used to reduce the Member Revenue Requirements while credits

**GREAT RIVER ENERGY
 RATE FORMULA
 (Continued)**

issued to sales under the Special Rate programs shall be used to increase the Member Revenue Requirements. The revenue and/or credits from these special programs shall be applied to each service classification consistent with the nature of the revenue and/or credit. The adjusted Member Revenue Requirements shall be used to establish the All-Requirements Rate.

2. The All-Requirements Rate shall be designed in the following manner:

a. Power Supply Services:

1) Power:

■ Summer (June, July & August)

$$\text{Monthly Demand Charge} = \frac{4 \times \text{MRRPSC}}{(4 \times \Sigma \text{MBDS}) + (2 \times \Sigma \text{MBDW}) + (\Sigma \text{MBDSF})}$$

■ Winter (January, February & December)

$$\text{Monthly Demand Charge} = \frac{2 \times \text{MRRPSC}}{(4 \times \Sigma \text{MBDS}) + (2 \times \Sigma \text{MBDW}) + (\Sigma \text{MBDSF})}$$

■ Spring/Fall (March, April, May September, October & November)

$$\text{Monthly Demand Charge} = \frac{1 \times \text{MRRPSC}}{(4 \times \Sigma \text{MBDS}) + (2 \times \Sigma \text{MBDW}) + (\Sigma \text{MBDSF})}$$

Where:

- MRRPSC = Member Revenue Requirements
(Power Supply - Capacity Component)
- Σ MBDS = Sum of the Monthly Billing Demands - Summer Season
- Σ MBDW = Sum of the Monthly Billing Demands - Winter Season
- Σ MBDSF = Sum of the Monthly Billing Demands - Spring & Fall Season

The billing demands used for purposes of this calculation shall be the sum of the Members' contribution to the GRE system monthly coincidental peak demand, determined on an hourly basis, and adjusted for load management credits during months when load management was not operated at the time GRE's system peak was established as described in Section 5.0 of this Appendix.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

2) Energy:

$$\text{Energy Charge} = \frac{\text{MRRPSE}}{\text{ES}}$$

Where:

MRRPSE = Member Revenue Requirements
(Power Supply - Energy Component)
ES = Energy Sales

b. Delivery Services:

1) Transmission Service

$$\text{Monthly Demand Charge} = \frac{\text{MRRT}}{\Sigma \text{MBD}}$$

Where:

MRRT = Member Revenue Requirements
(Transmission Component)
 Σ MBD = Sum of Monthly Billing Demands

The billing demands used for purposes of this calculation shall be the sum of the members' contribution to the GRE system monthly coincidental peak demand, determined on an hourly basis including loads served by an allocation of power and energy from WAPA. Measured demands shall be adjusted for load management credits during months when load management was not operated at the time GRE's system peak was established as described in Section 5.0 of this Appendix.

2) Ancillary Services:

Rates shall be established for each of the FERC required ancillary services using FERC approved methodology to establish the revenue requirements for each category. The six ancillary services required by FERC are:

- Scheduling, system control and dispatch service;

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

- Reactive supply and voltage control from generation sources service;
- Regulation and frequency response service;
- Energy imbalance service;
- Operating reserve - spinning reserve service; and
- Operating reserve - supplemental reserve services.

The billing demands used for purposes of this calculation shall be the sum of the members' contribution to the GRE system monthly coincidental peak demand, determined on an hourly basis including loads served by an allocation of power and energy from the WAPA. Measured demands shall be adjusted for load management credits during months when load management was not operated at the time GRE's system peak was established as described in Section 5.0 of this Appendix.

3) **Distribution Substation Service:**

In the event that GRE provides distribution substation service to a Member, the monthly Distribution Substation Service Charge shall be determined by prorating the Member Revenue Requirements (Distribution Substation Component) to each of the substation categories based on the cost of each type of substation as determined from GRE's/UPA's records.

4.3 Fixed Obligations Rates

In the event that one or more Members elect to fix their purchase obligations to GRE, the All-Requirements and Fixed Obligation Rates shall be established as follows:

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

1. Separate Resource Pools shall be established that reflect the existing and/or committed resources at the time each Fixed Obligation Member (or group of Fixed Obligation Members) fixes its electric power and energy purchase obligations.¹⁷
2. Rate Classes shall be established for the remaining All-Requirements Members, and the Fixed Obligation Members. Separate Rate Classes shall be established for each Fixed Obligation Member (or group of Fixed Obligation Members) based on the pool of resources to which each Fixed Obligation Member (or group of Fixed Obligation Members) is obligated.¹⁷
3. The capacity requirements of each Rate Class shall be equal to the sum of the monthly billing demands of the Rate Class adjusted for reserve requirements, as determined by MAPP (or equivalent authority), and transmission losses. The energy requirements of each Rate Class shall be the sum of the monthly billing energy amounts, adjusted for losses.
4. The capacity and energy available from the resources in each Resource Pool shall be allocated to each Rate Class in the following manner:
 - a. The available capacity and energy from the resources in the subject Resource Pool shall first be allocated to the Fixed Obligation Rate Class associated with the subject Resource Pool.

¹⁷ For example, if one or more Members fix their purchase obligations to GRE effective January 1, 2003, a Resource Pool, referred to as Resource Pool 2003, shall be established based on the Existing Resources, Substituted Resources and Committed Resources as of January 1, 2003. The Members fixing their purchase obligation as of January 1, 2003 shall comprise Rate Class 2003.

**GREAT RIVER ENERGY
 RATE FORMULA
 (Continued)**

- b. All remaining available capacity and energy from the resources in the subject Resource Pool shall be allocated to the remaining Rate Classes in proportion to each Rate Classes' sum of the monthly capacity requirements and annual energy requirements, respectively.
- c. The rates for power and energy purchases from each Resource Pool shall be determined on the basis of the following formulas, using the portion of each classes' total billing units supplied by the subject Resource Pool.

1) Power:

- Summer (June, July & August)

$$\text{Monthly Demand Charge} = \frac{4 \times \text{MRRPSC}}{(4 \times \sum \text{MBDS}) + (2 \times \sum \text{MBDW}) + (\sum \text{MBDSF})}$$

- Winter (January, February & December)

$$\text{Monthly Demand Charge} = \frac{2 \times \text{MRRPSC}}{(4 \times \sum \text{MBDS}) + (2 \times \sum \text{MBDW}) + (\sum \text{MBDSF})}$$

- Spring/Fall (March, April, May September, October & November)

$$\text{Monthly Demand Charge} = \frac{1 \times \text{MRRPSC}}{(4 \times \sum \text{MBDS}) + (2 \times \sum \text{MBDW}) + (\sum \text{MBDSF})}$$

Where:

- MRRPSC = Member Revenue Requirements
(Power Supply - Capacity Component)
- $\sum \text{MBDS}$ = Sum of the Monthly Billing Demands - Summer Season
- $\sum \text{MBDW}$ = Sum of the Monthly Billing Demands - Winter Season
- $\sum \text{MBDSF}$ = Sum of the Monthly Billing Demands - Spring & Fall Season

2) Energy:

$$\text{Energy Charge} = \frac{\text{MRRPSE}}{\text{ES}}$$

Where:

- MRRPSE = Member Revenue Requirements
(Power Supply - Energy Component)
- ES = Energy Sales

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

- d. A composite rate will be established for each Rate Class using the total billing units of the Rate Class and the total Revenue Requirements allocated to each Rate Class from the Resource Pools to which the Rate Class belongs. The composite rate will be developed using a rate design methodology consistent with the methodology described above.

