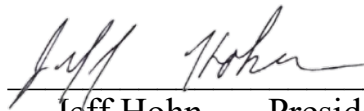


CASE NO. 2021-00066

VERIFICATION

I verify, state and affirm that the responses to the Commission Staff's and Attorney General's initial Request for Information filed with this verification and for which I am listed as a witness are true and correct to the best of my knowledge, information and belief formed after a reasonable inquiry.



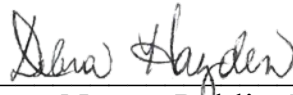
\_\_\_\_\_  
Jeff Hohn      President and CEO

STATE OF KENTUCKY

COUNTY OF: DAVIESS

The foregoing was signed, acknowledged and sworn to before me on this 23rd day of April, 2021, by Jeff Hohn

My commission expires 5-23-2023



ID#623317

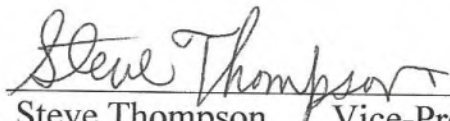
\_\_\_\_\_  
Notary Public, KY. State at Large

(seal)

CASE NO. 2021-00066

VERIFICATION

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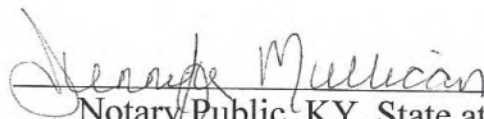
  
Steve Thompson Vice-President Finance

STATE OF KENTUCKY

COUNTY OF: DAVIESS

The foregoing was signed, acknowledged and sworn to before me on this 23rd day of April, 2021, by Steve Thompson

My commission expires August 7, 2021

  
Notary Public, KY. State at Large

(seal)



CASE NO. 2021-00066

VERIFICATION

I verify, state and affirm that the responses to the Commission Staff's and Attorney General's initial Request for Information filed with this verification and for which I am listed as a witness are true and correct to the best of my knowledge, information and belief formed after a reasonable inquiry.



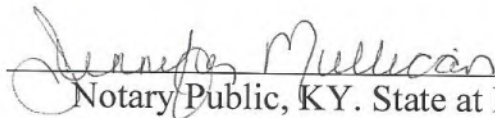
\_\_\_\_\_  
John Wolfram

STATE OF KENTUCKY

COUNTY OF: DAVIESS

The foregoing was signed, acknowledged and sworn to before me on this 23rd day of April, 2021, by John Wolfram

My commission expires August 7, 2021

  
\_\_\_\_\_  
Notary Public, KY. State at Large

(seal)



**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

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**Item 1)** Refer to the Application, Exhibit 2, Seventh Revised Sheet 162A.

- a. Explain why the customer deposit is being increased approximately 15 percent.
- b. Provide the calculation for the proposed \$315.00 deposit amount.

**Response)**

- a. The customer deposit is being decreased 3%. Using the current deposit of \$325.00 compared to the proposed deposit of \$315.00, results in a percentage decrease of 3%.
- b. Proposed Residential Revenues - \$87,967,871 (exhibit JW-9 page 2 of 9) divided by:  
Normalized annual Residential billings – 555,468 = \$158.37 average monthly bill  
Times 2 months = \$316.73 (Rounded to \$315.00 for ease of use)

**Witness)** Steve Thompson

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
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**Item 2)** Refer to the Application, Exhibit 2, Third Revised Tariff Sheet No. 32 (Exh. B).

- a. For the proposed Returned Check Charge, explain why the bank charge decreased from \$3.52 to zero.
- b. For the Turn-On, Reconnect, Termination, Special Meter Reading, and Meter Test estimates, explain why only one half hour is required to perform the services during normal business hours but two hours are required for overtime.
- c. Explain the basis for the \$0.575 mileage rate and why the rate is doubled for overtime.
- d. Recent Commission decisions concerning special nonrecurring charges have found that as personnel are paid during normal business hours, estimated labor costs previously included in determining the amount of nonrecurring charges should be eliminated from these charges. Explain why the proposed increases to Kenergy's nonrecurring charges include labor and why the inclusion is reasonable.

**Response)**

- a. Kenergy switched to a new bank since the last tariffs were filed in Case No. 2015-00312. The agreement negotiated with the bank does not provide for a separate returned check charge.
- b. Kenergy's standby pay policy provides for a minimum of two hours pay when the employee is called out to work after normal operating hours.
- c. The rate is the Internal Revenue Service allowed mileage rate for 2019 tax returns. The rate is not doubled for overtime, but the number of miles is increased from 10 to 20 to allow for the extra miles involved after hours because the employee is traveling from home and cannot efficiently work the travel into the schedule of field visits undertaken during regular business hours.

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1 d. Kenergy's position is the "fully embedded cost principle" should be utilized to price these  
2 special charges. This principle is utilized by Kenergy consistently to price events occurring  
3 such as Kenergy's crews performing storm restoration for other utilities, billings for damage to  
4 Kenergy's facilities caused by outside parties, work order costing for Rural Utilities Service  
5 financing purposes, affiliate transactions between Kenergy and wholly owned subsidiaries, and  
6 Cablevision attachment rates.

7           The fully embedded cost principal is consistent with cost causation, in that the  
8 individual members who cause particular costs to be incurred should pay those costs, rather  
9 than having all members pay for them. It is not a question of whether the personnel are paid  
10 for regular hours; it is a question of which members pay for which services during those hours.  
11 In other words, it is appropriate for customers responsible for non-recurring costs to pay  
12 Kenergy's labor cost associated with those activities, and for the entire membership to pay the  
13 remainder of the labor cost. It is not appropriate for Kenergy to socialize all the labor costs for  
14 these activities across the entire membership when we know that particular members cause a  
15 portion of these costs to be incurred.

16  
17  
18 **Witness)** Steve Thompson  
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**Item 3)** Refer to the Application, Exhibit 3, Third Revised Sheet 32B.

- a. Explain whether Kenergy still has customers who read their own meters, and if so, provide the number during the test year.
- b. Explain why Kenergy waits six months before sending a Service Technician out if a meter has not been read by the customer.
- c. Provide the number of customers who self-read meters.
- d. Explain whether Kenergy has plans to change out the meters to eliminate customer meter reading.
- e. Explain whether Kenergy allows customers to opt out of AMI service, and if so, what the fee is.

**Response)**

- a. Kenergy does not have members who read their own meters. Since this charge is no longer applicable, this sheet should be removed from Kenergy's tariff.
- b. N/A. see response to 3a.
- c. None. See response to 3a.
- d. All of Kenergy's meters are AMI.
- e. Members are not allowed to opt out of AMI service.

**Witness)** Steve Thompson

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**Item 4)** Refer to the Application, Exhibit 3, Fourth Revised Sheet 76 (Exh. A).

- a. Explain whether the proposed CATV pole attachment rates apply the formula prescribed in Administrative Case 251-42.
- b. Provide the revenue by category that Kenergy received during the test year for the six categories of CATV Attachments contained in Kenergy's CATV tariff approved on May 20, 2016, and on file with the Commission.

**Response)**

- a. Yes.
- b. Reference exhibit JW-2 of exhibit 9, page 21 of 22, rows 29-32, column h.  
  
Two party pole - \$36,487  
  
Three party pole - \$35,027  
  
Two party anchor - \$0  
  
Three party anchor - \$0

**Note:** only four categories are shown on the tariff sheet referenced.

**Witness)** Steve Thompson



**KENERGY CORP.  
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**Item 5)** Refer to the Application, Kenergy\_Rev\_Req.xlsx, tab 1.01 FAC. The figures listed in column F do not match the amounts submitted during the monthly FAC filings (see below); reconcile the difference.

Month	Application Revenues	Monthly Filings Revenues
Jan	\$317,904	\$318,757
Feb	3,345	3,354
Mar	131,420	131,739
Apr	26,679	26,731
May	57,672	57,795
Jun	(2,335)	(2,340)
Jul	177,359	177,664
Aug	14,645	14,669
Sep	(111,410)	(111,596)
Oct	49,109	49,189
Nov	82,360	82,574
Dec	128,838	129,177

**Response)** The difference between the two sets of monthly revenues is comprised entirely of the amount of the FAC charged to the cooperative use. The co-op use amounts are included in the total FAC amount in Kenergy's monthly PSC filings but is not placed on members' bills. Instead, the co-op use portion is charged to Kenergy operating expense accounts based on how the electricity was used by Kenergy and is not included in revenue billings. For the purposes of the pro forma adjustment, the amounts in Reference Schedule 1.01 include the portion billed to the members, which is the appropriate total for calculating the adjustment.

**Witness)** John Wolfram

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**Item 6)** Refer to the Application, Kenergy\_Rev\_Req.xlsx , Tab 1.13 Labor.

- a. Provide a breakdown of the Incentive awarded to each employee as described in note 5, and describe the safety, performance, financial, and customer service goal(s) required to receive an award.
- b. Provide a breakdown of the Christmas bonus by employee as described in note 6.
- c. Provide a breakdown of CEO Bonus to Deferred Compensation as described in note 7.

**Response)**

- a. Each employee, except the CEO, received \$1,440 in 2019 for incentive goals achieved in 2018. The incentive pay was prorated for employees that were not employed the full year. Please see the attached Success Share summary for details on the goals achieved.
- b. Each employee received a \$100 Christmas bonus grossed up for taxes so the employee's net check would be \$100. The total bonus was \$13,000 (130 employees times \$100). The total taxes were \$5,380, for a total Christmas bonus amount of \$18,380 (\$13,000 plus \$5,380). This entire amount has been removed for rate making purposes.
- c. The CEO received \$21,250 in bonus, out of a maximum of \$25,000, for performance measures achieved in 2019. \$19,500 was placed in a 457(b) account and \$1,750 was paid out. Please see attached CEO Goals for 2019.

**Witness)** Jeff Hohn



**2018 Success Share ending 12/31/2018**

	<b><u>TARGET</u></b>		<b><u>STRETCH</u></b>		<b><u>Actual</u></b>	<b><u>Payout</u></b>
	<b><u>PERFORMANCE</u></b>	<b><u>PAYOUT (\$)</u></b>	<b><u>PERFORMANCE</u></b>	<b><u>PAYOUT (\$)</u></b>		
<b><u>SAFETY</u></b>						
OSHA Recordable Incident Rate (TCIR) <sup>(1)</sup>	<b>3.63</b>	<b>\$320</b>	<b>1.39</b>	<b>\$640</b>	<b>.75</b>	<b>\$640</b>
DART (Days Away, Restricted or Transferred) Incident Rate <sup>(1)</sup>	<b>2.25</b>	<b>\$320</b>	<b>0</b>	<b>\$640</b>	<b>.75</b>	<b>\$320</b>
Lost Time	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$640</b>	<b>1</b>	<b>0</b>
<b><u>MEMBER SERVICE</u></b>						
Having Competent & Knowledgeable Employees	<b>84</b>	<b>\$120</b>	<b>86</b>	<b>\$240</b>	<b>86</b>	<b>\$240</b>
Restoring Service When Power is Out	<b>83</b>	<b>\$120</b>	<b>85</b>	<b>\$240</b>	<b>85</b>	<b>\$240</b>
SAIDI <sup>(2)</sup>	<b>96</b>	<b>\$240</b>	<b>87</b>	<b>\$480</b>	<b>107</b>	<b>\$0</b>
<b><u>OPERATIONAL PERFORMANCE</u></b>						
Controllable Cost Per Member <sup>(2)</sup>	<b>\$372</b>	<b>\$240</b>	<b>\$365</b>	<b>\$480</b>	<b>\$376</b>	<b>\$0</b>
<b>TOTAL</b>		<b>\$1,360</b>		<b>\$3,360</b>		<b>\$1,440</b>

Notes:

- (1) TCIR & DART is three year average minus 5%. Stretch is best performance
- (2) Excluding extreme weather events
- (3) \*Lost time will not be paid out until employee returns to full duty w/o restrictions assuming no lost days

## CEO Goals for 2019

In concert with both Kenergy's Safety Leadership Team and Safety Committee, assess Kenergy's safety culture, ensure culture is built upon genuine caring and concern for our employees, and ensure appropriate leading indicators are in place. Update Board monthly on significant safety activities and initiatives as well as leading indicators. – 5%

Achieve or exceed the six (6) incentive targets for 2019. They are:

### Safety

- A. OSHA Recordable Incident Rate (TCIR) – 5%
- B. DART (Days Away, Restricted or Transferred) Incident Rate - 5%
- C. Lost Time Accidents 10%.

### Member Service

- D. Member Satisfaction – ACSI – 5%
- E. SAID (System Average Interruption Index) - 5%

### Operational Performance

- F. Controllable Cost Per Member – 5%

### Additional Items

- Continue to build relationships with our elected officials. – 5%
- Continue to evaluate and report to the Board the benefits/savings of our AMI System. – 10%
- Continue to evaluate and discuss with the Board the strategic plan, succession planning and organizational changes. - 7.5%
- Work within the 2018 Budget. – 12.5%
- Keep Board informed of Member issues. Both system wide and within their respective Districts. – 10%
- Continue to work with/support KAEC and the other Kentucky Cooperatives. Continue to make Kenergy a respected leader in the State. – 5%
- Maintain a working relationship with BREC and the other two (2) Members Systems. Continue to assist them with ways to make rates stable and affordable. – 10%

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
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**Item 7)** Refer to the Application, Kenergy\_Present\_Proposed\_Rates.xlsx, Tab Res-1, Cell L17. Explain the rationale for subtracting 3,280,157 from the annual kWh billing units.

**Response)** The 3,280,157 kWh represents the amount of the year-end customer adjustment calculated for the residential class. It is subtracted in Cell L17 to convert the actual test period amounts to the adjusted test period or “Present Rate” amounts. See Exhibit JW-2, Reference Schedule 1.06, line 19, column 3. (This is also found in the uploaded file Kenergy\_Rev\_Req.xlsx, Tab 1.06 Cust, Cell F30.)

**Witness)** John Wolfram

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**Item 8)** Refer to the Application, Exhibit 2, Kenergy\_COS\_2019.xlsx, Tab Billing Det, Row 40, Average Demand. If the formula for Average Demand is monthly energy usage (kWh) divided by the number of hours in a month, then explain why the calculated total monthly number of hours is not consistent across the test year.

**Response)** The number of hours per month should vary based on how many days are in the month; months with 31 days have 744 hours (31 x 24), months with 30 days have 720 hours (30 x 24) and February has 672 hours (28 x 24). In the exhibit, the number of hours for February, June and July were inadvertently intermingled. Correcting this has a negligible effect on the rates of return. See corrected file provided electronically with this response.

**Witness)** John Wolfram

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1  
2 **Item 9)** Refer to the Application, Exhibit 2, Kenergy\_COS\_1029.xlsx, Tab ZeroInt.

- 3 a. If the account where the minimum system was applied, specifically Account 364, as well the  
4 inputted allocation for the overhead and underground conductor was changed so that the  
5 percentage is classified as 100 percent demand-related so to be consistent with prior  
6 Commission Orders, provide a revised Exhibit 2.
- 7 b. Provide support as to why Kenergy believes the Commission should be consistent with the last  
8 base rate case and not adjust the classification of the overhead and underground conductors  
9 from 84.46 percent demand-related and 15.54 percent customer-related.

10  
11  
12 **Response)**

- 13 a. See attached electronic file Kenergy\_COS\_2019\_REV PSC 1-9.xlsx. In this file, the costs in  
14 Accounts 364, 365 and 367 are classified as 100 percent demand-related, as requested in the  
15 question. (The file also includes the minor revisions to the Billing Determinants worksheet noted  
16 in the response to Item PSC 1-8.) However, this classification significantly understates the true  
17 fixed cost for providing service to a Kenergy residential customer.

