

## SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is made as of the 31<sup>st</sup> day of July, 1998, between EAST KENTUCKY POWER COOPERATIVE, INC. (hereinafter called the "Seller"), and Grayson Rural Elec. Coop. Corp. (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, which contract, as it may heretofore have been amended and supplemented, is hereinafter called the "Power Contract"; and,

**WHEREAS**, the Seller is seeking a new loan which is subject to the approval of the Administrator; and,

**WHEREAS**, the Government is relying on the Power Contract, as supplemented by this Supplemental Agreement, and similar contracts between Seller and other borrower 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**, for and in consideration of the mutual undertaking herein contained and the approval by the Administrator of the pending loan, 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 Notes are outstanding, the Member will not, without the approval in writing of the Seller and 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 substantial portion of its assets, whether now owned or hereafter acquired. The Seller 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 Seller 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 Seller, or impair the ability of the Seller to repay its secured loans in accordance with their terms, or adversely affect system performance in any material way.

(b) Notwithstanding paragraph (a) of this section, the Member may 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 substantial portion of its assets, whether now owned or hereafter acquired without the Seller's consent, so long as the Member shall pay such portion of the outstanding indebtedness on the Seller's Notes or other obligations as shall be determined by the Seller with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and Seller may require either:

(1) to eliminate any adverse effect that such action seems likely to have on the rates of the other members of the Seller, or

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

(c) The Administrator may require, among other things, that any payment owed under (b)(2) of this section that represents a portion of the Seller's indebtedness on the Seller 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 Seller Notes for application by them as prepayments in accordance with the provisions of such documents, or be paid to the Seller and held and invested in a manner satisfactory to the Administrator.

## **SECTION 2. Permitted Transactions.**

Notwithstanding the provisions of section 1 of this Supplemental Agreement, the Member may merge into or consolidate with:

(i) another member of the Seller, provided that the Member shall have provided evidence, in form and substance satisfactory to the Seller and the Administrator, that the obligations of the Member under the Power Contract and this Supplemental Agreement have been assumed by, and are binding on, the successor; or

(ii) a third party that is not a business competitor of the Seller or another Member System, or is not owned by or affiliated with such a business competitor of the Seller or another Member System, provided that the Member and such third party shall have provided assurances, in form and substance satisfactory to the Seller and the Administrator, that the obligations of the Member under the Power Contract and this Supplemental Agreement have been assumed by and are binding on such third party, the third party shall have the ability to perform its payment and other obligations under the Power Contract and this Supplemental Agreement, electric service will continue to be provided to those customers served by such Member, and such merger or consolidation will not otherwise materially adversely affect the Seller or the Government. For the purposes of this paragraph, a business competitor is defined as an organization whose primary business is in direct competition with the primary business of the Seller or another Member System.

**SECTION 3. 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 any such obligations in whole or in part.

**SECTION 4.** This Agreement may be simultaneously executed and delivered in two or more 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 parties hereto have caused this Agreement to be duly executed as of the day and year first above mentioned.

By: Roger L. Hunt  
Member

Title: Chairman

ATTEST:

Howard D. Sturgill  
Secretary

By: Ed Gilbert  
Seller

Title: CHAIRMAN OF THE BOARD

ATTEST:

Dino Tolson  
Secretary

**UNITED STATES OF AMERICA**

By: \_\_\_\_\_  
**Administrator  
of the  
Rural Utilities Service**

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement, dated 7-31-98, by and between Grayson Rural Elec., a Kentucky corporation with its principal office at 109 Bigby Park, Grayson, Ky. (hereinafter called "Member"); and East Kentucky Power Cooperative, Inc., a Kentucky corporation with its principal offices at 4775 Lexington Road, P. O. Box 707, Winchester, Kentucky 40392-0707 (hereinafter referred to as "Seller").

### WITNESSETH

**Whereas**, Seller and Member are parties to a Wholesale Power Contract (the "Power Contract") along with the United States of America, acting through the Administrator of the Rural Utilities Service (the "Administrator") dated October 1, 1964, and a Supplemental Agreement to said Power Contract (the "Agreement") dated July 31, 1998; and

**Whereas**, The Parties hereto desire to establish certain additional understandings relating to said Agreement;

**Now, Therefore**, in consideration of the mutual covenants made herein, the parties hereto agree as follows:

#### **1. Settlement Efforts**

In the event that Member shall determine to enter any transaction requiring approval under paragraph 1(a) of the Agreement or to exercise its rights under paragraph 1(b) of the Agreement, Seller and Member are to make a good faith effort to reach an agreement as to the settlement amount due to and from each party and/or the portion of outstanding indebtedness due by Member on Seller's Notes and other obligations, which portion shall be determined as provided in paragraph 1(b) (1) and (2) of the Agreement.

In the event that the parties cannot reach an agreement in these matters, they agree to utilize alternative dispute resolution measures in order to arrive at the amounts contemplated above or the portions of indebtedness required to accomplish the subject

transaction(s) : Provided however, that nothing herein shall limit the rights of the Administrator to determine the acceptability of such settlement with Seller or such portion of Seller's indebtedness that must be paid by the Member, taking into account the recommendation of the Member and Seller and/or any dispute resolution findings

**2. Fundamental Rights.**

The parties hereto agree that the terms of the Supplemental Agreement are not intended to and do not change the fundamental rights of the parties under the Power Contract.

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

By: Roger L. Just  
Member

Title: Chairman

ATTEST:

Howard D. Stuyell  
Secretary

By: EA Gilbert  
Seller

Title: CHAIRMAN OF THE BOARD

ATTEST:

Dino Tellez  
Secretary

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