5.0 Load Management

GRE and/or its Members have the capability of managing significant amounts of various end-use loads. GRE will initiate load management when it is required for system capacity and/or reasons, emergencies, or other circumstances. When load management is not initiated during a billing month, Members shall receive credit for load control that is estimated to be available even if it is not actually required. Such load control shall be subtracted from the measured demand for billing purposes. Policies and procedures necessary to implement load management shall be developed by GRE in consultation with the Members.

6.0 Rate Adjustments

In order to minimize any adverse impact of the Rate Formula rate on a Member, the Rate Formula rate shall be phased-in over a three (3) year period. In addition, GRE shall guarantee that the new Rate Formula rate shall not cause an increase over the UPA rate in effect for 1998 or the CP rate in effect for the CP 1998-99 rate year, whichever is applicable.

6.1 Rate Phase-In

The rate phase-in shall be accomplished in the following manner:

1. The rate phase-in plan shall phase-in the Rate Formula approach over a three year period, 2000 to 2002.
2. The rate phase-in adjustment shall be calculated monthly in the following manner:
 - a. Each month, the power bill for each member-system will be calculated under 1)

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

- the new consolidated GRE rate for the current calendar year (i.e., 2000, 2001 and 2002) using the Rate Formula approach, and 2) the individual G&T rate (i.e., CP or UPA) applicable during 1999, adjusted to produce the same total annual revenue as the Rate Formula rate. (This adjustment is necessary to ensure that the phase-in relates to the design of the Rate Formula rate only, and not the level of the overall revenue requirements.) In the case of a CP member-system, a weighted average 1999 rate (adjusted to 2000 or 2001 revenue requirements as appropriate) shall be established for this purpose; and the billing demand used for each of the CP member-systems for the purpose of applying the 1999 rates shall be the average of the seasonal billing demands of the member-system for the prior summer and winter seasons, pro rated monthly in accordance with CP's present policy. For example, the billing demand used in the year 2000 calculation will be the average of the seasonal billing demands, after adjustment for load management, recorded during the 1999 summer, and the 1999-00 winter season.¹¹
- b. The difference between CP or UPA's, whichever is applicable, 1999 rate calculation (adjusted to 2000 or 2001 revenue requirements) and the rate formula rate shall be determined for the month for each system.
 - c. A credit or surcharge, as applicable, shall be determined for each member-system for each month. The credit or surcharge shall be designed to move one third of the distance toward the Rate Formula rate in year 2000, and two thirds toward the Rate Formula rate in year 2001. In year 2002, all members shall be billed under the Rate Formula approach.

¹¹ For the first two months of 2000, this will require an estimate of the billing demands for January and February 2000 to establish the 1999-00 winter peak. The preliminary estimate shall be reconciled with actual billing data in following months.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

6.2 Rate Guarantee

For a period of five (5) years after the implementation of the Rate Formula rate (i.e., 2000 to 2004), GRE shall guarantee that no member-system shall experience a rate increase due to rate structure changes. The rate guarantee shall be applied on an annual basis in the following manner:

1. At the end of the year 2000, the Member's supplemental cost of purchased power and energy (excluding WAPA transmission) for the year 2000 shall be calculated by multiplying the member's actual billing units for the year by (1) the Rate Formula rate for the year 2000, before adjustment for any phase-in. This calculated power cost shall be converted to an average mills/kWh rate.
2. The Member's average cost of purchasing supplemental power and energy for 1998 shall then be determined by dividing the actual cost of supplemental power and energy recorded for 1998 by the supplemented energy purchased in 1998.
3. The average rate paid by all GRE members for supplemental power and energy for the year 2000 shall then be determined by dividing the total GRE charges for supplemental power and energy delivered to the members divided by the amount of supplemental energy delivered by GRE to its members in 2000. The difference between the average rate thus determined and 35.0 mills/kWh shall be determined and referred to as the rate level adjustment.
4. The rate structure impact shall be determined as follows:

$$\text{IMPACT} = \text{AVG}_{2000} - \text{AVG}_{1998} - \text{RL Adj}$$

Where:

AVG_{2000} = Member's average cost of supplemental purchased power and energy for the year 2000 determined in Step No. 1.

AVG_{1998} = Member's average cost of supplemental purchased power and energy for the year 1998 determined in Step No. 2.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

RLAdj = Rate level adjustment determined in Step No. 3.
IMPACT = Impact of the rate structure changes for the year 2000 in mills/kWh.

5. If the rate structure impact ("IMPACT") determined in Step No. 4 is positive, an annual Credit shall be calculated by multiplying the IMPACT by the Member's supplemental energy purchases from GRE in the year 2000.

6. The annual Credit shall be applied as follows:

<u>Year</u>	<u>Credit</u>
2000	1/3 of the annual Credit.
2001	2/3 of the annual Credit.
2002	The annual Credit.
2003	The annual Credit.
2004	The annual Credit.

7. In 2000, the Credit will be applied after data for the year necessary for the calculation, has been determined. In subsequent years the Credit shall be applied monthly, one twelfth of the Credit in each month.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

For example, if the Transmission component of Rate Base represents twenty percent (20%) of Total Rate Base, twenty percent (20%) of Margin Requirements shall be allocated to the Transmission category and recovered through the Transmission Charge.

In the event that one or more Members elect to fix their purchase obligations to GRE, the Power Supply Service categories (Capacity and Energy) shall be further broken down to identify the revenue requirements associated with each power supply resource. The methodology used for this purpose shall be consistent with the methodology stated above. For purposes of this Resource Revenue Requirements breakdown, long-term (greater than five (5) year terms) purchase power arrangements shall be identified individually as separate resources. Short-term (less than five (5) year or less terms) shall be treated as a group.

4.0 Rate Design

4.1 General

GRE's wholesale rate applicable to the member-systems taking power and energy services shall consist of an All-Requirements Rate, Fixed Obligation Rates and Special Rates. All billing units shall will be based on measurements taken at the low voltage side of the distribution substation delivery points. In the case of delivery points not located at a distribution substation, the measurement location and appropriate loss adjustment factors, if any, shall be established by mutual consent of GRE and the Member.

4.2 All-Requirements Rate

In the event that no Member has elected to fix their purchase obligation to GRE, an All-Requirements Rate shall be determined as follows:

1. The Member Revenue Requirements shall be adjusted to reflect the revenue and/or credits attributable to the Special Rates. Revenue realized from sales under the Special Rate programs shall be used to reduce the Member Revenue Requirements while credits

**GREAT RIVER ENERGY
 RATE FORMULA
 (Continued)**

issued to sales under the Special Rate programs shall be used to increase the Member Revenue Requirements. The revenue and/or credits from these special programs shall be applied to each service classification consistent with the nature of the revenue and/or credit. The adjusted Member Revenue Requirements shall be used to establish the All-Requirements Rate.