18 First, it is important to note that the 100 percent demand classification cited in the prior  
19 Commission Orders is inconsistent with findings of the Commission in many other utility rate  
20 cases and is likewise inconsistent with the *NARUC Electric Cost Allocation Manual* (“NARUC  
21 CAM”) which was adopted by the Commission many years ago and routinely used by it ever  
22 since. The manual specifically states on page 90 that “Distribution plant Accounts 364 through  
23 370 involve demand *and customer* costs.” (emphasis added) The NARUC CAM describes two  
24 methods for classification – the zero intercept method and the minimum system (or minimum-

**KENERGY CORP.  
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1 size) method. As the Commission acknowledged, if the zero intercept method is not adopted, the  
2 recommended approach then becomes the minimum system method. The minimum system  
3 method is not arbitrary. The minimum system method is not equivalent to classifying all of these  
4 costs as 100 percent demand. It is simply not reasonable to assume that the costs for poles,  
5 overhead conductor, and underground conductor have no customer-related component; if it were  
6 reasonable, it follows that there would be no cause for the NARUC CAM to identify two other  
7 methods for calculating the apportionment. Importantly, the NARUC CAM specifically  
8 identifies other individual accounts that should be classified as 100 percent demand, and these  
9 particular accounts are not among them.

10 Second, a utility will incur some portion of costs for poles and conductor for every  
11 customer, regardless of customer size, such that the classification of these costs to the customer  
12 component should not be zero. The split between demand-related and customer-related costs  
13 relate to whether and how the particular facility – poles, conductor, or line transformers – provide  
14 both a load function and a no-load function.<sup>1</sup> The cost to provide a no-load function is the  
15 customer-related cost, and the remainder of cost is for providing load and is thus demand-related.  
16 It is not possible to provide service, even under no-load conditions, without either underground  
17 conductor or overhead conductor with a pole. It is also not possible to provide conductor and/or  
18 a pole with zero cost. In other words, even for a customer that never uses a single kilowatt-hour,  
19 Kenergy must install either underground conductor or overhead conductor with a pole *to be able*  
20 to provide that customer with electric service, and those facilities will not have zero cost. For this  
21 reason, classifying the costs in Accounts 364, 365 and 366 as 100 percent demand-related is

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<sup>1</sup> Vogt, Lawrence. *Electricity Pricing: Engineering Principles and Methodologies*. CRC Press, 2009, p. 498.



**KENERGY CORP.  
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1       flawed; it overstates the demand component and thus understates the resultant fixed customer  
2       charge. It is inconsistent with cost-causation principles, is arbitrary, and is unreasonable.

3               Third, the minimum system calculation in Exhibit JW-8 is accurate for poles, relies upon  
4       detailed property data provided by the utility for the test period, and is consistent with both the  
5       NARUC CAM and prior Commission orders.

6               Kenergy respectfully believes that it should be accepted by the Commission and relied  
7       upon for determining the cost-based residential customer charge in this case.

- 8       b.   The Commission should accept the classifications from the last rate case for Accounts 365 and  
9       366 for several reasons. First, Kenergy does not currently have the data to support the zero  
10       intercept calculation or the minimum system calculation for the 2019 test period, which results  
11       in a lack of test year evidence supporting either of the classification methods noted in the  
12       NARUC CAM. Second, in the last rate case, the Commission accepted the cost of service study  
13       and found it to be reasonable.<sup>2</sup> No party took issue with the classification of these accounts as  
14       84.46 percent demand-related and 15.54 percent customer-related. Third, the classification of  
15       these costs as 100 percent demand-related is arbitrary, inconsistent with cost causation, and  
16       unreasonable, as noted in the response to part a. Absent any quantified support for a  
17       classification of these costs based on 2019 test year data, it is a reasonable substitute in this  
18       instance to classify these costs in the manner accepted by the Commission in the last rate order.  
19       Finally, while test year data to support the 84.46 percent demand-related and 15.54 percent  
20       customer-related classifications is not available, in the alternative it is useful to review a panel

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<sup>2</sup> See *In The Matter Of: Application Of Kenergy Corp. For A General Adjustment In Rates*, Case No. 2015-00312, Order dated September 15, 2016, at 18.

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1 of zero intercept classification data presented to the Commission in other, recent distribution  
2 cooperative rate filings. The relevant data for such filings dating back to 2016 (and excluding  
3 the last Kenergy case) is attached. The data includes only those classifications based on the  
4 zero intercept calculations (i.e., not minimum system). If the Commission concludes that using  
5 the data from Kenergy's last rate case is not representative of current conditions, it could  
6 alternatively rely upon the 5-year average of classifications from the zero intercept calculations  
7 provided in other distribution cooperative rate filings before this Commission.

8  
9  
10 **Witness)** John Wolfram

**Cost of Service Study: Zero Intercept Data  
April 21, 2021**

#	Utility	Case No.	Acct 365		Acct 366		Acct 368	
			Overhead Conductor	Customer	Underground Conductor	Customer	Line Transformers	Customer
			Demand		Demand		Demand	
1	Licking Valley	2020-00338					0.3607	0.6393
2	Cumberland Valley	2020-00264	0.7277	0.2723	0.0626	0.9374	0.2904	0.7096
3	Meade County	2020-00131	0.3574	0.6426	0.1372	0.8628	0.3906	0.6094
4	Jackson Energy	2019-00066	0.6506	0.3494	0.2167	0.7833	0.3655	0.6345
5	Jackson Purchase	2019-00053	0.1263	0.8737	0.8999	0.1001	0.4886	0.5114
6	Grayson	2018-00272					0.6522	0.3478
7	Inter-County	2018-00129	0.4995	0.5005	0.5319	0.4681	0.5168	0.4832
8	Big Sandy	2017-00374	0.6341	0.3659	0.0325	0.9675	0.5363	0.4637
9	Shelby Energy	2016-00434	0.3988	0.6012			0.5015	0.4985
10	Nolin	2016-00367					0.5946	0.4054
11	Farmers	2016-00365					0.4500	0.5500
12	Licking Valley	2016-00174	0.4241	0.5759	0.4585	0.5415	0.7586	0.2414
13	Cumberland Valley	2016-00169	0.4241	0.5759			0.8056	0.1944
AVERAGE			0.4714	0.5286	0.3342	0.6658	0.5163	0.4837

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

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**Item 10)** Refer to the Direct Testimony of Jeff Hohn (Hohn Testimony), page 4, lines 14–16.

- a. Big Rivers Electric Corporation (BREC) is anticipating an increase in demand and energy usage due to the expansion of its industrial load. Explain whether Kenergy is anticipating any of the economic benefits of this expansion.
- b. Kenergy has been experiencing a slow decline in residential customers. Explain whether this trend is expected to continue over the next five years, and if so, what actions Kenergy is taking toward further economic development.

**Response)**

- (a) Kenergy is not expecting any direct economic benefits from this expansion. The current expansion is located in Meade County RECC’s service territory. However, if Big Rivers achieves margins above its TIER requirement, a portion of those additional margins should flow through the MRSM directly to Kenergy’s members.
- (b) Yes, Kenergy is expecting the trend to continue under the current conditions. Kenergy works with local Economic Development Boards and Big Rivers’ economic development staff to promote economic growth throughout the region. A major factor that could change the current trend would be making broadband available to our Members. The County Judge Executives, State Representatives, and area businesspeople have stated they are continually being asked by their Constituents and clients as to when broadband will become available. With the passing of HB 320, Kenergy will now have the ability to partner and make broadband available.

**Witness)** Jeff Hohn

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
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2 **Item 11)** Refer to the Hohn Testimony page 6, lines 10–12. Mr. Hohn discusses  
3 increasing the employee share of health insurance premiums from 10 percent to 16 percent.  
4 Also refer to the Direct Testimony of John Wolfram (Wolfram testimony) page 15, lines 14–  
5 16. Mr. Wolfram states that no adjustment is required because the contribution is not zero.

- 6 a. Provide the board of director minutes or resolutions that made this change.  
7 b. Explain whether the Pro Forma Ending December 31, 2019 amount Health, Life, Disability  
8 should be adjusted to reflect this change in premiums and, if not, why not.  
9 c. Provide the adjustment to account for the increased employee contribution which occurred  
10 outside of the test year and why this is not appropriate.  
11 d. Explain whether the increase in employee share of health insurance premiums extends to all  
12 Kenergy employees and, if not, the reasons why not.

13

14 **Response)**

- 15 a. See the board resolution attached to this response.  
16 b. While Kenergy did not adjust employee healthcare contributions to national averages, as stated  
17 in Mr. Wolfram's testimony, Proforma test year ending December 31, 2019 has been adjusted  
18 to reflect 2020 employee contributions to health insurance of 16%. See Reference Schedule  
19 1.14 in Exhibit JW-1, and the healthpension tab of the Excel file titled "4. Labor Adjustment  
20 Detail".  
21 c. See the response to Item b above, the increase in employee health insurance contribution to  
22 16% is already included in the Labor Overhead Expense proforma adjustment.  
23 d. Yes, the increase in the employee share of health insurance premiums extends to all Kenergy  
24 employees.

25

26 **Witness)** Jeff Hohn (a,d); John Wolfram (b,c)

27



EXCERPT FROM THE MINUTES OF A MEETING  
OF THE KENERGY BOARD OF DIRECTORS  
ON NOVEMBER 14, 2017

WHEREAS, in its Order entered September 15, 2016, in Case No. 2015-00312, In the Matter of Application of Kenergy Corp. for a General Adjustment of Rates, the Kentucky Public Service Commission (“Commission”) expressed concern with Kenergy’s insurance and benefit packages to its employees.

WHEREAS, the Commission’s Order recognized growing concerns over compensation levels with increasing electric bills, the Commission believes that compensation and benefits need to be more sufficiently researched and studied.

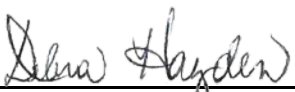
WHEREAS, future rate applications will be required to include salary and benefits comparisons that is not limited exclusively to electric cooperatives, electric utilities, or other regulated utility companies.

WHEREAS, the Kenergy Board of Directors believes any change shall be gradually implemented in order to prevent a sudden and unduly burdensome impact on the financial conditions of its employees, while at the same time realizing increased savings for the cooperative over time.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of Kenergy Corp. hereby approves and implements a plan pursuant to which, beginning January 1, 2018, Kenergy Corp. management and employees shall be required to contribute to their individual and family health insurance coverage in accordance with the following:

<u>Year</u>	<u>Employer Contribution</u>	<u>Employee Contribution</u>
2018	88%	12%
2019	86%	14%
2020	84%	16%
2021	82%	18%
2022	80%	20%

I, Debra Hayden, Assistant Secretary, certify that the foregoing is a true and correct excerpt from the minutes of a meeting of the board of directors of Kenergy Corp. on November 14, 2017.

  
\_\_\_\_\_  
Assistant Secretary

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
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**Item 12)** Refer to the Direct Testimony of Steve Thompson (Thompson Testimony), page 4, lines 13–16. Since the year 2019 reasonably reflects a calendar year of performance by Kenergy, explain how Kenergy’s performance in the year 2020 compares to 2019.

**Response)** Please see Kenergy’s 2020 statement of operations included as page 2 of this response. Operating margins decreased 147,079 from 702,212 in 2019 to 555,133 in 2020. Net margins decreased 966,962 from 2,796,711 in 2019 to 1,829,749 in 2020.

**Witness)** Steve Thompson

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0032. The time required to complete this information collection is estimated to average 15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL UTILITIES SERVICE

BORROWER DESIGNATION KY0065

**FINANCIAL AND OPERATING REPORT  
ELECTRIC DISTRIBUTION**

PERIOD ENDED December 2020

BORROWER NAME Kenergy Corp.

INSTRUCTIONS - See help in the online application.

This information is analyzed and used to determine the submitter's financial situation and feasibility for loans and guarantees. You are required by contract and applicable regulations to provide the information. The information provided is subject to the Freedom of Information Act (5 U.S.C. 552)

**CERTIFICATION**

**We recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Section 1001.**

We hereby certify that the entries in this report are in accordance with the accounts and other records of the system and reflect the status of the system to the best of our knowledge and belief.

**ALL INSURANCE REQUIRED BY PART 1788 OF 7 CFR CHAPTER XVII, RUS, WAS IN FORCE DURING THE REPORTING PERIOD AND RENEWALS HAVE BEEN OBTAINED FOR ALL POLICIES DURING THE PERIOD COVERED BY THIS REPORT PURSUANT TO PART 1718 OF 7 CFR CHAPTER XVII**

(check one of the following)

All of the obligations under the RUS loan documents have been fulfilled in all material respects.

There has been a default in the fulfillment of the obligations under the RUS loan documents. Said default(s) is/are specifically described in Part D of this report.

Jeffrey Hohn

3/24/2021

DATE

**PART A. STATEMENT OF OPERATIONS**

ITEM	YEAR-TO-DATE			THIS MONTH (d)
	LAST YEAR (a)	THIS YEAR (b)	BUDGET (c)	
1. Operating Revenue and Patronage Capital	393,029,574	357,966,779	395,830,998	32,520,039
2. Power Production Expense				
3. Cost of Purchased Power	352,421,358	316,981,619	353,920,300	28,430,286
4. Transmission Expense				
5. Regional Market Expense				
6. Distribution Expense - Operation	4,213,017	4,514,807	4,622,291	524,916
7. Distribution Expense - Maintenance	8,591,985	9,579,601	9,793,946	1,032,245
8. Customer Accounts Expense	3,392,505	3,278,330	3,394,511	262,961
9. Customer Service and Informational Expense	313,631	216,292	327,292	21,597
10. Sales Expense				
11. Administrative and General Expense	3,959,547	3,931,357	3,983,416	446,108
<b>12. Total Operation &amp; Maintenance Expense (2 thru 11)</b>	<b>372,892,043</b>	<b>338,502,006</b>	<b>376,041,756</b>	<b>30,718,113</b>
13. Depreciation and Amortization Expense	13,441,792	13,751,032	13,783,455	1,160,542
14. Tax Expense - Property & Gross Receipts				
15. Tax Expense - Other	624,155	666,002	657,897	52,473
16. Interest on Long-Term Debt	5,168,629	4,340,462	4,481,287	322,560
17. Interest Charged to Construction - Credit				
18. Interest Expense - Other	133,074	99,843	98,604	7,174
19. Other Deductions	67,669	52,301	80,000	9,107
<b>20. Total Cost of Electric Service (12 thru 19)</b>	<b>392,327,362</b>	<b>357,411,646</b>	<b>395,142,999</b>	<b>32,269,969</b>
<b>21. Patronage Capital &amp; Operating Margins (1 minus 20)</b>	<b>702,212</b>	<b>555,133</b>	<b>687,999</b>	<b>250,070</b>
22. Non Operating Margins - Interest	1,948,916	1,043,746	1,225,572	38,368
23. Allowance for Funds Used During Construction				
24. Income (Loss) from Equity Investments				
25. Non Operating Margins - Other	(50,725)	(27,798)	(34,828)	(13,907)
26. Generation and Transmission Capital Credits				
27. Other Capital Credits and Patronage Dividends	196,308	258,668	251,806	25,766
28. Extraordinary Items				
<b>29. Patronage Capital or Margins (21 thru 28)</b>	<b>2,796,711</b>	<b>1,829,749</b>	<b>2,130,549</b>	<b>300,297</b>



**KENERGY CORP.  
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**Item 13)** Refer to the Thompson Testimony, page 4, lines 20–21, and page 5, lines 1–3.