2. The All-Requirements Rate shall be designed in the following manner:

a. Power Supply Services:

1) Power:

- Summer (June, July & August)

$$\text{Monthly Demand Charge} = \frac{4 \times \text{MRRPSC}}{(4 \times \sum \text{MBDS}) + (2 \times \sum \text{MBDW}) + (\sum \text{MBDSF})}$$

- Winter (January, February & December)

$$\text{Monthly Demand Charge} = \frac{2 \times \text{MRRPSC}}{(4 \times \sum \text{MBDS}) + (2 \times \sum \text{MBDW}) + (\sum \text{MBDSF})}$$

- Spring/Fall (March, April, May September, October & November)

$$\text{Monthly Demand Charge} = \frac{1 \times \text{MRRPSC}}{(4 \times \sum \text{MBDS}) + (2 \times \sum \text{MBDW}) + (\sum \text{MBDSF})}$$

Where:

- MRRPSC = Member Revenue Requirements
(Power Supply - Capacity Component)
- $\sum \text{MBDS}$ = Sum of the Monthly Billing Demands - Summer Season
- $\sum \text{MBDW}$ = Sum of the Monthly Billing Demands - Winter Season
- $\sum \text{MBDSF}$ = Sum of the Monthly Billing Demands - Spring & Fall Season

The billing demands used for purposes of this calculation shall be the sum of the Members' contribution to the GRE system monthly coincidental peak demand, determined on an hourly basis, and adjusted for load management credits during months when load management was not operated at the time GRE's system peak was established as described in Section 5.0 of this Appendix.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

2) Energy:

$$\text{Energy Charge} = \frac{\text{MRRPSE}}{\text{ES}}$$

Where:

MRRPSE = Member Revenue Requirements
(Power Supply - Energy Component)
ES = Energy Sales

b. Delivery Services:

1) Transmission Service

$$\text{Monthly Demand Charge} = \frac{\text{MRRT}}{\Sigma \text{MBD}}$$

Where:

MRRT = Member Revenue Requirements
(Transmission Component)
 Σ MBD = Sum of Monthly Billing Demands

The billing demands used for purposes of this calculation shall be the sum of the members' contribution to the GRE system monthly coincidental peak demand, determined on an hourly basis including loads served by an allocation of power and energy from WAPA. Measured demands shall be adjusted for load management credits during months when load management was not operated at the time GRE's system peak was established as described in Section 5.0 of this Appendix.

2) Ancillary Services:

Rates shall be established for each of the FERC required ancillary services using FERC approved methodology to establish the revenue requirements for each category. The six ancillary services required by FERC are:

- Scheduling, system control and dispatch service;

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

- Reactive supply and voltage control from generation sources service;
- Regulation and frequency response service;
- Energy imbalance service;
- Operating reserve - spinning reserve service; and
- Operating reserve - supplemental reserve services.

The billing demands used for purposes of this calculation shall be the sum of the members' contribution to the GRE system monthly coincidental peak demand, determined on an hourly basis including loads served by an allocation of power and energy from the WAPA. Measured demands shall be adjusted for load management credits during months when load management was not operated at the time GRE's system peak was established as described in Section 5.0 of this Appendix.

3) **Distribution Substation Service:**

In the event that GRE provides distribution substation service to a Member, the monthly Distribution Substation Service Charge shall be determined by prorating the Member Revenue Requirements (Distribution Substation Component) to each of the substation categories based on the cost of each type of substation as determined from GRE's/UPA's records.

4.3 Fixed Obligations Rates

In the event that one or more Members elect to fix their purchase obligations to GRE, the All-Requirements and Fixed Obligation Rates shall be established as follows:

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

1. Separate Resource Pools shall be established that reflect the existing and/or committed resources at the time each Fixed Obligation Member (or group of Fixed Obligation Members) fixes its electric power and energy purchase obligations.¹⁷
2. Rate Classes shall be established for the remaining All-Requirements Members, and the Fixed Obligation Members. Separate Rate Classes shall be established for each Fixed Obligation Member (or group of Fixed Obligation Members) based on the pool of resources to which each Fixed Obligation Member (or group of Fixed Obligation Members) is obligated.¹⁷
3. The capacity requirements of each Rate Class shall be equal to the sum of the monthly billing demands of the Rate Class adjusted for reserve requirements, as determined by MAPP (or equivalent authority), and transmission losses. The energy requirements of each Rate Class shall be the sum of the monthly billing energy amounts, adjusted for losses.
4. The capacity and energy available from the resources in each Resource Pool shall be allocated to each Rate Class in the following manner:
 - a. The available capacity and energy from the resources in the subject Resource Pool shall first be allocated to the Fixed Obligation Rate Class associated with the subject Resource Pool.

¹⁷ For example, if one or more Members fix their purchase obligations to GRE effective January 1, 2003, a Resource Pool, referred to as Resource Pool 2003, shall be established based on the Existing Resources, Substituted Resources and Committed Resources as of January 1, 2003. The Members fixing their purchase obligation as of January 1, 2003 shall comprise Rate Class 2003.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

- b. All remaining available capacity and energy from the resources in the subject Resource Pool shall be allocated to the remaining Rate Classes in proportion to each Rate Classes' sum of the monthly capacity requirements and annual energy requirements, respectively.
- c. The rates for power and energy purchases from each Resource Pool shall be determined on the basis of the following formulas, using the portion of each classes' total billing units supplied by the subject Resource Pool.

1) Power:

- Summer (June, July & August)

$$\text{Monthly Demand Charge} = \frac{4 \times \text{MRRPSC}}{(4 \times \sum \text{MBDS}) + (2 \times \sum \text{MBDW}) + (\sum \text{MBDSF})}$$

- Winter (January, February & December)

$$\text{Monthly Demand Charge} = \frac{2 \times \text{MRRPSC}}{(4 \times \sum \text{MBDS}) + (2 \times \sum \text{MBDW}) + (\sum \text{MBDSF})}$$

- Spring/Fall (March, April, May September, October & November)

$$\text{Monthly Demand Charge} = \frac{1 \times \text{MRRPSC}}{(4 \times \sum \text{MBDS}) + (2 \times \sum \text{MBDW}) + (\sum \text{MBDSF})}$$

Where:

- MRRPSC = Member Revenue Requirements
(Power Supply - Capacity Component)
- \sum MBDS = Sum of the Monthly Billing Demands - Summer Season
- \sum MBDW = Sum of the Monthly Billing Demands - Winter Season
- \sum MBDSF = Sum of the Monthly Billing Demands - Spring & Fall Season

2) Energy:

$$\text{Energy Charge} = \frac{\text{MRRPSE}}{\text{ES}}$$

Where:

- MRRPSE = Member Revenue Requirements
(Power Supply - Energy Component)
- ES = Energy Sales

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

- d. A composite rate will be established for each Rate Class using the total billing units of the Rate Class and the total Revenue Requirements allocated to each Rate Class from the Resource Pools to which the Rate Class belongs. The composite rate will be developed using a rate design methodology consistent with the methodology described above.

5.0 Load Management

GRE and/or its Members have the capability of managing significant amounts of various end-use loads. GRE will initiate load management when it is required for system capacity and/or reasons, emergencies, or other circumstances. When load management is not initiated during a billing month, Members shall receive credit for load control that is estimated to be available even if it is not actually required. Such load control shall be subtracted from the measured demand for billing purposes. Policies and procedures necessary to implement load management shall be developed by GRE in consultation with the Members.

6.0 Rate Adjustments

In order to minimize any adverse impact of the Rate Formula rate on a Member, the Rate Formula rate shall be phased-in over a three (3) year period. In addition, GRE shall guarantee that the new Rate Formula rate shall not cause an increase over the UPA rate in effect for 1998 or the CP rate in effect for the CP 1998-99 rate year, whichever is applicable.