- a. Provide Kenergy’s loan covenants.
- b. State whether Kenergy has been in default of the mortgage requirements in the last six years.
- c. Provide an update to Exhibit 34 for 2020 and 2021 listed by month.

**Response)**

- a. The following contracts are attached to this response:
  - 1. RUS Loan Contract (Page 2-27); Reference Article V and Article VI (pages 10-19)
  - 2. CoBank Credit Agreement (Page 28-46); Reference Article 5, 6 and 7. (pages 33-38)
  - 3. NRUCFC Loan Agreement (Page 47-74); Reference Article V (pages 59-60)
- b. No, Kenergy has not been in default of the mortgage requirements in the last six years.
- c. See page 75 of this response for an updated Exhibit 34 for 2020 and 2021 listed by month.

**Witness)** Steve Thompson

RUS Project Designation:

KENTUCKY 0065-H8 HENDERSON

RUS LOAN CONTRACT

An Agreement Made By And Between

KENERGY CORP.,

as Borrower

and

UNITED STATES OF AMERICA,

as Lender

Dated as of November 2, 2020

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL UTILITIES SERVICE

Generated: October 25, 2020

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## RUS LOAN CONTRACT

AGREEMENT, dated as November 2, 2020, between KENERGY CORP. ("Borrower"), a corporation organized and existing under the laws of the Commonwealth of Kentucky (the "State"), and the UNITED STATES OF AMERICA, acting by and through the Administrator of the Rural Utilities Service ("RUS").

### RECITALS

The Borrower has applied to RUS for financial assistance for the purpose(s) set forth in Schedule 1 hereto.

RUS is willing to extend financial assistance to the Borrower pursuant to the Rural Electrification Act of 1936, as amended, on the terms and conditions stated herein.

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

### ARTICLE I

#### DEFINITIONS

Capitalized terms that are not defined herein shall have the meanings as set forth in the Mortgage. The terms defined herein include the plural as well as the singular and the singular as well as the plural.

Act shall mean the Rural Electrification Act of 1936, as amended.

Advance or Advances shall mean advances of Loan funds to the Borrower which have been made or approved by RUS pursuant to the terms and conditions of this Agreement.

Agreement shall mean this Loan Contract together with all schedules and exhibits and also any subsequent supplements or amendments.

Business Day shall mean any day that RUS is open for business.

Contemporaneous Loan shall mean any loan which the Borrower has used to satisfy RUS Regulations or loan conditions requiring that supplemental financing be obtained in order to obtain a loan from RUS. Any loan used to refinance or refund a Contemporaneous Loan is also considered to be a Contemporaneous Loan.

Coverage Ratios shall mean, collectively, the following financial ratios: (i) TIER of 1.25; (ii) Operating TIER of 1.1; (iii) DSC of 1.25; and Operating DSC of 1.1.

Debt Service Coverage Ratio ("DSC") shall have the meaning provided in the Mortgage.

Distributions shall mean for the Borrower to, in any calendar year, declare or pay any dividends, or pay or determine to pay any patronage refunds, or retire any patronage capital or make any other Cash Distributions, to its members, stockholders or consumers; provided, however, that for the purposes of this Agreement a "Cash Distribution" shall be deemed to include any general cancellation or abatement of charges for electric energy or services furnished by the Borrower, but not the repayment of a membership fee upon termination of a membership or the rebate of an abatement of wholesale power costs previously incurred pursuant to an order of a state regulatory authority or a wholesale power cost adjustment clause or similar power pricing agreement between the Borrower and a power supplier.

Electric System shall have the meaning as defined in the Mortgage.

Equity shall mean the Borrower's total margins and equities computed pursuant to RUS Accounting Requirements but excluding any Regulatory Created Assets.

Event of Default shall have the meaning as defined in Section 7.1.

Final Maturity Date shall have the meaning as defined in the Note.

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

Interest Expense shall mean the interest expense of the Borrower computed pursuant to RUS Accounting Requirements.

Loan shall mean the loan described in Article III which is being made or guaranteed pursuant to the RUS Commitment in furtherance of the objectives of the Act.

Loan Documents shall mean, collectively, this Agreement, the Mortgage and the Note and shall also include any Reimbursement Note.

Long-Term Debt shall mean the total of all amounts included in the long-term debt of the Borrower pursuant to RUS Accounting Requirements.

Monthly Payment Date shall have the meaning as defined in the Note.

Mortgage shall have the meaning as described in Schedule 1 hereto.

Mortgaged Property shall have the meaning as defined in the Mortgage.

Net Utility Plant shall mean the amount constituting the Total Utility Plant of the Borrower, less depreciation, computed in accordance with RUS Accounting Requirements.

Note shall mean a promissory note or notes executed by the Borrower in the form of Exhibit A hereto, and any note executed and delivered to RUS or to the Federal Financing Bank (FFB) to refund, or in substitution for such a note. If the RUS Commitment includes both a commitment by RUS to make a loan and also a commitment by RUS to guarantee a loan made by FFB, then Exhibit A includes both forms. Note shall also mean any promissory note or notes executed by the Borrower and delivered to a third party in connection with a loan that RUS has guaranteed as to payment pursuant to a master loan guaranty agreement.

Operating DSC or ODSC shall mean Operating Debt Service Coverage calculated as:

$$\text{ODSC} = \frac{\text{A+B+C}}{\text{D}}$$

where:

All amounts are for the same calendar year and are computed pursuant to RUS Accounting Requirements and RUS Form 7;

A = Depreciation and Amortization Expense of the Electric System;

B = Interest Expense on Total Long-Term Debt of the Electric System, except that such Interest Expense shall be increased by 1/3 of the amount, if any, by which the Restricted Rentals of the Electric System exceed 2 percent of the Borrower's Equity;

C = Patronage capital & operating margins of the Electric System, (which equals operating revenue and patronage capital of Electric System operations, less total cost of electric service, including Interest Expense on Total Long-Term Debt of the Electric System) plus cash received from the retirement of patronage capital by suppliers of electric power and by lenders for credit extended for the Electric System; and

D = Debt service billed which equals the sum of all payments of principal and interest required to be made on account of Total Long-Term Debt of the Electric System during the calendar year, plus 1/3 of the amount, if any, by which Restricted Rentals of the Electric System exceed 2 percent of the Mortgagor's Equity.

Operating TIER or OTIER shall mean Operating Times Interest Earned Ratio calculated as:

$$\text{OTIER} = \frac{A+B}{A}$$

where:

All amounts are for the same calendar year and are computed pursuant to RUS Accounting Requirements and RUS Form 7;

A = Interest Expense on Total Long-Term Debt of the Electric System, except that such Interest Expense shall be increased by 1/3 of the amount, if any, by which Restricted Rentals of the Electric System exceed 2 percent of the Mortgagor's Equity; and

B = Patronage capital & operating margins of the Electric System, (which equals operating revenue and patronage capital of Electric System operations, less total cost of electric service, including Interest Expense on Total Long-Term Debt of the Electric System) plus cash received from the retirement of patronage capital by suppliers of electric power and by lenders for credit extended for the Electric System.

Permitted Debt shall have the meaning as defined in Section 6.13.

Prior Loan Contracts shall mean all loan and loan guarantee agreements, if any, previously entered into by and between RUS and the Borrower.

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

Reimbursement Note shall mean any demand note of the Borrower which evidences the Borrower's obligation to immediately repay RUS any payments which RUS makes on behalf of the Borrower on the Note pursuant to a RUS guaranty if one has been provided under the terms of the RUS Commitment.

RUS Accounting Requirements shall mean any system of accounts prescribed by RUS Regulations as such RUS Accounting Requirements exist at the date of applicability thereof.

RUS Commitment shall have the meaning as defined in Schedule 1 hereto.

RUS Regulations shall mean regulations of general applicability published by RUS from time to time as they exist at the date of applicability thereof, and shall also include any regulations of other federal entities which RUS is required by law to implement.

Special Construction Account shall have the meaning as defined in Section 5.21.

Subsidiary shall mean a corporation that is a subsidiary of the Borrower and subject to the Borrower's control, as defined by RUS Accounting Requirements.

Termination Date shall mean the date specified in the Note after which no further Advances shall be made under the terms of the RUS Commitment.

Times Interest Earned Ratio ("TIER") shall have the meaning provided in the Mortgage.

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

Total Utility Plant shall mean the amount constituting the total utility plant of the Borrower computed in accordance with RUS Accounting Requirements.

Utility System shall have the meaning as defined in the Mortgage.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

#### Section 2.1. Representations and Warranties.

To induce RUS to make the Loan, and recognizing that RUS is relying hereon, the Borrower represents and warrants as follows:

(a) Organization; Power, Etc. The Borrower: (i) is an organization of the type and organized in the jurisdiction set forth on the first page hereof, and is duly organized, validly existing, and in good standing under the laws of its state of incorporation; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary; (iii) has all requisite corporate and legal power to own and operate its assets and to carry on its business and to enter into and perform the Loan Documents; (iv) has duly and lawfully obtained and maintained all licenses, certificates, permits, authorizations, approvals, and the like which are material to the conduct of its business or which may be otherwise required by law; and (v) is eligible to obtain the financial assistance from RUS contemplated by this Agreement.

(b) Authority. The execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate action and shall not violate any provision of law or of the Articles of Incorporation or By-Laws of the Borrower or result in a breach of, or constitute a default under, any agreement, indenture or other instrument to which the Borrower is a party or by which it may be bound.

(c) Consents. No consent, permission, authorization, order, or license of any governmental authority is necessary in connection with the execution, delivery, performance, or enforcement of the Loan Documents, except (i) such as have been obtained and are in full force and effect and (ii) such as have been disclosed on Schedule I hereto.

(d) Binding Agreement. Each of the Loan Documents is, or when executed and delivered shall be, the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its terms, subject only to limitations on enforceability imposed by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally.

(e) Compliance with Laws. The Borrower is in compliance in all material respects with all federal, state, and local laws, rules, regulations, ordinances, codes, and orders (collectively, "Laws"), the failure to comply with which could have a material adverse effect on the condition, financial or otherwise, operations, properties, or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents, except as the Borrower has disclosed to RUS in writing.

(f) Litigation. There are no pending legal, arbitration, or governmental actions or proceedings to which the Borrower is a party or to which any of its property is subject which, if adversely determined, could have a material adverse effect on the condition, financial or otherwise, operations, properties, profits or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents, and to the best of the Borrower's knowledge, no such actions or proceedings are threatened or contemplated, except as the Borrower has disclosed to RUS in writing.

(g) Title to Property. As to property which is presently included in the description of Mortgaged Property, the Borrower holds good and marketable title to all of its real property and owns all of its personal property free and clear of any Lien except Permitted Encumbrances or Liens permitted under the Mortgage.

(h) Financial Statements; No Material Adverse Change; Etc. All financial statements submitted to RUS in connection with the application for the Loan or in connection with this Agreement fairly and fully present the financial condition of the Borrower and the results of the Borrower's operations for the periods covered thereby and are prepared in accordance with RUS Accounting Requirements consistently applied. Since the dates thereof, there has been no material adverse change in the financial condition or operations of the Borrower. All budgets, projections, feasibility studies, and other documentation submitted by the Borrower to RUS are based upon assumptions that are reasonable and realistic, and as of the date hereof, no fact has come to light, and no event or transaction has occurred, which would cause any assumption made therein not to be reasonable or realistic.

(i) Principal Place of Business; Records. The principal place of business and chief executive office of the Borrower is at the address of the Borrower shown on Schedule 1 attached hereto.

(j) Location of Properties. All property owned by the Borrower is located in the counties identified in Schedule 1 hereto.

(k) Subsidiaries. The Borrower has no subsidiary, except as the Borrower has disclosed to RUS in writing.

(l) Legal Name. The Borrower's exact legal name is that indicated on the signature page.

(m) Organizational Number. Schedule 1 hereto accurately sets forth the Borrower's organizational identification number or accurately states that the Borrower has none.

(n) Defaults Under Other Agreements. The Borrower is not in default under any agreement or instrument to which it is a party or under which any of its properties are subject that is material to its financial condition, operations, properties, profits, or business.

(o) Survival. All representations and warranties made by the Borrower herein or made in any certificate delivered pursuant hereto shall survive the making of the Advances and the execution and delivery to RUS of the Note.

### ARTICLE III

#### LOAN

**Section 3.1. Advances.**

RUS agrees to make, or in the case of any loan guaranteed by RUS, approve, and the Borrower agrees to request, on the terms and conditions of this Agreement, Advances from time to time in an aggregate principal amount not to exceed the RUS Commitment. On the Termination Date, RUS may stop advancing funds and limit the RUS Commitment to the amount advanced prior to such date. The obligation of the Borrower to repay the Advances shall be evidenced by the Note in the principal amount of the unpaid principal amount of the Advances from time to time outstanding. The Borrower shall give RUS written notice of the date on which each Advance is to be made.

**Section 3.2. Last Date for an Advance.**

Funds will only be advanced pursuant to this Agreement and the Note on or before the Last Date for an Advance, as specified in the Note. No funds will be advanced subsequent to the Last Date for an Advance unless prior to such date the Administrator has extended this date by written agreement. However, under no circumstances shall RUS ever make or approve an Advance, regardless of the Last Date for an Advance or any extension by the Administrator, later than September 30 of the fifth year after the Fiscal Year of Obligation as identified in Schedule I if such date would result in RUS obligating or permitting advances of funds contrary to the Antideficiency Act 31 U.S.C. §1341.

**Section 3.3. Interest Rate and Payment.**

Each Note shall be payable and bear interest as follows:

- (a) Payments and Amortization. Principal shall be amortized in accordance with one or more methods stated in Schedule I hereto and more fully described in the form of each Note attached hereto as Exhibit A.
- (b) Application of Payments. All payments which the Borrower sends to RUS on any outstanding obligation owed to or guaranteed by RUS shall be applied in the manner provided in the Borrower's Loan Documents to which such payments relate and in a manner consistent with RUS policies, practices, and procedures for obligations that have been similarly classified by RUS.
- (c) Electronic Funds Transfer. Except as otherwise prescribed by RUS, the Borrower shall make all payments on each Note utilizing electronic funds transfer procedures as specified by RUS.
- (d) Fixed or Variable Rate. Each Note shall bear interest at either a fixed or variable rate in accordance with one or more methods stated in Schedule I hereto and as more particularly described in the form of each Note attached hereto as Exhibit A.

**Section 3.4. Prepayment.**

The Borrower has no right to prepay a Note in whole or in part except such rights, if any, as are expressly provided for in a Note or applicable federal statutes. However, prepayment of a Note (and any penalties) shall be mandatory under Section 5.3 hereof if the Borrower has used a Contemporaneous Loan in order to qualify for the RUS Commitment, and later repays the Contemporaneous Loan.

**ARTICLE IV**

**CONDITIONS OF LENDING**

**Section 4.1. General Conditions.**



The obligation of RUS to make or, in the case of any Loan guaranteed by RUS, approve to be made any Advance hereunder is subject to satisfaction of each of the following conditions precedent on or before the date of such Advance:

(a) Legal Matters. All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS.

(b) Loan Documents. That RUS receive duly executed originals of this Agreement and the other Loan Documents.

(c) Authorization. That RUS receive evidence satisfactory to it that all corporate documents and proceedings of the Borrower necessary for duly authorizing the execution, delivery and performance of the Loan Documents have been obtained and are in full force and effect.

(d) Approvals. That RUS receive evidence satisfactory to it that all consents and approvals (including without limitation the consents referred to in Section 2.1(c) of this Agreement) which are necessary for, or required as a condition of, the validity and enforceability of each of the Loan Documents have been obtained and are in full force and effect.

(e) Event of Default. That no Event of Default specified in Article VII and no event which, with the lapse of time or the notice and lapse of time specified in Article VII would become such an Event of Default, shall have occurred and be continuing, or shall have occurred after giving effect to the Advance on the books of the Borrower.

(f) Continuing Representations and Warranties. That the representations and warranties of the Borrower contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date.

(g) Opinion of Counsel. That RUS receive an opinion of counsel for the Borrower (who shall be acceptable to RUS) in form and content acceptable to RUS.

(h) Mortgage Filing. The Mortgage shall have been duly recorded as a mortgage on real property, including after-acquired real property, and a financing statement shall have been duly filed, recorded and indexed as a security interest in personal property, including after acquired personal property, wherever RUS shall have requested, all in accordance with applicable law, and the Borrower shall have caused satisfactory evidence thereof to be furnished to RUS.

(i) Wholesale Power Contract. That the Borrower shall not be in default under the terms of, or contesting the validity of, any contract for sales for resale that has been pledged by any entity to RUS as security for the repayment of any loan made or guaranteed by RUS under the Act.

(j) Material Adverse Change. That there has occurred no material adverse change in the business or condition, financial or otherwise, of the Borrower and nothing has occurred which in the opinion of RUS materially and adversely affects the Borrower's ability to meet its obligations hereunder.

(k) Requisitions. That the Borrower shall requisition all Advances by submitting its requisition to RUS in form and substance satisfactory to RUS. Requisitions shall be made only for the purpose(s) set forth herein. The Borrower agrees to apply the proceeds of the Advances in accordance with its loan application with such modifications as may be mutually agreed.

(l) Flood Insurance. That for any Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the

Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act ("Rules") as any area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by the Borrower and located in such a flood hazard area, the Borrower has submitted evidence, in form and substance satisfactory to RUS, or RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any Rules, and (ii) the Borrower has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any Rules.

(m) Compliance with Loan Contract and Mortgage. That the Borrower is in material compliance with all provisions of this Agreement and the Mortgage.

**Section 4.2. Special Conditions.**

The obligation of RUS to make or, in the case of any Loan guaranteed by RUS, approve to be made any Advance hereunder is also subject to satisfaction, on or before the date of such Advance, of each of the special conditions, if any, listed in Schedule 1 hereto.

**ARTICLE V**

**AFFIRMATIVE COVENANTS**

**Section 5.1. Generally.**

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, whether or not any Advance is outstanding, the Borrower agrees to duly observe each of the affirmative covenants contained in this Article.

**Section 5.2. Annual Certificates.**

(a) Performance under Loan Documents. The Borrower shall duly observe and perform all of its obligations under each of the Loan Documents.

(b) Annual Certification. Within ninety (90) days after the close of each calendar year, commencing with the year following the year in which the initial Advance hereunder shall have been made, the Borrower shall deliver to RUS a written statement signed by its General Manager, stating that during such year the Borrower has fulfilled all of its obligations under the Loan Documents throughout such year in all material respects or, if there has been a default in the fulfillment of any such obligations, specifying each such default known to said person and the nature and status thereof.

**Section 5.3. Simultaneous Prepayment of Contemporaneous Loans.**

If the Borrower shall at any time prepay in whole or in part the Contemporaneous Loan described on Schedule I, the Borrower shall prepay the RUS Note correspondingly in order to maintain the ratio that the Contemporaneous Loan bears to the RUS Commitment. If the RUS Note calls for a prepayment penalty or premium, such amount shall be paid but shall not be used in computing the amount needed to be paid to RUS under this section to maintain such ratio. In the case of Contemporaneous Loans and RUS Notes existing prior to the date of this Agreement under previous agreements, prepayments shall be treated as if governed by this section. Provided, however, in all cases prepayments associated with refinancing or refunding a Contemporaneous Loan pursuant to Article II of the Mortgage are not considered to be prepayments for purposes of this Agreement if they satisfy each of the following requirements:

(a) Principal. The principal amount of such refinancing or refunding loan is not less than the amount of loan principal being refinanced; and

(b) Weighted Average Life. The weighted average life of the refinancing or refunding loan is not less than the weighted average remaining life of the loan being refinanced.

**Section 5.4. Rates to Provide Revenue Sufficient to Meet Coverage Ratios Requirements.**

(a) Prospective Requirement. The Borrower shall design and implement rates for utility service furnished by it to provide sufficient revenue (along with other revenue available to the Borrower in the case of TIER and DSC) (i) to pay all fixed and variable expenses when and as due, (ii) to provide and maintain reasonable working capital, and (iii) to maintain, on an annual basis, the Coverage Ratios. In designing and implementing rates under this paragraph, such rates should be capable of producing at least enough revenue to meet the requirements of this paragraph under the assumption that average weather conditions in the Borrower's service territory shall prevail in the future, including average Utility System damage and outages due to weather and the related costs.

(b) Retrospective Requirement. The average Coverage Ratios achieved by the Borrower in the 2 best years out of the 3 most recent calendar years must be not less than any of the following:

TIER	=	1.25
DSC	=	1.25
OTIER	=	1.1
ODSC	=	1.1

(c) Prospective Notice of Change in Rates. The Borrower shall give thirty (30) days prior written notice of any proposed change in its general rate structure to RUS if RUS has requested in writing that it be notified in advance of such changes.

(d) Routine Reporting of Coverage Ratios. Promptly following the end of each calendar year, the Borrower shall report, in writing, to RUS the TIER, Operating TIER, DSC and Operating DSC levels which were achieved during that calendar year.

(e) Reporting Non-achievement of Retrospective Requirement. If the Borrower fails to achieve the average levels required by paragraph (b) of this section, it must promptly notify RUS in writing to that effect.

(f) Corrective Plans. Within 30 days of sending a notice to RUS under paragraph (e) of this section, or of being notified by RUS, whichever is earlier, the Borrower in consultation with RUS, shall provide a written plan satisfactory to RUS setting forth the actions that shall be taken to achieve the required Coverage Ratios on a timely basis.

(g) Noncompliance. Failure to design and implement rates pursuant to paragraph (a) of this section and failure to develop and implement the plan called for in paragraph (f) of this section shall constitute an Event of Default under this Agreement in the event that RUS so notifies the Borrower to that effect under section 7.1(d) of this Agreement.

**Section 5.5. Depreciation Rates.**

The Borrower shall adopt as its depreciation rates only those which have been previously approved for the Borrower by RUS.

**Section 5.6. Property Maintenance.**

The Borrower shall maintain and preserve its Utility System in compliance in all material respects with the provisions of the Mortgage, RUS Regulations and all applicable laws.

**Section 5.7. Financial Books.**

The Borrower shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all of the dealings, business and affairs of the Borrower and its Subsidiaries, in accordance with any applicable RUS Accounting Requirements.

**Section 5.8. Rights of Inspection.**

The Borrower shall afford RUS, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect the Utility System, any other property encumbered by the Mortgage, and any or all books, records, accounts, invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Borrower or in any way pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

**Section 5.9. Area Coverage.**

(a) The Borrower shall make diligent effort to extend electric service to all unserved persons within the service area of the Borrower who (i) desire such service and (ii) meet all reasonable requirements established by the Borrower as a condition of such service.

(b) If economically feasible and reasonable considering the cost of providing such service and/or the effects on consumers' rates, such service shall be provided, to the maximum extent practicable, at the rates and minimum charges established in the Borrower's rate schedules, without the payment of such persons, other than seasonal or temporary consumers, of a contribution in aid of construction. A seasonal consumer is one that demands electric service only during certain seasons of the year. A temporary consumer is a seasonal or year-round consumer that demands electric service over a period of less than five years.

(c) The Borrower may assess contributions in aid of construction provided such assessments are consistent with this section.

**Section 5.10. Real Property Acquisition.**

In acquiring real property, the Borrower shall comply in all material respects with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "Uniform Act"), as amended by the Uniform Relocation Act Amendments of 1987, and 49 CFR part 24, referenced by 7 CFR part 21, to the extent the Uniform Act is applicable to such acquisition.

**Section 5.11. "Buy American" Requirements.**

The Borrower shall use or cause to be used in connection with the expenditures of funds advanced on account of the Loan only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or any eligible country substantially all from articles, materials, and

supplies mined, produced or manufactured, as the case may be, in the United States or any eligible country, except to the extent RUS shall determine that such use shall be impracticable or that the cost thereof shall be unreasonable. For purposes of this section, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative.

**Section 5.12. Power Requirements Studies.**

The Borrower shall prepare and use power requirements studies of its electric loads and future energy and capacity requirements in conformance with RUS Regulations.

**Section 5.13. Long Range Engineering Plans and Construction Work Plans.**

The Borrower shall develop, maintain and use up-to-date long-range engineering plans and construction work plans in conformance with RUS Regulations.

**Section 5.14. Design Standards, Construction Standards, and List of Materials.**

The Borrower shall use design standards, construction standards, and lists of acceptable materials in conformance with RUS Regulations.

**Section 5.15. Plans and Specifications.**

The Borrower shall submit plans and specifications for construction to RUS for review and approval, in conformance with RUS Regulations, if the construction will be financed in whole or in part by a loan made or guaranteed by RUS.

**Section 5.16. Standard Forms of Construction Contracts, and Engineering and Architectural Services Contracts.**

The Borrower shall use the standard forms of contracts promulgated by RUS for construction, procurement, engineering services and architectural services in conformance with RUS Regulations, if the construction, procurement, or services are being financed in whole or in part by a loan being made or guaranteed by RUS.

**Section 5.17. Contract Bidding Requirements.**

The Borrower shall follow RUS contract bidding procedures in conformance with RUS Regulations when contracting for construction or procurement financed in whole or in part by a loan made or guaranteed by RUS.

**Section 5.18. Nondiscrimination.**

(a) Equal Opportunity Provisions in Construction Contracts. The Borrower shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Exhibit B hereto entitled Equal Opportunity Contract Provisions.

(b) Equal Opportunity Contract Provisions Also Bind the Borrower. The Borrower further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.

(c) Sanctions and Penalties. The Borrower agrees that it shall cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of RUS's primary responsibility for securing compliance. The Borrower further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Borrower agrees that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this contract, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from such Borrower, or may refer the case to the Department of Justice for appropriate legal proceedings.

**Section 5.19. Financial Reports.**

The Borrower shall cause to be prepared and furnished to RUS a full and complete annual report of its financial condition and of its operations in form and substance satisfactory to RUS, audited and certified by Independent certified public accountants satisfactory to RUS and accompanied by a report of such audit in form and substance satisfactory to RUS. The Borrower shall also furnish to RUS from time to time such other reports concerning the financial condition or operations of the Borrower, including its Subsidiaries, as RUS may reasonably request or RUS Regulations require.

**Section 5.20. Miscellaneous Reports and Notices.**

The Borrower shall furnish to RUS:

(a) Notice of Default. Promptly after becoming aware thereof, notice of: (i) the occurrence of any default; and (ii) the receipt of any notice given pursuant to the Mortgage with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an "Event of Default" under the Mortgage.

(b) Notice of Non-Environmental Litigation. Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Borrower which, if adversely determined, could have a material adverse effect on the condition, financial or otherwise, operations, properties or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents.

(c) Notice of Environmental Litigation. Without limiting the provisions of Section 5.20(b) above, promptly after receipt thereof, notice of the receipt of all pleadings, orders, complaints, indictments, or other communications alleging a condition that may require the Borrower to undertake or to contribute to a cleanup or other response under laws relating to environmental protection, or which seek penalties, damages, injunctive relief, or criminal sanctions related to alleged violations of such laws, or which claim personal injury or property damage to any person as a result of environmental factors or conditions for which the Borrower is not fully covered by insurance, or which, if adversely determined, could have a material adverse effect on the condition, financial or otherwise, operations, properties or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents.

(d) Notice of Change of Place of Business. Promptly in writing, notice of any change in location of its principal place of business or the office where its records concerning accounts and contract rights are kept.

(e) Regulatory and Other Notices. Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could have a material adverse effect on the condition, financial or otherwise, operations, properties, or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents.

(f) Material Adverse Change. Promptly, notice of any matter which has resulted or may result in a material adverse change in the condition, financial or otherwise, operations, properties, or business of the Borrower, or the ability of the Borrower to perform its obligations under the Loan Documents.

(g) Assignment of Organizational Number. If the Borrower does not have an organizational identification number and later has one assigned to it, the Borrower will promptly notify RUS of such assigned organizational identification number.

(h) Other Information. Such other information regarding the condition, financial or otherwise, or operations of the Borrower as RUS may, from time to time, reasonably request.

**Section 5.21. Special Construction Account.**

The Borrower shall hold all moneys advanced to it by RUS hereunder in trust for RUS and shall deposit such moneys promptly after the receipt thereof in a bank or banks which meet the requirements of Section 6.7 of this Agreement. Any account (hereinafter called "Special Construction Account") in which any such moneys shall be deposited shall be insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be designated by the corporate name of the Borrower followed by the words "Trustee, Special Construction Account." Moneys in any Special Construction Account shall be used solely for the construction and operation of the Utility System and may be withdrawn only upon checks, drafts, or orders signed on behalf of the Borrower and countersigned by an executive officer thereof.

**Section 5.22. Additional Affirmative Covenants.**

The Borrower also agrees to comply with any additional affirmative covenant(s) identified in Schedule I hereto.

**ARTICLE VI**

**NEGATIVE COVENANTS**

**Section 6.1. General.**

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, whether or not any Advance is outstanding hereunder, the Borrower shall duly observe each of the negative covenants set forth in this Article.

**Section 6.2. Limitations on System Extensions and Additions.**

(a) The Borrower shall not extend or add to its Electric System either by construction or acquisition without the prior written approval of RUS if the construction or acquisition is financed or will be financed, in whole or in part, by a RUS loan or loan guarantee.

(b) The Borrower shall not extend or add to its Electric System with funds from other sources without prior written approval of RUS in the case of:

(1) Generating facilities if the combined capacity of the facilities to be built, procured, or leased, including any future facilities included in the planned project, will exceed the lesser of 5 Megawatts or 30 percent of the Borrower's Equity;

(2) Existing electric facilities or systems in service whose purchase price, or capitalized value in the case of a lease, exceeds ten percent of the Borrower's Net Utility Plant; and

(3) Any project to serve a customer whose annual kWh purchases or maximum annual kW demand is projected to exceed 25 percent of the Borrower's total kWh sales or maximum kW demand in the year immediately preceding the acquisition or start of construction of facilities.

**Section 6.3. Limitations on Changing Principal Place of Business.**

The Borrower shall not change its principal place of business or keep property in a county not shown on a schedule to the Mortgage if the change would cause the lien in favor of RUS to become unperfected or fail to become perfected, as the case may be, unless, prior thereto, the Borrower shall have taken all steps required by law in order to assure that the lien in favor of RUS remains or becomes perfected, as the case may be, and, in either event, such lien has the priority accorded by the Mortgage.

**Section 6.4. Limitations on Employment and Retention of Manager.**

At any time any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing the Borrower shall not employ any general manager of the Utility System or the Electric System or any person exercising comparable authority to such a manager unless such employment shall first have been approved by RUS. If any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing and RUS requests the Borrower to terminate the employment of any such manager or person exercising comparable authority, or RUS requests the Borrower to terminate any contract for operating the Utility System or the Electric System, the Borrower shall do so within thirty (30) days after the date of such notice. All contracts in respect of the employment of any such manager or person exercising comparable authority, or for the operation of the Utility System or the Electric System, shall contain provisions to permit compliance with the foregoing covenants.