6.1 Rate Phase-In

The rate phase-in shall be accomplished in the following manner:

1. The rate phase-in plan shall phase-in the Rate Formula approach over a three year period, 2000 to 2002.
2. The rate phase-in adjustment shall be calculated monthly in the following manner:
 - a. Each month, the power bill for each member-system will be calculated under 1)

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

the new consolidated GRE rate for the current calendar year (i.e., 2000, 2001 and 2002) using the Rate Formula approach, and 2) the individual G&T rate (i.e., CP or UPA) applicable during 1999, adjusted to produce the same total annual revenue as the Rate Formula rate. (This adjustment is necessary to ensure that the phase-in relates to the design of the Rate Formula rate only, and not the level of the overall revenue requirements.) In the case of a CP member-system, a weighted average 1999 rate (adjusted to 2000 or 2001 revenue requirements as appropriate) shall be established for this purpose; and the billing demand used for each of the CP member-systems for the purpose of applying the 1999 rates shall be the average of the seasonal billing demands of the member-system for the prior summer and winter seasons, pro rated monthly in accordance with CP's present policy. For example, the billing demand used in the year 2000 calculation will be the average of the seasonal billing demands, after adjustment for load management, recorded during the 1999 summer, and the 1999-00 winter season.¹⁷

- b. The difference between CP or UPA's, whichever is applicable, 1999 rate calculation (adjusted to 2000 or 2001 revenue requirements) and the rate formula rate shall be determined for the month for each system.
- c. A credit or surcharge, as applicable, shall be determined for each member-system for each month. The credit or surcharge shall be designed to move one third of the distance toward the Rate Formula rate in year 2000, and two thirds toward the Rate Formula rate in year 2001. In year 2002, all members shall be billed under the Rate Formula approach.

¹⁷ For the first two months of 2000, this will require an estimate of the billing demands for January and February 2000 to establish the 1999-00 winter peak. The preliminary estimate shall be reconciled with actual billing data in following months.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

6.2 Rate Guarantee

For a period of five (5) years after the implementation of the Rate Formula rate (i.e., 2000 to 2004), GRE shall guarantee that no member-system shall experience a rate increase due to rate structure changes. The rate guarantee shall be applied on an annual basis in the following manner:

1. At the end of the year 2000, the Member's supplemental cost of purchased power and energy (excluding WAPA transmission) for the year 2000 shall be calculated by multiplying the member's actual billing units for the year by (1) the Rate Formula rate for the year 2000, before adjustment for any phase-in. This calculated power cost shall be converted to an average mills/kWh rate.
2. The Member's average cost of purchasing supplemental power and energy for 1998 shall then be determined by dividing the actual cost of supplemental power and energy recorded for 1998 by the supplemented energy purchased in 1998.
3. The average rate paid by all GRE members for supplemental power and energy for the year 2000 shall then be determined by dividing the total GRE charges for supplemental power and energy delivered to the members divided by the amount of supplemental energy delivered by GRE to its members in 2000. The difference between the average rate thus determined and 35.0 mills/kWh shall be determined and referred to as the rate level adjustment.
4. The rate structure impact shall be determined as follows:

$$\text{IMPACT} = \text{AVG}_{2000} - \text{AVG}_{1998} - \text{RL Adj}$$

Where:

AVG_{2000} = Member's average cost of supplemental purchased power and energy for the year 2000 determined in Step No. 1.

AVG_{1998} = Member's average cost of supplemental purchased power and energy for the year 1998 determined in Step No. 2.

**GREAT RIVER ENERGY
RATE FORMULA
(Continued)**

RLAdj = Rate level adjustment determined in Step No. 3.
IMPACT = Impact of the rate structure changes for the year 2000 in mills/kWh.

5. If the rate structure impact ("IMPACT") determined in Step No. 4 is positive, an annual Credit shall be calculated by multiplying the IMPACT by the Member's supplemental energy purchases from GRE in the year 2000.

6. The annual Credit shall be applied as follows:

<u>Year</u>	<u>Credit</u>
2000	1/3 of the annual Credit.
2001	2/3 of the annual Credit.
2002	The annual Credit.
2003	The annual Credit.
2004	The annual Credit.

7. In 2000, the Credit will be applied after data for the year necessary for the calculation, has been determined. In subsequent years the Credit shall be applied monthly, one twelfth of the Credit in each month.

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to Legal*

**FROM THE MINUTE BOOK OF PROCEEDINGS
OF THE BOARD OF DIRECTORS OF
EAST KENTUCKY POWER COOPERATIVE, INC.**

At a regular meeting of the Board of Directors of East Kentucky Power Cooperative, Inc. held at the Headquarters Building, 4775 Lexington Road, located in Winchester, Kentucky, on Tuesday, March 9, 2004, at 11:00 a. m., EST, the following business was transacted:

Board Policy No. 305—Allocation Procedures for Non-EKPC-Sourced Power Acquisitions Under Wholesale Power Contract Amendment No. 3

After review of the applicable information, a motion was made by Fred Brown, seconded by Allen Anderson, and, there being no further discussion, passed to approve the following:

Whereas, On October 14, 2003 the East Kentucky Power Cooperative, Inc. ("EKPC") Board of Directors ("Board") approved Amendment No. 3 to the Wholesale Power Contract ("WPC") between EKPC and its members;

Whereas, This amendment allowed each member cooperative to purchase power and energy from non-EKPC sources up to a maximum of 15% of the member system's 3-year rolling average peak load (the "15% Option"), provided that the total of all such non-EKPC acquisitions by all member systems does not exceed 5% of EKPC's 3-year rolling average peak load (the "5% Cap");

Whereas, The adoption of Board Policy No. 305, as attached, will provide a reasonable mechanism to alleviate the 5% Cap among the member systems so that those member systems with specific identifiable projects can avail themselves of the 15% Option and can proceed with those projects in a timely manner; and

Whereas, It is the recommendation of management and the Operations, Services & Support committee that Board Policy No. 305 be adopted; now, therefore, be it

Resolved, That EKPC Board Policy No. 305 be and hereby is adopted.

The foregoing is a true and exact copy of a resolution passed at a meeting called pursuant to proper notice at which a quorum was present and which now appears in the Minute Book of Proceedings of the Board of Directors of the Cooperative, and said resolution has not been rescinded or modified.

Witness my hand and seal this 9th day of March, 2004.

A handwritten signature in cursive script that reads "Sam Penn". The signature is written in black ink and is positioned to the right of the witness text.

Sam Penn, Secretary

Corporate Seal

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EAST KENTUCKY POWER COOPERATIVE

Policy No. 305

March 9, 2004

ALLOCATION PROCEDURES FOR NON-EKPC-SOURCED
POWER ACQUISITIONS UNDER WHOLESALE POWER
CONTRACT AMENDMENT NUMBER 3

I. BACKGROUND

Amendment Number 3 to the Wholesale Power Contract between East Kentucky Power Cooperative ("EKPC") and its member systems allows each member system executing the Amendment to purchase or otherwise acquire power and energy from non-EKPC sources up to a maximum of 15% of the member system's 3-year rolling average peak load (the "15% Option"), provided that the total of all such non-EKPC acquisitions by all member systems does not exceed 5% of EKPC's 3-year rolling average peak load (the "5% Cap").

II. OBJECTIVE

The objective of this Board Policy is to provide a reasonable mechanism to allocate the 5% Cap among the member systems so that those member systems with specific, identifiable projects that would be facilitated by the use of the 15% Option can proceed in a timely manner.