**Section 6.5. Limitations on Certain Types of Contracts.**

Without the prior approval of RUS in writing, the Borrower shall not enter into any of the following contracts:

(a) Construction contracts. Any contract for construction or procurement or for architectural and engineering services in connection with its Electric System if the project is financed or will be financed, in whole or in part, by a RUS loan or loan guarantee;

(b) Large retail power contracts. Any contract to sell electric power and energy for periods exceeding two (2) years if the kWh sales or kW demand for any year covered by such contract shall exceed 25 percent of the Borrower's total kWh sales or maximum kW demand for the year immediately preceding the execution of such contract;

(c) Wholesale power contracts. Any contract to sell electric power or energy for resale and any contract to purchase electric power or energy that, in either case, has a term exceeding two (2) years;

(d) Power supply arrangements. Any interconnection agreement, interchange agreement, wheeling agreement, pooling agreement or similar power supply arrangement that has a term exceeding two (2) years;



(e) System management and maintenance contracts. Any contract for the management and operation of all or substantially all of its Electric System; or

(f) Other contracts. Any contracts of the type described on Schedule 1.

**Section 6.6. Limitations on Mergers and Sale, Lease or Transfer of Capital Assets.**

(a) The Borrower shall not consolidate with, or merge, or sell all or substantially all of its business or assets, to another entity or person except to the extent it is permitted to do so under the Mortgage. The exception contained in this paragraph (a) is subject to the additional limitation set forth in paragraph (b) of this section.

(b) The Borrower shall not, without the written approval of RUS, voluntarily or involuntarily sell, convey or dispose of any portion of its business or assets (including, without limitation, any portion of its franchise or service territory) to another entity or person if such sale, conveyance or disposition could reasonably be expected to reduce the Borrower's existing or future requirements for energy or capacity being furnished to the Borrower under any wholesale power contract which has been pledged as security to RUS.

**Section 6.7. Limitations on Using non-FDIC Insured Depositories.**

Without the prior written approval of RUS, the Borrower shall not place the proceeds of the Loan or any loan which has been made or guaranteed by RUS in the custody of any bank or other depository that is not insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS.

**Section 6.8. Limitation on Distributions.**

Without the prior written approval of RUS, the Borrower shall not in any calendar year make any Distributions (exclusive of any Distributions to the estates of deceased natural patrons) to its members, stockholders or consumers except as follows:

(a) Equity above 30%. If, after giving effect to any such Distribution, the Equity of the Borrower shall be greater than or equal to 30% of its Total Assets; or

(b) Equity above 20%. If, after giving effect to any such Distribution, the Equity of the Borrower shall be greater than or equal to 20% of its Total Assets and the aggregate of all Distributions made during the calendar year when added to such Distribution shall be less than or equal to 25% of the prior year's margins.

Provided however, that in no event shall the Borrower make any Distributions if there is unpaid when due any installment of principal of (premium, if any) or interest on any of its payment obligations secured by the Mortgage, if the Borrower is otherwise in default hereunder or if, after giving effect to any such Distribution, the Borrower's current and accrued assets would be less than its current and accrued liabilities.

**Section 6.9. Limitations on Loans, Investments and Other Obligations.**

The Borrower shall not make any loan or advance to, or make any investment in, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assume or otherwise become obligated or liable with respect to the obligations of, any other person, firm or corporation, except as permitted by the Act and RUS Regulations.

**Section 6.10. Depreciation Rates.**

The Borrower shall not file with or submit for approval of regulatory bodies any proposed depreciation rates which are inconsistent with RUS Regulations.

**Section 6.11. Historic Preservation.**

The Borrower shall not, without approval in writing by RUS, use any Advance to construct any facilities which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

**Section 6.12. Rate Reductions.**

Without the prior written approval of RUS, the Borrower shall not decrease its rates if it has failed to achieve all of the Coverage Ratios for the calendar year prior to such reduction.

**Section 6.13. Limitations on Additional Indebtedness.**

Except as expressly permitted by Article II of the Mortgage and subject to the further limitations expressed in the next section, the Borrower shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Indebtedness) other than the following: ("Permitted Debt")

- (a) Additional Notes issued in compliance with Article II of the Mortgage;
- (b) Purchase money indebtedness in non-Utility System property, in an amount not exceeding 10% of Net Utility Plant;
- (c) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;
- (d) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;
- (e) Unsecured indebtedness for borrowed money, except when the aggregate amount of such indebtedness exceeds 15% of Net Utility Plant and after giving effect to such unsecured indebtedness the Borrower's Equity is less than 30% of its Total Assets;
- (f) Debt represented by dividends declared but not paid; and
- (g) Subordinated Indebtedness approved by RUS.

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

PROVIDED, FURTHER, by executing this Agreement any consent of RUS that the Borrower would otherwise be required to obtain under this section is hereby deemed to be given or waived by RUS by operation of law to the extent, but only to the extent, that to impose such a requirement of RUS consent would clearly violate federal laws or RUS Regulations.

**Section 6.14. Limitations on Issuing Additional Indebtedness Secured Under the Mortgage.**

- (a) The Borrower shall not issue any Additional Notes under the Mortgage to finance Eligible Property Additions without the prior written consent of RUS unless the following additional requirements are met in addition to the requirements set forth in the Mortgage for issuing Additional Notes:

(1) The weighted average life of the loan evidenced by such Notes does not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(2) The principal of the loan evidenced by such Notes is amortized at a rate that shall yield a weighted average life that is not greater than the weighted average life that would result from level payments of principal and interest; and

(3) The principal of the loan being evidenced by such Notes has a maturity of not less than 5 years.

(b) The Borrower shall not issue any Additional Notes under the Mortgage to refund or refinance Notes without the prior written consent of RUS unless, in addition to the requirements set forth in the Mortgage for issuing Refunding or Refinancing Notes, the weighted average life of any such Refunding or Refinancing Notes is not greater than the weighted average remaining life of the Notes being refinanced.

(c) Any request for consent from RUS under this section, shall be accompanied by a certificate of the Borrower's manager substantially in the form attached to this Agreement as Exhibit C-1 in the case of Notes being issued under Section 2.01 of the Mortgage and C-2 in the case of Notes being issued under Section 2.02 of the Mortgage.

**Section 6.15. Impairment of Contracts Pledged to RUS.**

The Borrower shall not materially breach any obligation to be paid or performed by the Borrower on any contract, or take any action which is likely to materially impair the value of any contract, which has been pledged as security to RUS by the Borrower or any other entity.

**Section 6.16. Notice of Organizational Changes.**

The Borrower covenants and agrees with RUS that the Borrower will not, directly or indirectly, without giving written notice to RUS thirty (30) days prior to the effective date:

- (a) Change the name of the Borrower
- (b) Change the mailing address of the Borrower, and
- (c) Change its organizational identification number if it has one.

**Section 6.17. Consent for Organizational Changes.**

The Borrower covenants and agrees with RUS that the Borrower will not, directly or indirectly, without the prior written consent of RUS change its type of organization, jurisdiction of organization or other legal structure.

**Section 6.18. Additional Negative Covenants.**

The Borrower also agrees to comply with any additional negative covenant(s) identified in Schedule I hereto.

**ARTICLE VII**

**EVENTS OF DEFAULT**

**Section 7.1. Events of Default.**

The following shall be Events of Default under this Agreement:

- (a) Representations and Warranties. Any representation or warranty made by the Borrower in Article II hereof or any certificate furnished to RUS hereunder or under the Mortgage shall prove to have been incorrect in any material respect at the time made and shall at the time in question be untrue or incorrect in any material respect and remain uncured;
- (b) Payment. Default shall be made in the payment of or on account of interest on or principal of the Note or any other Government Note when and as the same shall be due and payable, whether by acceleration or otherwise, which shall remain unsatisfied for five (5) Business Days;
- (c) Borrowing Under the Mortgage in Violation of the Loan Contract. Default by the Borrower in the observance or performance of any covenant or agreement contained in Section 6.14 of this Agreement;
- (d) Other Covenants. Default by the Borrower in the observance or performance of any other covenant or agreement contained in any of the Loan Documents, which shall remain unremedied for 30 calendar days after written notice thereof shall have been given to the Borrower by RUS;
- (e) Corporate Existence. The Borrower shall forfeit or otherwise be deprived of its corporate charter, franchises, permits, easements, consents or licenses required to carry on any material portion of its business;
- (f) Other Obligations. Default by the Borrower in the payment of any obligation, whether direct or contingent, for borrowed money or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation;
- (g) Bankruptcy. A court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days or the Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; and
- (h) Dissolution or Liquidation. Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Borrower, or failure by the Borrower promptly to forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within 30 days. The term "dissolution or liquidation of the Borrower", as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another corporation following a transfer of all or substantially all its assets as an entirety, under the conditions permitting such actions.

**ARTICLE VIII**

**REMEDIES**

**Section 8.1. Generally.**

Upon the occurrence of an Event of Default, then RUS may pursue all rights and remedies available to RUS that are contemplated by this Agreement or the Mortgage in the manner, upon the conditions, and with the effect provided in this Agreement or the Mortgage, including, but not limited to, a suit for specific performance, injunctive relief or damages. Nothing herein shall limit the right of RUS to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default listed in Article VII hereof. Each right, power and remedy of RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

**Section 8.2. Suspension of Advances.**

In addition to the rights, powers and remedies referred to in the immediately preceding section, RUS may, in its absolute discretion, suspend making or, in the case of any Loan guaranteed by RUS, approving Advances hereunder if (i) any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing; (ii) there has occurred a change in the business or condition, financial or otherwise, of the Borrower which in the opinion of RUS materially and adversely affects the Borrower's ability to meet its obligations under the Loan Documents, or (iii) RUS is authorized to do so under RUS Regulations.

**ARTICLE IX**

**MISCELLANEOUS**

**Section 9.1. Notices.**

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Address for Notices of the respective parties are set forth in Schedule I hereto.

**Section 9.2. Expenses.**

To the extent allowed by law, the Borrower shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Loan Documents or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

**Section 9.3. Late Payments.**

If payment of any amount due hereunder is not received at the United States Treasury in Washington, DC, or such other location as RUS may designate to the Borrower within five (5) Business Days after the due date thereof or such other time period as RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the "delinquent amount", and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period"), the Borrower shall pay to RUS, in addition to all other amounts due under the terms of the Note, the Mortgage and this Agreement, any late-payment charge as may be fixed by RUS Regulations from time to time on the delinquent amount for the late-payment period.

**Section 9.4. Filing Fees.**

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

**Section 9.5. No Waiver.**

No failure on the part of RUS to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

**Section 9.6. Governing Law.**

EXCEPT TO THE EXTENT GOVERNED BY APPLICABLE FEDERAL LAW, THE LOAN DOCUMENTS SHALL BE DEEMED TO BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE BORROWER IS INCORPORATED.

**Section 9.7. Holiday Payments.**

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

**Section 9.8. Rescission.**

The Borrower may elect not to borrow the RUS Commitment in which event RUS shall release the Borrower from its obligations hereunder, provided the Borrower complies with such terms and conditions as RUS may impose for such release and provided also that if the Borrower has any remaining obligations to RUS for loans made or guaranteed by RUS under any Prior Loan Contracts, RUS may, under Section 9.15 of this Loan Contract, withhold such release until all such obligations have been satisfied and discharged.

**Section 9.9. Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the Borrower and RUS and their respective successors and assigns, except that the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.

**Section 9.10. Complete Agreement; Waivers and Amendments.**

Subject to RUS Regulations, this Agreement and the other Loan Documents are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement and the other Loan Documents. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Borrower there from or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**Section 9.11. Headings.**

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

**Section 9.12. Severability.**

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

**Section 9.13. Right of Setoff.**

Upon the occurrence and during the continuance of any Event of Default, RUS is hereby authorized at any time and from time to time, without prior notice to the Borrower, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Borrower or for the credit or account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing hereunder or under the Note. RUS agrees to notify the Borrower promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. The rights of RUS under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which RUS may have. Borrower waives all rights of setoff, deduction, recoupment or counterclaim.

**Section 9.14. Schedules and Exhibits.**

Each Schedule and Exhibit attached hereto and referred to herein is each an integral part of this Agreement.

**Section 9.15. Prior Loan Contracts.**

With respect to all Prior Loan Contracts, the Borrower shall, commencing on the delivery date hereof, prospectively meet the affirmative and negative covenants as set forth in this Agreement rather than those set forth in the Prior Loan Contracts. In addition, any remaining obligation of RUS to make or approve additional Advances on promissory notes of the Borrower that have been previously delivered to RUS under Prior Loan Contracts shall, after the date hereof, be subject to the conditions set forth in this Agreement. In the event of any conflict between any provision set forth in a Prior Loan Contract and any provision in this Agreement, the requirements as set forth in this Agreement shall apply. Nothing in this section shall, however, eliminate or modify (i) any special condition, special affirmative covenant or special negative covenant, if any, set forth in any Prior Loan Contract or (ii) alter the repayment terms of any promissory notes which the Borrower has delivered under any Prior Loan Contract, except, in either case, as RUS may have specifically agreed to in writing.

**Section 9.16. Authority of Representatives of RUS.**

In the case of any consent, approval or waiver from RUS that is required under this Agreement or any other Loan Document, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this section, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

**Section 9.17. Term.**

This Agreement shall remain in effect until one of the following two events has occurred:

- (a) The Borrower and RUS replace this Agreement with another written agreement; or
- (b) All of the Borrower's obligations under the Prior Loan Contracts and this Agreement have been discharged and paid.

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

KENERGY CORP.


by



BRENT WIGGINTON, Chairman

(Seal)

Attest:



SUSIE GIVENS, Secretary



UNITED STATES OF AMERICA

by CHRISTOPHER  
MCLEAN

Digitally signed by  
CHRISTOPHER MCLEAN  
Date: 2020.11.02 12:25:55 -05'00'

Acting Administrator  
of the  
Rural Utilities Service

## RUS LOAN CONTRACT SCHEDULE 1

1. The purpose of this loan is to finance construction of distribution facilities and such other purposes that RUS may agree to in writing in order to carry out the purposes of the Act.
2. The Mortgage shall mean the Restated Mortgage and Security Agreement, dated as of November 2, 2020, among the Borrower, RUS, National Rural Utilities Cooperative Finance Corporation and CoBank, as it may have been or shall be supplemented, amended, consolidated, or restated from time to time.
3. The governmental authority referred to in Section 2.1(c) is the **Not Applicable**.
4. The date of the Borrower's financial information referred to in Section 2.1(h) is September 30, 2020.
5. The principal place of business and mailing address of the Borrower referred to in Section 2.1(i) is 6402 Old Corydon Road, Henderson, Kentucky 42420-9392.
6. All of the property of the Borrower is located in the Counties of Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Muhlenberg, Ohio, Union and Webster in the Commonwealth of Kentucky.
7. The subsidiary referred to in Section 2.1(k) is Kenect, Inc..
8. The organizational identification number of the Borrower referred to in Section 2.1(m) is 0471117
9. Fiscal Year of Obligation: 2020
10. The Contemporaneous Loan referred to in Section 5.3 is described as follows:

**None.**
11. The RUS Commitment referred to in the definitions means a loan in the principal amount of \$35,000,000.00, which is being made to Kenergy Corp. by the Federal Financing Bank (FFB) and guaranteed as to payment by RUS, pursuant to the Rural Electrification Act and RUS Regulations.
12. Amortization of Advance shall be based upon the method for the repayment of principal for an Advance selected for such Advance, in accordance with that certain note, dated as of even date herewith, evidencing the RUS guaranteed FFB loan.
13. The SPECIAL conditions referred to in Section 4.2 is as follows:

The Borrower has duly authorized, executed, and has delivered to the Administrator of RUS, the note (the "FFB Note"), dated November 2, 2020, evidencing the loan made by FFB to the Borrower, within ninety (90) days of the date of the certain designation notice committing FFB to purchase the FFB Note (the "Designation Notice"), in the manner prescribed in the Designation Notice and has satisfied all the conditions set forth in the Designation Notice.
14. The additional AFFIRMATIVE covenants referred to in Section 5.22 are as follows:

**None.**
15. The additional NEGATIVE covenants referred to in Section 6.16 are as follows:

**None.**

16. The additional types of contract referred to in Section 6.5(f) are described as follows:

**None.**

17. The addresses of the parties referred to in Section 9.1. are as follows:

RUS

Rural Utilities Service  
U.S. Department of Agriculture  
Washington, DC 20250-1500  
Attention: Administrator  
Fax: (844) 875-8076

BORROWER

Kenergy Corp.  
6402 Old Corydon Road  
Henderson, Kentucky 42420-9392  
Fax: (270) 685-2279

**CREDIT AGREEMENT**

THIS CREDIT AGREEMENT (this "**Agreement**"), dated as of September 20, 2017 is entered into by and between **KENERGY CORP.**, Owensboro, Kentucky, a corporation (the "**Borrower**"), and **COBANK, ACB**, a federally-chartered instrumentality of the United States ("**Lender**").

**RECITALS**

(A) The Borrower and Lender are parties to that certain Amended and Restated Master Loan Agreement dated as of August 12, 2009 (the "**Existing Agreement**"). Pursuant to the terms of the Existing Agreement, the parties entered into one or more Supplement(s) and/or Promissory Note(s) and Supplement(s) thereunder (the "**Existing Promissory Note(s) and Supplement(s)**"). The Borrower and Lender now desire to amend and restate the Existing Agreement and to apply this Agreement to the Existing Promissory Note(s) and Supplement(s), as well as any new Promissory Note(s) that may be issued hereunder. For that reason and for valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Borrower and Lender hereby agree that the Existing Agreement will be amended and restated by this Agreement.

In consideration of the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and Lender agree as follows:

**ARTICLE 1 Defined Terms; Accounting Principles.** Certain capitalized terms used in this Agreement bear the definitions given to them in this Agreement. References to accounting standards are to United States generally accepted accounting principles, consistently applied, or the system of accounts established by the Rural Utilities Service ("**RUS**"), or such other commission or body as may be agreeable to Lender (the "**Accounting Standards**").

**ARTICLE 2 The Facilities.**

**2.1 Promissory Note.** In the event the Borrower desires to borrow from Lender and Lender is willing to lend to the Borrower, or in the event the parties desire to consolidate any existing loans hereunder, the parties will enter into a promissory note (a "**Promissory Note**"). Each Promissory Note will set forth Lender's commitment to make a loan or loans to the Borrower, the amount of the loan(s), the purpose of the loan(s), the interest rate or rate options applicable to the loan(s), the repayment terms of the loan(s), and any other terms and conditions applicable to the particular loan(s). Each Promissory Note will also contain the Borrower's promise to make payments of interest on the unpaid principal balance of the loan(s), and fees and premiums, if any, and to repay the principal balance of the loan(s). Each loan will be governed by the terms and conditions contained in this Agreement and in the Promissory Note relating to that loan.

**2.2 Availability.** Loans will be made available on any day on which Lender and the Federal Reserve Banks are open for business (a "**Business Day**") upon the telephonic or written request of an authorized employee of the Borrower. Requests for loans must be received by 12:00 p.m. Denver, Colorado time on the date the loan is desired. Loans will be made available by wire transfer of immediately available funds. Wire transfers will be made to such account or accounts as may be authorized by the Borrower.

**2.3 Security.** The Borrower's obligations under this Agreement and each Promissory Note will be secured by a statutory first lien on all equity that the Borrower may now own or hereafter acquire or be allocated in Lender. In addition, except as otherwise provided in a Promissory Note or in a closing instruction letter signed by the parties (an "**Instruction Letter**"), the Borrower's obligations hereunder and under each Promissory Note will be:

(a) secured by a first priority lien (subject only to exceptions approved in writing by Lender) and shared pro rata with the Rural Utilities Service ("RUS") and the National Rural Utilities Cooperative Finance Corporation ("CFC") on all real and personal property of the Borrower, whether now existing or hereafter acquired. The Borrower agrees to take such steps, including, without limitation, the execution and recordation or filing, as applicable, of mortgages, deeds of trust, security agreements, intercreditor or parity agreements, pledge agreements, control agreements, financing statements, and amendments to any of the foregoing, and such other instruments and documents as Lender may require to enable Lender to obtain, perfect, and maintain a lien on such property, and the payment of any applicable mortgage recording, documentary stamp, or intangible taxes; and

(b) guaranteed by an unsecured or secured, limited or continuing guarantee of payment, in form and substance and from such parties as may be required by Lender from time to time. If Lender requires such guarantee(s) to be secured by a lien on the real and/or personal property of a guarantor (a "**Guarantor**"), Borrower will cause each Guarantor to take such steps, including, without limitation, the execution and recordation or filing, as applicable, of mortgages, deeds of trust, security agreements, pledge agreements, control agreements, financing statements, and amendments to any of the foregoing, and such other instruments and documents as Lender may require to enable Lender to obtain, perfect, and maintain a lien on such property, and the payment of any applicable mortgage recording, documentary stamp, or intangible taxes.

**2.4 Payments Generally.** The Borrower's obligation to repay each loan will be evidenced by a Promissory Note. Lender will maintain a record of all loans, the interest accrued thereon, and all payments made with respect thereto, and such record will, absent proof of manifest error, be conclusive evidence of the outstanding principal and interest on the loans. Payments under each Promissory Note will be made by wire transfer of immediately available funds, by check, or by automated clearing house (ACH) or other similar cash handling processes as specified by separate agreement between the Borrower and Lender. Wire transfers will be made to ABA No. 307088754 for advice to and credit of "CoBANK" (or to such other account as Lender may direct by notice). The Borrower will give Lender telephonic notice no later than 12:00 p.m. Denver, Colorado time on the day the Borrower intends to pay by wire of such intent, and funds received after 3:00 p.m. Denver, Colorado time will be credited on the next Business Day. Checks will be mailed to CoBANK, Department 167, Denver, Colorado 80291-0167 (or to such other place as Lender may direct by notice). Credit for payment by check will not be given until the later of the next Business Day after receipt of the check or the day on which Lender receives immediately available funds. If any installment of principal or interest is due on a date that is not a Business Day, then such installment will be due and payable on the next Business Day.

**2.5 Broken Funding Surcharge.** Notwithstanding the terms of any Promissory Note giving the Borrower the right to repay any loan prior to the date it would otherwise be due and payable, the Borrower agrees to provide three Business Days' prior written notice for any prepayment of a fixed rate balance and to pay to Lender a broken funding surcharge in the amount set forth below in the event the Borrower: (a) repays any fixed rate balance prior to the last day of its fixed rate period (whether such payment is made voluntarily, as a result of an acceleration, or otherwise); (b) converts any fixed rate

balance to another fixed rate or to a variable rate prior to the last day of the fixed rate period applicable to such balance; or (c) fails to borrow any fixed rate balance on the date scheduled therefor. The surcharge will be in an amount equal to the greater of (1) the sum of: (i) the present value of any funding losses imputed by Lender to have been incurred as a result of such payment, conversion or failure; plus (ii) a per annum yield of 0.50% of the amount repaid, converted or not borrowed for the period such amount was scheduled to have been outstanding at such fixed rate, or (2) \$300.00. Any surcharge will be determined and calculated in accordance with methodology established by Lender, a copy of which will be made available upon request. Notwithstanding the foregoing, in the event of a conflict between the provisions of this section and of the broken funding charge section of a forward fix agreement between Lender and the Borrower, the provisions of the forward fix agreement will control.

**2.6 Taxes; Change in Law.** Any payment by the Borrower to Lender will be made net of any taxes (other than income and similar taxes imposed on or measured by Lender's overall net income). If any change in any law, rule, regulation, code, ordinance, order or the like to which the Borrower is subject, including, without limitation, all laws relating to environmental protection, and taxes (collectively, "**Laws**"), increases the cost of making or maintaining any loan (or any associated commitment to lend), or reduces the amount received or receivable by Lender hereunder then, upon request, the Borrower will pay to Lender such additional amount as will compensate Lender for such additional costs incurred or reduction suffered.

### **ARTICLE 3 Conditions Precedent.**

**3.1 Conditions to Initial Promissory Note.** Lender's obligation to extend credit under the initial Promissory Note hereunder is subject to the condition precedent that Lender receive, in form and substance satisfactory to Lender, each of the following, except as otherwise provided in the Promissory Note or in an Instruction Letter:

(a) **This Agreement.** A duly executed copy of this Agreement, the other Loan Documents (as defined below), the Instruction Letter accompanying this Agreement, and all instruments and documents contemplated hereby and thereby.

(b) **Banking Service Agreements.** A duly completed and executed copy of any banking service agreement, including any agreement relating to the provision by Lender of cash management services, required by Lender from time to time. Lender will be entitled to rely on (and will incur no liability to the Borrower in acting on) any request or direction furnished in accordance with the terms thereof.

**3.2 Conditions to Each Promissory Note.** Lender's obligations to extend credit under each Promissory Note hereunder, including the initial Promissory Note, is subject to the condition precedent that Lender receive, in form and substance satisfactory to Lender, each of the following, except as otherwise provided in the Promissory Note or in an Instruction Letter:

(a) **Promissory Note.** A duly executed copy of the Promissory Note and all instruments and documents contemplated by the Promissory Note.

(b) **Instruction Letter.** Any and all items or requirements detailed in an Instruction Letter.

(c) **Evidence of Perfection.** Such evidence as Lender may require that it has duly perfected liens as required under this Agreement.

(d) **Evidence of Authority.** Such certified board resolutions, certificates of incumbency, and other evidence that Lender may require that the Promissory Note, all instruments and documents executed in connection therewith, and, in the case of the initial Promissory Note hereto, this Agreement, the other Loan Documents (as defined below) and all instruments and documents executed in connection herewith and therewith, including any security documents, have been duly authorized and executed.

(e) **Fees and Other Charges.** Any fees or other charges provided for herein, in the Promissory Note or in any invoice provided by Lender.

(f) **Insurance.** Such evidence as Lender may require that the Borrower is in compliance with Section 5.4 below.

(g) **Consents and Approvals.** Evidence as Lender may require that all regulatory and other consents and approvals referred to in Section 4.6 below have been obtained and are in full force and effect.

(h) **Opinion of Counsel.** An opinion of counsel to the Borrower (which counsel must be acceptable to Lender).

**3.3 Conditions to Each Loan.** Lender's obligation under each Promissory Note to make any loan to the Borrower thereunder is subject to the condition that no "**Event of Default**" (as defined in Section 8.1 below) or event that, with the giving of notice and/or the passage of time and/or the occurrence of any other condition, would ripen into an Event of Default (a "**Potential Default**") will have occurred and be continuing or would be caused by the making of such loan.

**ARTICLE 4 Representations and Warranties.** The execution by the Borrower of this Agreement and each Promissory Note hereunder, or any renewal or extension by Lender of any Promissory Note hereunder, will constitute a representation and warranty by the Borrower that:

**4.1 Instruction Letter; Loan Documents.** Each representation and warranty and all information set forth in Instruction Letter and/or any of the Loan Documents (as defined below) and/or any other document submitted in connection with, or to induce Lender to enter into, such Promissory Note is correct in all material respects as of the date of such Promissory Note.

**4.2 Compliance; Legal Proceedings.** The Borrower and its subsidiaries and all property owned or leased or proposed to be acquired with the proceeds of any Promissory Note hereunder by the Borrower and/or its subsidiaries and all of its/their operations are in compliance with all applicable Laws and the terms of the Loan Documents and no Event of Default or Potential Default exists or is continuing. In addition, there are no pending legal, arbitration, or governmental actions or proceedings to which the Borrower or any subsidiary is a party or to which any of its or any subsidiaries' property is subject which, if adversely determined, might have a material adverse effect on the financial condition, operations, properties, profits, or business of the Borrower or any subsidiary, and to the best of the Borrower's knowledge, no such actions or proceedings are threatened or contemplated.

**4.3 Organization; Good Standing.** The Borrower (a) is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization, (b) has the lawful power to own or lease its properties and to engage in the business it conducts or proposes to conduct, and (c) is duly qualified and in good standing in each jurisdiction where the property owned or leased by it or the nature of the business transacted by it makes such qualification necessary.

**4.4 Binding Agreement.** The Loan Documents constitute legal, valid, and binding obligations of the Borrower that are enforceable in accordance with their terms.

**4.5 Conflicting Agreements.** Neither this Agreement nor any Promissory Note, or other instrument or document securing or otherwise relating hereto or to any Promissory Note (each a “**Loan Document**” and collectively, at any time, the “**Loan Documents**”) conflicts with, or constitutes (with or without the giving of notice and/or the passage of time and/or the occurrence of any other condition) a default under, any other agreement to which the Borrower is a party or by which it or any of its property may be bound or affected, and does not conflict with any provision of its bylaws, articles of incorporation or other organizational documents.

**4.6 Consents and Approvals.** No consent, permission, authorization, order or license of any governmental authority or of any party to any agreement to which the Borrower is a party or by which it or any of its property may be bound or affected, is necessary in connection with the project, acquisition or other activity being financed by such Promissory Note, or the execution, delivery, performance or enforcement of any Loan Document, except as have been obtained and are in full force and effect.

**4.7 Budgets; Full Disclosure.** All budgets, projections, feasibility studies, and other documentation submitted by the Borrower to Lender in connection with, or to induce Lender to enter into, such Promissory Note are based upon assumptions that are reasonable and realistic, and as of the date of such Promissory Note, no fact has come to light, and no event has occurred, that would cause any assumption made therein to not be reasonable or realistic. No Loan Document or other certificate, statement, agreement, or document furnished to Lender in connection with this Agreement or any other Loan Document (a) contains any untrue statement of a material fact, or (b) fails to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. The Borrower is not aware of any Material Adverse Change that has not been disclosed in writing to Lender. A “**Material Adverse Change**” means any material adverse change, as reasonably determined by Lender, in the condition, financial or otherwise, operations, business, liabilities (actual or contingent) or properties of the Borrower or in its ability to perform its obligations hereunder, under any security instrument or document, or under any other Loan Document.

**4.8 Accurate Financial Information.** Each submission of financial information or documents relating to the Borrower will constitute a representation and warranty by the Borrower that such information and documents (a) are true and accurate in all material respects, and (b) do not fail to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

**4.9 ERISA.** The Borrower and its subsidiaries are in compliance in all material respects with the applicable provisions of the Employee Retirement Income Security Act of 1974, and the regulations and published interpretations thereunder from time to time (“**ERISA**”).