III. CONTENT

- A. An Allocation Pool is hereby created which will be made up of the combined total of the unused portions of each member system's load ratio share of the 5% Cap, as hereinafter set out.
- B. An Allocation Committee is hereby created as hereinafter set out which will administer the allocation of the unused portions of the member systems' load ratio share of the 5% Cap in the Allocation Pool to requesting eligible member systems.
- C. (1) As soon as is reasonably possible, but no later than 90 days after either the adoption of this Board Policy or the execution of Amendment Number 3 of the Wholesale Power Contract, whichever is later, each member system shall submit to the Allocation Committee a detailed, written plan of its intended use of its 15% Option (the "Plan"). Each Plan shall include the following:

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- a) Whether or not the member system intends to use all or any portion of its load ratio share of the 5% Cap within 6 months of the date of submittal of the Plan;
 - b) How much of its load ratio share of the 5% Cap the member system intends to use;
 - c) A detailed description of the specific use to which it will be put;
 - d) The anticipated time frame within which the use will occur;
 - e) Any contracts or other agreements executed with respect to such use, and if none, the status of negotiations for such contracts or agreements and the anticipated date of execution thereof; and
 - f) Any other information that may be requested by the Allocation Committee.
- (2) A member system may immediately proceed to utilize that portion of its load ratio share of the 5% cap identified in its Plan.
- (3) If a member system's Plan reveals that the member system does not intend to use any or all of its load ratio share of the 5% Cap, then the unused portion will be placed in the Allocation Pool.
- (4) If, within 6 months from the submittal of its Plan, a member system does not use the portion of its load ratio share of the 5% Cap as stated in the Plan, or, if reasonable progress, in the determination of the Allocation Committee, has not been made by the member system toward such use, then that portion of the 5% Cap will be placed in the Allocation Pool.
- (5) The Allocation Committee may require periodic progress reports with respect to such use at intervals of the Committee's determination.
- D. (1) At any time after submittal of its Plan, a member system who desires an initial allocation or an allocation of more than its load ratio share of the 5% Cap, shall submit a written request to the Allocation Committee, which request shall contain the same type of information as required by Paragraphs III(C)(1)(a-f) hereof.
- (2) The Committee shall determine whether to grant such a request by majority vote.

EKPC Board Minutes for 3/9/2004
Attachment C, Page 3 of 4

- (3) If, within 6 months from the granting of any such request by the Committee, a member system has not used the allocation, or if reasonable progress, in the determination of the Committee, has not been made toward such use, then the allocation shall be returned to the Allocation Pool.
- E. Any new member of EKPC admitted by the EKPC Board of Directors ("Board") shall have the same rights as existing members with respect to the 15% Option and 5% Cap upon execution by the new member of the Wholesale Power Contract including Amendment Number 3. The new member shall submit a Plan within 90 days of its execution of the Wholesale Power Contract.
- F. The use of 15% Option shall be limited to the following:
 - 1) Service of new load acquired by a member system and which was not part of the member's traditionally recognized service territory as certified by the Kentucky Public Service Commission pursuant to KRS 278.017.
 - 2) Distributed Generation projects owned by a member system.
 - 3) Other uses as established by the Board.
- G. A member may exceed the 15% Option only upon approval of the Board and RUS. Any request by a member system to so exceed its 15% Option shall be made in writing to the Allocation Committee and shall include all relevant information and justifications for such request. The Committee shall have the authority to request any additional information or documentation it feels is necessary or advisable. The Committee shall review and consider the request and make a recommendation to the full Board for action.
- H. Any determination or decision of the Allocation Committee may be reviewed by the Board at the request and upon the motion of any director and the Board may affirm, overturn or modify such determination or decision in its discretion.

IV. ORGANIZATIONAL RELATIONSHIPS

- A. The Allocation Committee shall report directly to the Board.
- B. The Allocation Committee shall have 5 members, 3 of which shall be managers, presidents or CEO's of member systems, 1 of which shall be a

**EKPC Board Minutes for 3/9/2004
Attachment C, Page 4 of 4**

regular director of the Board, and 1 of which shall be an employee or other representative of EKPC. The members shall be appointed by the Chairman of the Board with the advice and consent of the other officers of the Board and in consultation with the President and CEO in accordance with Board Policy 105 and shall serve at the pleasure of the Board.

- C. The Committee is a continuing one, except for the EKPC representative, and the term of each member shall run for one year, coincident with the term of the Chairman of the Board, or until his successor is appointed. Appointments of committee members shall be staggered so that no more than two members leave the Committee each year. No member shall serve more than 4 consecutive years except that the term of the EKPC representative shall be indefinite.
- D. The Committee shall annually elect a Chairman, Vice-Chairman and Secretary. Minutes of each meeting shall be kept. The Chairmen of other Board Committees or any Board officer shall not be Chairman of the Allocation Committee.
- E. Meetings of the Committee shall be held at the call of the Committee Chairman, the Chairman of the Board, or at the call of three members of the Committee when there are items or other issues for consideration by the Committee. The time, location and agenda of the meeting shall be set in the notice.

Smart, David A.

From: CBJ523@aol.com [CBJ523@aol.com]
To: Goss, Mark David; Smart, David A.
Cc: mstallons@owenelectric.com
Subject: Power Purchase Agreement (PPA)
Attachments:

Sent: Tue 11/30/2010 12:54 PM

Mark/David:

A week or so ago I had a phone conference with Mark David regarding Amendment #3 of the Wholesale Power Contract and EKP policy #305. As I understand, there has been ongoing discussion for some time with Tony Campbell about the issues raised by one or more of the Coops proceeding with a PPA. More specifically, the discussions have involved EKP and Jackson Energy's interest in a PPA. On 10/5/10, there was apparently a powerpoint presentation at the EKP board meeting regarding the matter.

As I explained to Mark David in our phone conversation, Owen at its recent board meeting met with representatives of ACES Power about the potential benefits of a PPA. Based on the presentation, it appears there are significant cost advantages to Owen in pursuing a PPA. Therefore, the Owen Board made it clear to management and to me as legal counsel they wanted us to immediately pursue a resolution of the issues identified by Mr. Campbell in his discussions with Jackson Energy about a PPA and highlighted in the above-mentioned powerpoint presentation.

✓ More specifically, the Owen Board wants to know EKP's position on load following and the notice requirements of Amendment #3. Amendment #3 speaks in terms of making or canceling an election to receive electric power and energy from an entity other than EKP "by giving at least 18 months or greater notice". However, there is no clear language in the amendment as to the specifics of the notice among other things. No where in Amendment #3 is load following mentioned per se.

It's my understanding from discussions with counsel for Jackson Energy that Mr. Campbell on behalf of EKP interprets the words "load or loads" in Amendment #3 differently from the view point of Jackson and probably OEC. It is also my understanding EKP is of the position that if a coop enters into a PPA, they must obtain load following. Once again, OEC doesn't agree with this interpretation of Amendment #3. Mr. Campbell as I understand has suggested that these differences of opinion could be resolved by arbitration. I don't agree with that position. It seems to me these issues go directly to "rates and services" and, therefore, the Kentucky Public Service Commission has the ultimate say as to how Amendment #3 is to be interpreted. I think this is particularly true given the recent Duke Energy decision released October 31, 2010, 57 K.L.S. 10 that Mark David mentioned at the legal seminar in Louisville earlier this month.

I tried to call Mark David earlier today to discuss by phone the issues I'm raising in this correspondence. However, I determined he was tied up in a PSC matter through possibly tomorrow. Therefore, I asked his secretary to arrange a mutually agreeable time the 3 of us could talk by phone about these matters before Owen does anything further with regard to a PPA.

Please let me hear from you.

Hon. James M. Crawford/mns

Crawford & Baxter, P.S.C.

P.O. Box 353

Carrollton KY 41008-0353 Phone: (502) 732-6688

Fax: (502) 732-8303

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If for any reason you do not receive all of the pages, please advise by calling (502) 732-6688 and ask for the undersigned.

**EAST KENTUCKY POWER COOPERATIVE, INC.
MINUTES OF BOARD MEETING
OCTOBER 14, 2003**

A regular meeting of the Board of Directors of East Kentucky Power Cooperative, Inc. ("EKPC") was held at the Headquarters Building, 4775 Lexington Road, Winchester, Kentucky, on Tuesday, October 14, 2003, at 12:20 p.m. EDT pursuant to proper notice.

Chairman Delno Tolliver called the meeting to order. Jackie Browning gave the invocation. The minutes were kept under the supervision of Secretary Sam Penn. The secretary took the roll call with the following directors present:

Mike Adams	Licking Valley
Fred Brown	Jackson
Donnie Crum	Grayson
P. D. Depp	Taylor County
Danny Divine	Inter-County
E. A. Gilbert	Blue Grass
Virgil "Jack" Ginter	Clark Energy
Jimmy Longmire	Salt River
C. F. Martin	Farmers
Wade May	Big Sandy
Sam Penn	Owen
A. L. Rosenberger	Nolin
Rick Stephens	South Kentucky
Wayne Stratton	Shelby
Delno Tolliver	Cumberland Valley
Lonnie Vice	Fleming-Mason

BOARD MINUTES

On motion of E. A. Gilbert, seconded by Wade May, the minutes of the September 9, 2003, regular board meeting were approved.

ADOPTION OF AGENDA

On motion of P. D. Depp, seconded by Jack Ginter, the agenda was adopted as amended with correction of the acreage in the Executive Summary pertaining to a project with Jackson Energy Cooperative under Power Delivery Committee items.

ANNOUNCEMENTS

Among the announcements were:

- Welcomed Cheryl Thomas from Nolin RECC, and Bobby Sexton from Big Sandy RECC.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Wholesale Power Contract Amendment No. 3

After review of the applicable information, a motion was made by Fred Brown, seconded by Wayne Stratton, and, there being no further discussion and upon the Chairman's request for a roll-call vote, with the following Directors voting "yes:" Michael Adams, Fred Brown, Donnie Crum, P. D. Depp, Daniel Divine, E. A. Gilbert, Virgil "Jack" Ginter, Jimmy Longmire, C. F. Martin, Wade May, Sam Penn, A. L. Rosenberger, Wayne Stratton, and Delno Tolliver; and the following Directors voting "no:" Rick Stephens and Lonnie Vice; the following motion was passed with 14 "yes" votes and 2 "no" votes:

Whereas, On February 6, 2001, the East Kentucky Power Cooperative, Inc. ("EKPC") Board of Directors ("Board") approved construction of the 268 MW E.A. Gilbert Generating Unit ("Gilbert") at the Spurlock Power Station in Mason County, Kentucky, for purposes of securing an economical long-term source of wholesale power for EKPC's 16 member-owners;

Whereas, On August 14, 2001, the EKPC Board approved a loan filing with the Rural Utilities Service ("RUS") for \$410,000,000 to finance Gilbert and related transmission facilities; and on April 8, 2003, this loan application was amended to increase the amount to \$434,000,000;

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Whereas, RUS has informed EKPC that its approval of the loan package is conditioned on extension of the Wholesale Power Contracts ("WPC") through 2041;

Whereas, The proposed amendment provides, for the first time, some flexibility to the member-owners' current obligation to secure all of their system power supply needs from EKPC;

Whereas, RUS has agreed to consider opportunities for member-owners outside the percentage limitations contained in Amendment No. 3 on a case-by-case basis; to make every effort to work with member-owners and EKPC to convert any member-owner's WPC, as amended, to a partial requirements contract with 24 months;

Whereas, RUS financing is the least cost option for Gilbert; and

Whereas, Management and the Operations, Services and Support Committee recommend approval; now, therefore, be it

Resolved, That the EKPC Board approves Amendment No. 3 to the WPC, as attached, subject to RUS review and approval;

Resolved, That the EKPC Board commits to making every effort to work with member-owners and RUS to convert any member-owner's WPC, as amended, to a partial requirements contract within 24 months; and

Resolved, That the EKPC Board requests that each of its member-owner cooperatives approve and execute Amendment No. 3 at their next board meeting.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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AMENDMENT NO. 3 TO WHOLESALE POWER CONTRACT
BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND

This Agreement dated the _____ day of _____, 2003, amends the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. (hereinafter "Seller") and _____ (hereinafter "Member") as follows:

I. Numerical Section 1 of the Wholesale Power Contract shall be amended and restated to read in its entirety as follows:

1. General - The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which shall be required to serve the Member's load, including all electric power and energy required for the operation of the Member's system. Notwithstanding the foregoing, the Member shall have the option, from time to time, with notice to the Seller, to receive electric power and energy, from persons other than the Seller, or from facilities owned or leased by the Member, provided that the aggregate amount of all members' elections (measured in megawatts in 15-minute intervals) so obtained under this paragraph shall not exceed five percent (5%) of the rolling average of Seller's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member from time to time, as provided herein and further provided that no Member shall receive more than fifteen percent (15%) of the rolling average of its coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the 3 twelve

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month periods immediately preceding any election by the Member from time to time, as provided herein.

For any election made or cancelled under this Section, the following provisions shall apply:

a. During any calendar year, the Member may make or cancel any such election or elections by giving at least 90 days' notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or less, in the annual aggregate.

b. During any calendar year, the Member may make or cancel any such election or elections by giving at least 18 months or greater notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or more, in the annual aggregate

Upon the effective date of the Member's cancellation of any such election under this Agreement, the load or loads shall be governed by the all requirements obligations of the Seller and the Member in this Section, and notice of same shall be provided to the Rural Utilities Service ("RUS") by the member. Such loads which are transferred to Seller's all-requirements obligations shall not thereafter be switched by Member to a different power supplier.

c. Should any such election by Member involve the acquisition of new service territory currently served by another power supplier or municipal utility, Member shall provide evidence to Seller and RUS in the new Load Purchase Agreement that the acquired territory must be served by the current power supplier as a condition of the acquisition of the new load.

Seller will provide transmission, substation, and ancillary services without

discrimination or adverse distinction with regard to rates, terms of service or availability of such service as between power supplies under paragraphs above and Member will pay charges therefore to Seller. Seller also agrees to allow, at Member's sole cost and expense, such additional interconnection as may be reasonably required to provide such capacity and energy as contemplated in the above paragraphs.

Member will be solely responsible for all additional cost associated with the exercise of elections under the above paragraphs including but not limited to administrative, scheduling, transmission tariff and any penalties, charges and costs, imposed by the Midwest Independent System Operator ("MISO") or other authorities.

II. Section 10 of the Wholesale Power Contract shall be restated as Section 11 and new Section 10 and Section 11 shall read in their entirety as follows:

10. Retail Competition - Seller and its subsidiaries, shall not, during the term of this contract, without the consent of the Member, (i) sell or offer to sell electric power or energy at retail within the Member's assigned or expanded geographic area, if any, established by applicable laws or regulations or (ii) provide or offer to provide retail electric service to any person which is a customer of the Member.

11. Term - This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2041, and thereafter until terminated by either party's giving to the other not less than six months' written notice of its intention to terminate. Subject to the provisions of Section 1 hereof, service hereunder and the obligation of the Member to pay therefore shall commence upon completion of the facilities necessary to provide service.

Executed the day and year first above mentioned.