**4.10 Margin Stock.** No Borrower is engaged or intends to engage principally, or as one of its important activities, in the business of extending credit for the purpose, immediately, incidentally or ultimately, of purchasing or carrying margin stock (within the meaning of Regulation U, T or X as promulgated by the Board of Governors of the Federal Reserve System of the United States of America (the “**Board**”)). No part of the proceeds of any loan made by Lender to the Borrower has been or will be used, immediately, incidentally or ultimately, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or in any way that is inconsistent with



the provisions of the regulations of the Board. No Borrower or any subsidiary, if any, of any Borrower holds or intends to hold margin stock in such amounts that more than 25% of the reasonable value of the assets of any Borrower or subsidiary, if any, of any Borrower are or will be represented by margin stock.

**ARTICLE 5 Affirmative Covenants.** Unless otherwise agreed to in writing by Lender, while this Agreement is in effect, the Borrower agrees to, and with respect to Sections 5.3, 5.4, 5.5, and 5.8, agrees to cause each subsidiary, if any, to:

**5.1 Reports and Notices.** Furnish to Lender:

(a) **Annual Financial Statements.** As soon as available, but in no event more than 120 days after the end of each fiscal year of the Borrower occurring during the term hereof, annual consolidated and consolidating financial statements of the Borrower and its consolidated subsidiaries, if any, prepared in accordance with the Accounting Standards. Such financial statements will: (1) be audited by independent certified public accountants selected by the Borrower and acceptable to Lender; (2) be accompanied by a report of such accountants containing an opinion thereon acceptable to Lender; (3) be prepared in reasonable detail and in comparative form; and (4) include a balance sheet, a statement of income, a statement of retained earnings, a statement of cash flows, and all notes and schedules relating thereto.

(b) **Interim Financial Statements.** As soon as available, but in no event more than 60 days after the end of each fiscal or calendar quarter (other than the last fiscal or calendar quarter of each fiscal or calendar year of the Borrower), a consolidated and consolidating balance sheet of the Borrower and its consolidated subsidiaries, if any, as of the end of such fiscal or calendar quarter, a consolidated and consolidating statement of income for the Borrower and its consolidated subsidiaries, if any, for such period and for the period year to date, and such other interim statements as Lender may specifically request, all prepared in reasonable detail and in comparative form in accordance with the Accounting Standards; and, if required by written notice from Lender, certified by a authorized officer of the Borrower.

(c) **Notice of Default.** Promptly after becoming aware thereof, notice of the occurrence of an Event of Default or a Potential Default, including, without limitation, any error in the Borrower's financial information previously provided to Lender and the occurrence of any breach, default, event of default or event that, with the giving of notice and/or the passage of time and/or the occurrence of any other condition, would become a breach, default or event of default under any loan agreement, indenture, mortgage, or other credit or security agreement or instrument to which the Borrower is a party or by which it or any of its property may be bound or affected.

(d) **Notice of Litigation, Environmental Matters, Etc.** Promptly after becoming aware thereof, notice of: (1) the commencement of any action, suit or proceeding before any court, arbitrator or governmental department, commission, board, bureau, agency, or instrumentality having jurisdiction over the Borrower, that, if adversely decided, could result in a Material Adverse Change; (2) the receipt of any notice, indictment, pleading or other communication alleging a condition that may require the Borrower to undertake or to contribute to a clean-up or other response under any environmental Law, or that seeks penalties, damages, injunctive relief, criminal sanctions or other relief as a result of an alleged violation of any such Law, or that claims personal injury or property damage as a result of environmental factors or conditions; and (3) any matter that could have a material adverse effect on the Borrower, including any decision of any regulatory authority or commission.

(e) **Notice of Certain Events.** (1) Notice at least 30 days prior thereto, of any change in the Borrower's name or corporate structure; (2) notice at least 30 days prior thereto, of any change in the Borrower's organizational documents which changes must be approved in writing by Lender in its reasonable discretion; (3) notice at least 30 days prior thereto, of any change in the principal place of business of the Borrower or the office where its records concerning its accounts are kept; and (4) as soon as available after any changes thereto, copies of the Borrower's organizational documents certified by the Borrower's Secretary or equivalent officer acceptable to Lender.

(f) **Annual RUS Financial and Operating Report Electric Distribution (formerly known as RUS Form 7).** As soon as available, but in any event within 90 days after the end of each calendar year occurring during the term hereof, a duly completed copy of RUS Financial and Operating Report Electric Distribution (formerly known as RUS Form 7) for December 31 of such year.

**5.2 Instruction Letter.** Comply with any and all requirements detailed in an Instruction Letter.

**5.3 Corporate Existence, Etc.** Preserve and keep in full force and effect its existence and good standing in the jurisdiction of its incorporation or formation, qualify and remain qualified to transact business in all jurisdictions where such qualification is required, and obtain and maintain all licenses, certificates, permits, authorizations, approvals, and the like that are material to the conduct of its business or required by any Law.

**5.4 Insurance.** Maintain insurance with reputable and financially sound insurance companies or associations, including self-insurance to the extent customary, acceptable to Lender in such amounts and covering such risks as are usually carried by companies engaged in the same or similar business and similarly situated, and make such increases in the type or amount of coverage as Lender may reasonably request. All such policies insuring any collateral for the Borrower's obligations to Lender will have additional insured, mortgagee and lender's loss payee clauses or endorsements, as applicable, in form and substance satisfactory to Lender. At Lender's request, the Borrower agrees to deliver to Lender such proof of compliance with this section as Lender may require.

**5.5 Property Maintenance.** Maintain in good repair, working order and condition (ordinary wear and tear excepted) in accordance with the general practice of other businesses of similar character and size, all of those properties useful or necessary to its business, and make all alterations, replacements, and improvements thereto as may from time to time be necessary in order to ensure that its properties remain in good working order and condition. The Borrower agrees that at Lender's request, which request may not be made more than once a year, the Borrower will furnish to Lender a report on the condition of the Borrower's property prepared by a professional engineer satisfactory to Lender.

**5.6 Inspection.** Permit Lender or its agents, upon reasonable notice and during normal business hours or at such other times as the parties may agree, to inspect and visit any of its properties, examine and make excerpts from its books and records, and to discuss its business affairs, finances and accounts with its officers, directors, employees, and independent certified public accountants and to conduct reviews of any collateral.

**5.7 Books and Records.** Maintain and keep proper books and records of account in which full, true and correct entries of all its dealings, business and financial affairs will be made in accordance with the Accounting Standards.

**5.8 Compliance With Laws.** Comply in all material respects with all Laws and any patron or member investment program applicable to the Borrower. In addition, the Borrower agrees to cause all persons occupying or present on any of its properties to comply in all material respects with all Laws relating to such properties.

**5.9 Further Assurances and Other Information.** From time to time and at its expense, execute and deliver such documents and do such other acts and things as Lender in its sole discretion may deem necessary or advisable from time to time in order to more fully carry out the provisions and purpose of the Loan Documents, including delivery of such other information regarding the condition or operations, financial or otherwise, of the Borrower as Lender may from time to time reasonably request, including, but not limited to, copies of all pleadings, notices and communications referred to in Section 5.1(d) above.

**5.10 Capital.** Maintain its status as an entity eligible to borrow from Lender and acquire equity in Lender in such amounts and at such times as Lender may from time to time require in accordance with its Bylaws and Capital Plan (as each may be amended from time to time), except that the maximum amount of equity that the Borrower may be required to purchase in connection with a loan may not exceed the maximum amount permitted by the Bylaws at the time the Promissory Note relating to such loan is entered into or such loan is renewed or refinanced by Lender. The rights and obligations of the parties with respect to such equity and any patronage or other distributions made by Lender will be governed by Lender's Bylaws and Capital Plan (as each may be amended from time to time).

**5.11 Delivery of Original Loan Documents.** If copies of any executed Loan Documents are delivered to Lender as provided in Article 3 above, immediately deliver to Lender the original executed versions of such Loan Documents.

**5.12 Indemnity for Taxes.** At all times indemnify and hold and save Lender harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind and nature incurred by Lender as a result of the non-payment of any documentary stamp tax, intangible tax, interest or penalties associated therewith or any other local, state or federal assessment required to be paid, but not paid in conjunction with the indebtedness evidenced by the Loan Documents. The Borrower agrees to pay to Lender, its successors and assigns, all sums of money requested by Lender hereunder within ten days of such request, which Lender will or may advance, pay or cause to be paid, or become liable to pay, on account of or in connection with failure to pay as required by the regulations of the governmental authority so imposing said payment. Lender will be entitled to charge for any and all disbursements made by it in good faith, under the reasonable belief that it or the Borrower is or was liable for the amount so assessed. Any default by the Borrower in making any payments required under this covenant will constitute a payment Event of Default under the Loan Documents and Lender may, at its option, declare the entire amount of principal plus accrued interest thereon due and payable without notice or demand.

**5.13 ERISA.** The Borrower and its subsidiaries, for so long as this Agreement remains outstanding, will remain in compliance in all material respects with the applicable provisions of **ERISA**, the failure to comply with which has or may have a material adverse effect on the Borrower.

**ARTICLE 6 Negative Covenants.** Unless otherwise agreed to in writing by Lender, while this Agreement is in effect, the Borrower will not:

**6.1 Other Indebtedness.** Create, incur, assume or allow to exist, directly or indirectly, any indebtedness or liability for borrowed money (including trade or bankers' acceptances), letters of credit, or for the deferred purchase price of property or services (including leases that should be capitalized on the books of the lessee in accordance with the Accounting Standards), except for:

- (a) debt to Lender.
- (b) accounts payable to trade creditors incurred in the ordinary course of business.
- (c) current operating liabilities (other than for borrowed money) incurred in the ordinary course of business.
- (d) (1) capitalized leases in an aggregate amount not to exceed 5% of the Borrower's equity at any one time; (2) unsecured indebtedness to Lender and other lenders; provided, however, that such debt will be limited to 15% of "**Net Utility Plant**" (as determined in accordance with the system of accounts established by RUS (the "**RUS System of Accounts**"), or such other commission or body as may be agreeable to Lender) if, after giving effect thereto, the Borrower's equity will be less than 30% of its total assets; (3) purchase money indebtedness incurred with respect to non-utility property and secured by a lien on the property being financed; and (4) secured debt to RUS and any other lender(s) that are parties to the RUS mortgage.

**6.2 Contingent Liabilities.** Assume, guarantee, become liable as a surety, indorse, contingently agree to purchase, or otherwise be or become liable, directly or indirectly (including, but not limited to, by means of a maintenance agreement, an asset or stock purchase agreement, or any other agreement designed to ensure any creditor against loss), for or on account of the obligation of any person or entity except for such guaranties as may from time to time be made, purchased or undertaken by the Borrower; provided, however, that the aggregate cost of such other investments, plus the total unpaid principal amount of such guaranties together with the loans and investments detailed in Section 6.5(c) below will not exceed 15% of the Borrower's "**Total Utility Plant**" (as determined in accordance with the Accounting Standards).

**6.3 Liens.** Create, incur, assume, or allow to exist any mortgage, deed of trust, pledge, lien (including the lien of an attachment, judgment, or execution), security interest, or other encumbrance of any kind upon any of its property, real or personal (collectively, "**Liens**"). The foregoing restrictions will not apply to:

- (a) Liens in favor of Lender, RUS and any mortgagees under the RUS mortgage.
- (b) Permitted Encumbrances (as defined in the RUS mortgage).

**6.4 Transactions with Affiliates.** Enter into any transaction with any affiliate except in the ordinary course of and pursuant to the reasonable requirements of its business and upon fair and reasonable terms no less favorable to it than it would obtain in a comparable arm's-length transaction with a person or entity that was not an affiliate.

**6.5 Loans and Investments.** Make any loan or advance to, or make any investment in, or make any capital contribution to, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of any person or entity, except for:

(a) securities or deposits issued, guaranteed or fully insured as to payment by the United States of America or any agency thereof.

(b) equity in, or obligation of, Lender.

(c) (1) existing investments in generation and transmission cooperatives and investments in Lender and other lenders organized on a cooperative basis, and (2) such other loans, deposits, advances, investments, and obligations as may from time to time be made, purchased or undertaken by the Borrower; provided, however, that the aggregate cost of such other investments, plus the total unpaid principal amount of such other loans, deposits, advances and obligations, and the guarantees detailed in Section 6.2 above will not exceed 15% of the Borrower's "**Total Utility Plant**" (as determined in accordance with the Accounting Standards).

**6.6 Dividends and Distributions.** Declare or pay any dividends or patronage refunds, or declare or grant any general cancellation or abatement of charges for electric energy or services furnished by the Borrower, or purchase, retire, or redeem any patronage or other capital, or make any other distribution of any kind (whether in cash or property) to its members, stockholders or consumers (collectively, "**Distributions**"), except that the Borrower may, in any fiscal year, make Distributions provided that, both before and after giving effect thereto, the Borrower will be in compliance with its Equity to Total Assets Ratio under Article 7 below.

**6.7 Mergers, Acquisitions, Etc.** Merge or consolidate with any other entity or acquire all or a material part of the assets of any other person or entity, or form or create any new subsidiary, or commence operations under any other name, organization, or entity, including any joint venture.

**6.8 Transfer of Assets.** Sell, transfer, lease, or otherwise dispose of any of its assets, except: (a) in the ordinary course of business; and (b) the sale, transfer or disposal of any obsolete or worn-out assets that are no longer necessary or required in the conduct of the Borrower's business.

**6.9 Change in Business.** Engage in any business activities or operations substantially different from or unrelated to the Borrower's present business activities or operations.

**6.10 Use of Proceeds.** Use the proceeds of any loan made by Lender to the Borrower, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**ARTICLE 7 Financial Covenants.** Unless otherwise agreed to in writing by Lender, while this Agreement is in effect:

**7.1 Debt Service Coverage Ratio.** The Borrower and its consolidated subsidiaries, if any, will have at the end of each fiscal year of the Borrower, a Debt Service Coverage Ratio (as defined below) for such year of not less than 1.25 to 1.00. Such ratio will be determined by averaging the two highest annual ratios achieved by the Borrower during the most recent three fiscal years. For purposes

hereof, the term “**Debt Service Coverage Ratio**” means the ratio of: (a) net income (after taxes and after eliminating any gain or loss on sale of assets or other extraordinary gain or loss), plus depreciation expense, amortization expense, and interest expense, minus non-cash patronage, and non-cash income from subsidiaries and/or joint ventures; to (b) all principal payments due within the period on all Long-Term Debt (as defined below) plus interest expense (all as calculated on a consolidated basis for the applicable period in accordance with the Accounting Standards). For purposes hereof, “**Long-Term Debt**” means, for the Borrower, on a consolidated basis, the sum of (1) all indebtedness for borrowed money, (2) obligations that are evidenced by notes, bonds, debentures or similar instruments, and (3) that portion of obligations with respect to capital leases or other capitalized agreements that are properly classified as a liability on the balance sheet in conformity with Accounting Standards or that are treated as operating leases under regulations applicable to them but that otherwise would be required to be capitalized under Accounting Standards, in each case having a maturity of more than one year from the date of its creation or having a maturity within one year from such date but that is renewable or extendible, at the Borrower’s option, to a date more than one year from such date or that arises under a revolving credit or similar agreement that obligates the lender(s) to extend credit during a period of more than one year from such date, including all current maturities in respect of such indebtedness whether or not required to be paid within one year from the date of its creation.

**7.2 Equity to Total Assets.** The Borrower and its consolidated subsidiaries, if any, will have at the end of each fiscal quarter of the Borrower, a ratio of consolidated total equity to consolidated total assets (both as determined in accordance with the Accounting Standards) of not less than 0.20 to 1.00.