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EAST KENTUCKY POWER
COOPERATIVE, INC.

BY: _____

ITS: _____

ATTEST, SECRETARY

BY: _____

ITS: _____

ATTEST, SECRETARY

(H:Legal/misc/amend-3-wpc)

**EAST KENTUCKY POWER COOPERATIVE, INC.
MINUTES OF BOARD MEETING
AUGUST 12, 2003**

A regular meeting of the Board of Directors of East Kentucky Power Cooperative, Inc. ("EKPC") was held at the Headquarters Building, 4775 Lexington Road, Winchester, Kentucky, on Tuesday, August 12, 2003, at 12:30 p.m. EDT pursuant to proper notice.

Chairman Delno Tolliver called the meeting to order. Jackie Browning gave the invocation. The minutes were kept under the supervision of Secretary Sam Penn. The secretary took the roll call with the following directors present:

Mike Adams	Licking Valley
Allen Anderson, Alternate	South Kentucky
Fred Brown	Jackson
Donnie Crum	Grayson
Danny Divine	Inter-County
E. A. Gilbert	Blue Grass
Virgil "Jack" Ginter	Clark Energy
Jimmy Longmire	Salt River
C. F. Martin	Farmers
Wade May	Big Sandy
Barry Myers, Alternate	Taylor County
Sam Penn	Owen
A. L. Rosenberger	Nolin
Wayne Stratton	Shelby
Delno Tolliver	Cumberland Valley
Lonnie Vice	Fleming-Mason

Also present was P. D. Depp, Director of Taylor County RECC.

BOARD MINUTES

On motion of Jack Ginter, seconded by A. L. Rosenberger, the minutes of the July 8, 2003, regular board meeting were approved.

ADOPTION OF AGENDA

On motion of E. A. Gilbert, seconded by Jack Ginter, the agenda was adopted as amended with the addition of Seating of the Taylor County RECC Director.

[REDACTED]

[REDACTED]

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[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED] and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Wholesale Power Contract Update – Mr. Palk distributed and the group reviewed and discussed RUS' comments to Amendment No. 3 to the EKPC Wholesale Power Contract

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that were received via e-mailed today. RUS will approve the Gilbert loan by the end of its fiscal year—September 30—conditional upon EKPC and its members' intentions to extend the EKPC Wholesale Power Contract; but monies cannot be drawn until all contracts are actually extended. It may take OGC up to nine months to do the loan documents after all members have approved the contract. Mr. Palk suggested a conference call this week with RUS and any interested member systems; and anyone with questions or suggestions with regard to RUS' comments should get them to him immediately.

[REDACTED]

[REDACTED]

[REDACTED]

WHEREAS, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

WHEREAS, Bobby Kueker, [REDACTED]

WHEREAS, [REDACTED]

**EAST KENTUCKY POWER COOPERATIVE, INC.
MINUTES OF BOARD MEETING
SEPTEMBER 9, 2003**

A regular meeting of the Board of Directors of East Kentucky Power Cooperative, Inc. ("EKPC") was held at the Headquarters Building, 4775 Lexington Road, Winchester, Kentucky, on Tuesday, September 9, 2003, at 12:40 p.m. EDT pursuant to proper notice.

Chairman Delno Tolliver called the meeting to order. Donnie Crum gave the invocation. The minutes were kept under the supervision of Secretary Sam Penn. The secretary took the roll call with the following directors present:

Mike Adams	Licking Valley
Allen Anderson, Alternate	South Kentucky
Fred Brown	Jackson
Donnie Crum	Grayson
P. D. Depp	Taylor County
Danny Divine	Inter-County
E. A. Gilbert	Blue Grass
Virgil "Jack" Ginter	Clark Energy
Jimmy Longmire	Salt River
C. F. Martin	Farmers
Wade May	Big Sandy
Sam Penn	Owen
A. L. Rosenberger	Nolin
Wayne Stratton	Shelby
Delno Tolliver	Cumberland Valley
Lonnie Vice	Fleming-Mason

BOARD MINUTES

On motion of Danny Divine, seconded by C. F. Martin, the minutes of the August 12, 2003, regular board meeting were approved.

ADOPTION OF AGENDA

On motion of Danny Divine, seconded by Lonnie Vice, the agenda was adopted as amended with the deletion of the Operations, Services & Support Committee item regarding the wholesale power contract amendment.



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• [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RUS Response to Amendment for Wholesale Power Contract ("WPC") – Roy Palk reviewed RUS' four responses regarding negotiations for extension of the WPC to make its term the same as the loan on Gilbert Unit No. 3 of Spurlock Station. The Gilbert Unit is approximately 60% complete. The Gilbert loan is going to the RUS loan committee tomorrow—September 10, but is subject to the four RUS conditions that were faxed and/or mailed to each Board member on September 4. The four RUS conditions are: ① If member systems want to obtain service territory outside of their regular service territory and that serviced area is provided by another supplier, that supply contract needs to be honored. ② If member systems want to get off-system supply power from a non-EKPC source, that is a combination of two factors—each member system cannot exceed 15% of its peak over a three-year period, nor can those 15%, collectively for all the members, exceed 5% of EKPC's peak during the same period. ③ If loads obtained off of EKPC's system are brought to EKPC's system, there is a differentiation between 5 MW and under and 5 MW and over, in terms of a notice provision to EKPC. If it is 5 MW and under, it is a 90-day notice period so EKPC can arrange power supply. If it is 5 MW and over, it is not to exceed 18 months notice period so EKPC can prepare to serve that load. ④ Once that load comes onto the EKPC system, that election is irrevocable—it stays on EKPC's system. Mr. Palk said he believes there is no disagreement with the first point—to honor a contract if it is another service provider; nor the third point—the 90 days vs. 18 months; nor the fourth point—the irrevocable election provision. The point of contention with RUS is point No. 2. as stated above.

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Regarding point No. 2, Mr. Palk presented and discussed five points, as follows.

1. RUS final position – 4 points – Hilda Legg:

Mr. Palk said, upon verification this morning with RUS Administrator, Hilda Legg, the four above conditions are RUS' final position. He noted that as a result of negotiations among RUS, South Kentucky, Fleming-Mason, and EKPC, RUS did move the limit for member systems from 10% to 15%. RUS said it would go no higher than 15% stating they believe a default could occur at the member system level and put the G&T at risk. EKPC/member systems responded that the opportunities for additional territory for member systems would come with revenue and would be on-going business transactions of non-speculative risks. RUS said they understood that in EKPC's case, but that RUS would not want to set a precedence whereby they bind themselves to other transactions that may not be as strong as the EKPC system; that if they do this in a broader sense they want to make it a general policy of RUS rather than make individual exceptions.

2. Impact of 5% and 15%:

Mr. Palk distributed and reviewed a handout relative to EKPC peak loads from December 2000 through January 2003, and the 15% and 5% impact for that time period. The member system 15% allowance ranged from 9 MW to 47 MW, with the EKPC 5% average being 119 MW. He said a mechanism would need to be devised in order that all member systems could participate if they choose.

3. Cost of alternate financing:

Mr. Palk invited David Eames to discuss this point. Mr. Eames said there were two ways to look at the financing—if we have to find alternate financing for the Gilbert loan (\$400+ million), landfill gas loan (\$25 million), CFC \$50 million short-term financing loan for CT 6 and 7, and about \$30 million for transmission facilities. EKPC would probably work with CFC to syndicate a loan, with about a \$7.5 million increase in interest expense the first year, which would require a lien accommodation from RUS with possibly the same restrictions. The next alternative would be to refinance all RUS and FFB debt, which would mean a prepayment penalty (buy-out premium) of approximately \$63 million and increased interest expense of about \$11 million incurred on existing debt. Also, the annual interest expense would increase (interest rate differential) approximately \$18 million—based on non-RUS borrowings. Mr. Eames distributed this information.

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4. Distribution Mortgage Allowance – i.e. Non-RUS \$, Lien Accommodation, Subsidiary of Distribution Coop.:

Mr. Palk continued with, if flexibility is not achievable to the degree that is sought at the G&T level, what are the options at the distribution level. He asked Sherman Goodpaster discuss alternatives he had researched regarding options which allow member distribution systems to acquire non-G&T power supply and keep their current power supply. According to Mr. Goodpaster, the most popular option was creation of a subsidiary—a separate entity created under the member cooperative. This allows the subsidiary to acquire a potential system and get the power supply out from under the wholesale power supply. The new load does not become a part of the cooperative system so it's not under the WPC. At that point the member system could acquire other power supply sources or honor existing power supply contracts. Another option for the distribution system is to acquire the new load and have the G&T (EKPC) become the purchaser under that existing power supply and then resell the power back to the member. This could be done either as a pass-through at the existing contract rate, which would probably entail a tariff change, or as actual assignment of the power supply contract to EKPC and allow EKPC to incorporate that contract into its own portfolio and pass that on to the members under its existing tariff. These are possible options that RUS may consider. Mr. Goodpaster will e-mail this information to the member systems.

5. How to handle if all 16 do not accept -

Finally, Mr. Palk, stated that he talked with Victor Vu at RUS this morning, and was told all sixteen members must accept.

He recapped all points noting the costs of alternate financing, the member system options presented by Mr. Goodpaster, and that all members must be on board. He also added that in RUS's letter of the four points, they did say that if there are transactions that you contemplate that would be beyond the 5% and 15% criteria, they would entertain an analysis of those on a case-by-case basis.

Following discussion, Allen Anderson and Tony Overbey said they would like to discuss this material with their boards. Mr. Palk said he will contact RUS today and report that two cooperatives will inform their boards of information discussed today. South Kentucky requested that EKPC work up several real scenarios for review. Mr. Palk stated that anyone needing any assistance regarding this matter to please contact him. It is anticipated this item will come before the Board in October.

AMENDMENT NO. 5 TO WHOLESALE POWER CONTRACT
BETWEEN
EAST KENTUCKY POWER COOPERATIVE, INC.
AND
[NAME OF MEMBER]

This Amendment No. 5 to Wholesale Power Contract (this "Amendment"), dated as of _____, 2011, amends the Wholesale Power Contract, dated October 1, 1964, between East Kentucky Power Cooperative, Inc. (hereinafter, the "Seller") and [Name of Member] (hereinafter, the "Member"), as heretofore amended, as follows:

I. Numerical Section 1 of the Wholesale Power Contract is amended and restated to read in its entirety as follows:

1. General - The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which shall be required to serve the Member's load, including all electric power and energy required for the operation of the Member's system. Notwithstanding the foregoing, the Member shall have the option, from time to time, to receive electric power and energy from suppliers other than the Seller or from facilities owned or leased by the Member, subject to and in accordance with the following terms and conditions, and policies and procedures established and maintained by the Seller, as amended by the Seller from time to time, for implementing elections by the Member to exercise such option.

For any election made under this Section, the following provisions shall apply:

a. Except as specifically provided in Subsection f. below, the Member shall be responsible for all stranded costs and all additional costs incurred by the Seller as a result of such election, including without limitation, transmission, load following, energy imbalance and other

ancillary services, scheduling, reliability, metering, regional transmission authority and administrative costs.

b. In connection with each election to purchase from a third-party supplier or self-supply, the maximum amount of capacity the Member may elect to so purchase or supply, together with the amount of capacity, if any, the Member is then purchasing from a third-party supplier or self-supplying and the amount, if any, the Member has transferred to one or more other members of the Seller pursuant to Subsection c., is five percent (5%) of the average of the Member's peak demand coincident with the Seller's peak demand in each of the three most recently completed calendar years immediately preceding the Member's election. The Member may, in connection with any such election, exceed this maximum amount of capacity by any amount of entitlement to obtain third-party supply or self-supply of another member of the Seller the Member has obtained from the other member, provided that the Member and the other member have provided prior written notice to the Seller in accordance with the Seller's policies and procedures.

c. The Member may from time to time transfer to another member of Seller all or any portion of its entitlement under this Section 1 to obtain third-party supply for, or self supply, load. The maximum amount of such entitlement the Member may transfer at any time is the maximum amount the Member may elect at such time to obtain third-party supply for, or self-supply, its own load.

d. The third-party supply, or self-supply, must be a firm capacity and energy supply, and must serve (i) the actual hourly load of one or more specifically identified retail meters, (ii) a percentage of the Member's actual hourly load at specified delivery points, or (iii) such other load as is approved in accordance with the Seller's policies and procedures. The third-party supplier or the Member must procure such transmission, load following, energy imbalance and other ancillary services from the Seller or other suppliers as is required pursuant to the Seller's policies and procedures.

e. The responsibilities of the Member with respect to load served by a third-party or the Member will vary as provided in Subsections f. and g. depending on whether the load is New Load or Existing Load. For purposes of this Section 1, "New Load" means (i) retail load of at least 2,500kW for a customer, as measured at one or more of such customer's meters, as to which the Member makes the election at the time the Member first starts serving load at such meters, (ii) retail load at a facility previously served by the Member at which new or re-started operations commence after a period of at least twelve (12) months during which no electric service was provided by the Member to the facility, or (iii) load of a newly acquired service territory as to which the Member makes the election at the time the Member first acquires the service territory. For purposes of this Section 1, "Existing Load" means any load that is not a New Load.

f. If the load to be served by a third-party or the Member is New Load, the Member will not be obligated to reimburse the Seller for stranded costs.

g. The Member will be responsible for obtaining all additional supply for any load growth for: (i) any New Load and (ii) any Existing Load that is a specifically identified retail load.

h. The Member must give the Seller at least one hundred eighty (180) days prior written notice of any election under this Section 1 to purchase from a third-party supplier or self-supply. The Member must give the Seller at least three (3) years prior written notice to cancel any such election and obtain supply for the applicable load from the Seller. All such notices must comply with the Seller's policies and procedures.

h. Upon the effective date of the Member's cancellation of any such election under this Agreement, the applicable load shall be governed by the all requirements obligations of the Seller and the Member in this Section 1, and the Member may not thereafter elect to serve such load from a supplier other than the Seller or through facilities owned or leased by the Member.

i. The Seller will make available interconnection, transmission, and load following, energy imbalance and other ancillary services to any third-party supplier or the Member, pursuant to

separate agreements with such terms and conditions as are acceptable to the Seller and the third-party supplier or the Member, as the case may be, without discrimination or adverse distinction with regard to rates, terms of service or availability of such service, as required by law.

2. Effectiveness - This Amendment shall become effective only upon approval in writing by the Administrator of the Rural Utilities Service.

IN WITNESS WHEREOF, the Seller and the Member have caused this Amendment to be executed and attested by their respective duly authorized officers, as of the day and year first written above.

EAST KENTUCKY POWER
COOPERATIVE, INC.

BY: _____

ITS: _____

ATTEST, SECRETARY

[NAME OF MEMBER] _____

BY: _____

ITS: _____

ATTEST, SECRETARY