**7.3 Total Debt to EBITDA.** The Borrower and its consolidated subsidiaries, if any, will have at the end of each fiscal year of the Borrower a Total Debt to EBITDA (each as defined below) ratio of not greater than 11.00 to 1.00 (all as determined in accordance with the Accounting Standards). For purposes hereof: (a) “**Total Debt**” means, for the Borrower, and its consolidated subsidiaries, if any, the sum of (1) all indebtedness for borrowed money, (2) obligations which are evidenced by notes, bonds, debentures or similar instruments, and (3) that portion of obligations with respect to capital leases or other capitalized agreements that are properly classified as a liability on the balance sheet in conformity with Accounting Standards or that are treated as operating leases under regulations applicable to them but that otherwise would be required to be capitalized under Accounting Standards; and (b) “**EBITDA**” means, for the Borrower, and its consolidated subsidiaries, if any, operating revenues minus operating expenses, plus depreciation and amortization expenses.

## **ARTICLE 8 Default.**

**8.1** Each of the following will constitute an “Event of Default” hereunder:

(a) **Payment Default.** The Borrower should fail to make any payment to Lender when due.

(b) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made at any time by the Borrower, herein or in any other Loan Document, or in any certificate, other instrument or statement furnished to Lender by or on behalf of the Borrower, will have been false or misleading in any material respect as of the time it was made or furnished.

(c) **Covenants.** The Borrower will default in the observance or performance of any covenant set forth in Article 5 (other than Sections 5.1(c), 5.1(d), 5.1(e)(1), and 5.1(e)(2) above), and such default continues for 30 days after written notice thereof will have been delivered to the Borrower by Lender.

(d) **Other Covenants and Agreements.** The Borrower will default in the observance or performance of Sections 5.1(c), 5.1(d), 5.1(e)(1), and 5.1(e)(2) or any other covenant or agreement contained herein or in any other Loan Document if Borrower uses the proceeds of any loan for any unauthorized purpose.

(e) **Cross Default.** The Borrower should, after any applicable grace period, breach or be in default under the terms of any other Loan Document (including, without limitation, any security instrument or document) or any other agreement between the Borrower and Lender, or between the Borrower and any affiliate of Lender, including without limitation Farm Credit Leasing Services Corporation.

(f) **Other Indebtedness.** The Borrower should fail to pay when due any indebtedness to any other person or entity for borrowed money or any long-term obligation for the deferred purchase price of property (including any capitalized lease), or any other event occurs that, under any agreement or instrument relating to such indebtedness or obligation, has the effect of accelerating or permitting the acceleration of such indebtedness or obligation, whether or not such indebtedness or obligation is actually accelerated or the right to accelerate is conditioned on the giving of notice, the passage of time, or otherwise.

(g) **Judgments.** A judgment, decree, or order for the payment of money will have been rendered against the Borrower and either: (1) enforcement proceedings will have been commenced; (2) a Lien prohibited by this Agreement, any security instrument, or any other Loan Document, will have been obtained; or (3) such judgment, decree, or order will continue unsatisfied and in effect for a period of 30 consecutive days without being vacated, discharged, satisfied, bonded, or stayed pending appeal.

(h) **Loan Document Unenforceable.** Any of the Loan Documents ceases to be a legal, valid, and binding agreement enforceable against the Borrower or any Guarantor, if any or is in any way terminated (except in accordance with its terms) or becomes or is declared ineffective or inoperative.

(i) **Revocation of Guaranty.** Any guaranty, suretyship, subordination agreement, maintenance agreement, or other agreement furnished in connection with the Borrower's obligations hereunder and under any Promissory Note will, at any time, cease to be in full force and effect, or will be revoked or declared null and void, or the validity thereof will be contested by the Guarantor, surety or other maker thereof, or the Guarantor will deny any further liability or obligations thereunder, or will fail to perform its obligations thereunder, or any representation or warranty set forth therein will be breached, or the Guarantor will breach or be in default under the terms of any other agreement with Lender (including any loan agreement or security agreement), or a default set forth in sections (f) through (h) will occur with respect to the Guarantor.

(j) **Insolvency, Etc.** The Borrower will: (1) become insolvent or will generally not, or will be unable to, or will admit in writing its inability to, pay its debts as they become due; or (2) suspend its business operations or a material part thereof or make an assignment for the benefit of creditors; or (3) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, or other custodian for it or any of its property; or (4) have commenced against it any action or proceeding for the appointment of a trustee, receiver, or other custodian and such action or proceeding is not dismissed within 30 days of the date thereof, or a trustee, receiver, or other custodian is appointed for all or any part of its property; or (5) receive notice from any regulatory or governmental authority to the effect that such authority intends to replace the management of the Borrower or assume control over the Borrower; or (6) commence or

have commenced against it any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law of any jurisdiction.

(k) **Material Adverse Change.** Any Material Adverse Change occurs, as reasonably determined by Lender.

**8.2 Remedies.** Upon the occurrence and during the continuance of an Event of Default or Potential Default, Lender will have no obligation to extend or continue to extend credit to the Borrower and may discontinue doing so at any time without prior notice or other limitation. In addition, upon the occurrence and during the continuance of any Event of Default, Lender may, upon notice to the Borrower:

(a) **Termination and Acceleration.** Terminate any commitment and declare the unpaid principal balance of the loans, all accrued interest thereon, and all other amounts payable under this Agreement, each Promissory Note, and all other Loan Documents to be immediately due and payable. Upon such a declaration, the unpaid principal balance of the loans and all such other amounts will become immediately due and payable, without protest, presentment, demand, or further notice of any kind, all of which are hereby expressly waived by the Borrower.

(b) **Enforcement.** Proceed to protect, exercise, and enforce such rights and remedies as may be provided by this Agreement, any security instrument or document, any other Loan Document, or under Law. Each and every one of such rights and remedies will be cumulative and may be exercised from time to time, and no failure on the part of Lender to exercise, and no delay in exercising, any right or remedy will operate as a waiver thereof, and no single or partial exercise of any right or remedy will preclude any future or other exercise thereof, or the exercise of any other right. Without limiting the foregoing, Lender may hold and/or set off and apply against the Borrower's obligations to Lender the proceeds of any equity in Lender, any cash collateral held by Lender, or any balances held by Lender for the Borrower's account (whether or not such balances are then due).

(c) **Application of Funds.** Lender may apply all payments received by it to the Borrower's obligations to Lender in such order and manner as Lender may elect in its sole discretion.

(d) In addition to the rights and remedies set forth above and notwithstanding any Promissory Note: (1) upon the occurrence and during the continuance of an Event of Default, at Lender's option in each instance, the entire indebtedness outstanding hereunder and under each Promissory Note will bear interest from the date of such Event of Default until such Event of Default will have been waived or cured in a manner satisfactory to Lender at 4.00% per annum in excess of the rate(s) of interest that would otherwise be in effect on that loan under the terms of the applicable Promissory Note; and (2) after the maturity of any loan (whether as a result of acceleration or otherwise), the unpaid principal balance of such loan (including without limitation, principal, interest, fees and expenses) will automatically bear interest at 4.00% per annum in excess of the rate(s) of interest that would otherwise be in effect on that loan under the terms of the Promissory Note. All interest provided for herein will be payable on demand and will be calculated on the basis of a year consisting of 360 days.

## **ARTICLE 9 Miscellaneous.**

**9.1 Amendments; Waivers; Etc.** No amendment, modification, or waiver of any provision of this Agreement or the other Loan Documents, and no consent to any departure by the Borrower herefrom or therefrom, will be effective unless approved by Lender and contained in a writing signed by



or on behalf of Lender, and then such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. In the event this Agreement is amended or restated, each such amendment or restatement will be applicable to all Promissory Notes hereto.

**ARTICLE 10 Expenses; Indemnification; Damage Waiver.**

**10.1 Costs and Expenses.** To the extent allowed by Law, the Borrower agrees to pay all reasonable out-of-pocket costs and expenses (including the fees and expenses of counsel retained or employed by Lender) incurred by Lender and any participants of Lender in connection with the origination, administration, collection and enforcement of this Agreement and the other Loan Documents, including, without limitation, all costs and expenses incurred in obtaining, perfecting, maintaining, determining the priority of, and releasing any security for the Borrower's obligations to Lender, and any stamp, intangible, transfer or like tax incurred in connection with this Agreement or any other Loan Document or the recording hereof or thereof.

**10.2 Indemnification.** The Borrower indemnifies Lender, its affiliates and its and their respective officers, directors, employees, agents and advisors (each an "Indemnitee") against, and holds each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including fees and expenses of employed or retained counsel) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower arising out of or as a result of (a) the execution or delivery of any Loan Document, the performance or nonperformance by the Borrower of its obligations under any Loan Document or the consummation of the transactions contemplated thereby, including the use of the proceeds therefrom, (b) breach of representations, warranties or covenants of the Borrower under any Loan Document, or (c) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, including any such items or losses relating to or arising under environmental Laws or pertaining to environmental matters, regardless whether any Indemnitee is a party thereto; provided that such indemnity will not, as to an Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

**10.3 Waiver of Consequential Damages.** To the fullest extent permitted by applicable Law, the Borrower will not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages arising out of, in connection with, or as a result of, any Loan Document, the transactions contemplated thereby or the use of the proceeds thereof.

**10.4 Notices.** All notices hereunder will be in writing and will be deemed to have been duly given when addressed to the party intended to receive the same at the address of such party set forth below (or such other address either party may specify by like notice), (a) upon delivery if personally delivered to a party at such address, (b) three days after the same is deposited in the United States mail as first class, certified mail, return receipt requested, postage paid, (c) one business day after the same has been deposited with Federal Express or another nationally recognized overnight courier service if designated for next-day delivery, and (d) upon delivery if sent by facsimile or electronic mail with confirmation of delivery of the same:

KENERGY CORP.  
Owensboro, Kentucky  
Agreement No. 14213240SLA

If to Lender, as follows:

For general correspondence purposes:  
P.O. Box 5110  
Denver, Colorado 80217-5110

For direct delivery purposes, when desired:  
6340 South Fiddlers Green Circle  
Greenwood Village, Colorado 80111-1914

Attention: Credit Information Services  
Fax No.: (303) 224-6101

If to the Borrower, as follows:

KENERGY CORP.  
P.O. Box 18  
Henderson, Kentucky 42419

3111 Fairview Drive  
Owensboro, Kentucky 42303

Attention: VP of Finance and Accounting

Fax No.: ( ) -

**10.5 Effectiveness and Severability.** This Agreement will continue in effect until: (a) all indebtedness and obligations of the Borrower under this Agreement and the other Loan Documents have been paid or satisfied; (b) Lender has no commitment to extend credit to or for the account of the Borrower under any Promissory Note; and (c) either party sends written notice to the other party terminating this Agreement. Any provision of this Agreement or any other Loan Document that is prohibited or unenforceable in any jurisdiction will be ineffective to the extent of such prohibition or unenforceable without invalidating the remaining provisions hereof or thereof.

#### **10.6 Successors and Assigns.**

(a) **Successors and Assigns Generally.** This Agreement and the other Loan Documents will be binding upon and inure to the benefit of the Borrower and Lender and their respective successors and assigns, except that the Borrower may not assign or transfer its rights or obligations under this Agreement or the other Loan Documents without the prior written consent of Lender.

(b) **Participations, Etc.** From time to time, Lender may sell to one or more banks, financial institutions, or other lenders a participation in one or more of the loans or other extensions of credit made pursuant to this Agreement. However, no such participation will relieve Lender of any commitment made to the Borrower hereunder. In connection with the foregoing, Lender may disclose information concerning the Borrower and its subsidiaries, if any, to any participant or prospective participant, provided that such participant or prospective participant agrees to keep such information confidential. Patronage distributions in the event of a sale of a participation interest will be governed by Lender's Bylaws and Capital Plan (as each may be amended from time to time). A sale of a participation interest may include certain voting rights of the participants regarding the loans hereunder (including without limitation the administration, servicing, and enforcement thereof). Lender agrees to give written notification to the Borrower of any sale of a participation interest.

#### **10.7 Integration; Other Types of Credit; Counterparts.**

(a) **Integration.** The Loan Documents are intended by the parties to be a complete and final expression of their agreement. Each Promissory Note will be deemed to incorporate all of the terms and conditions of this Agreement as if fully set forth therein. Without limiting the foregoing, any capitalized term utilized in any Promissory Note (or in any amendment to this Agreement or Promissory Note) and not otherwise defined in the Promissory Note (or amendment) will have the meaning set forth herein or, if

applicable, in the Accounting Standards. In the event the Accounting Standards are changed after the date hereof, then all such changes will be applicable hereto, unless Lender otherwise specifies in writing.

(b) **Other Types of Credit.** From time to time, Lender may issue letters of credit or extend other types of credit to or for the account of the Borrower. In the event the parties desire to do so under the terms of this Agreement, then the agreement of the parties with respect thereto may be set forth in a Promissory Note and this Agreement will be applicable thereto.

(c) **Counterparts.** This Agreement, each Promissory Note and any other Loan Document may be executed in counterparts, each of which will constitute an original, but all of which when taken together will constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement, each Promissory Note and any other Loan Document by facsimile or other electronic means will be as effective as delivery of a manually executed counterpart of each such agreement.

**10.8 Applicable Law; Submission to Jurisdiction; Service of Process; Waiver of Venue; Waiver of Jury Trial.**

(a) **Applicable Law.** Without giving effect to the principles of conflict of laws and except to the extent governed by federal law, the Laws of the State of Colorado, without reference to choice of law doctrine, will govern this Agreement, each Promissory Note and any other Loan Document for which Colorado is specified as the applicable law, and all disputes and matters between the parties to this Agreement, including all disputes and matters whatsoever arising under, in connection with or incident to the lending and/or leasing or other business relationship between the parties, and the rights and obligations of the parties to this Agreement or any other Loan Document by and between the parties for which Colorado is specified as the applicable law.

(b) **Submission to Jurisdiction; Service of Process.** The Borrower hereby irrevocably consents to the nonexclusive jurisdiction of any state or federal court in Denver, Colorado, and consents that Lender may effect any service of process in the manner and at the Borrower's address set forth herein for providing notice or demand; provided that nothing contained in this Agreement will prevent Lender from bringing any action, enforcing any award or judgment or exercising any rights against the Borrower individually, against any collateral or against any property of the Borrower within any other county, state or other foreign or domestic jurisdiction.

(c) **Waiver of Venue.** The Borrower acknowledges and agrees that the venue provided above is the most convenient forum for the Borrower and Lender. The Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

(d) **Waiver of Jury Trial.** The Borrower and Lender each hereby irrevocably waives any right it may have to a trial by jury in connection with any action directly or indirectly arising out of or relating to this Agreement or any other Loan Document. Each party hereto (1) certifies that no representative, administrative agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (2) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and other Loan Documents by, among other things, the mutual waivers and certifications in this section.

**10.9 USA Patriot Act Notice.** Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify, and record information that identifies

KENERGY CORP.  
Owensboro, Kentucky  
Agreement No. 14213240SLA

the Borrower in accordance with the USA Patriot Act. The Borrower covenants and agrees it will not, and agrees to cause each of its subsidiaries not to, at any time, directly or indirectly be (a) a person with whom Lender is restricted from doing business under any Anti-Terrorism Law, (b) engaged in any business involved in making or receiving any contribution of funds, goods or services to or for the benefit of such a person or in any transaction that evades or avoids, or has the purpose of evading or avoiding, the prohibitions set forth in any Anti-Terrorism Law, or (c) otherwise in violation of any Anti-Terrorism Law (the Borrower will and will cause each of its subsidiaries to provide to Lender any certifications or information that Lender requests to confirm compliance by the Borrower and its subsidiaries with any Anti-Terrorism Law). "**Anti-Terrorism Law**" means any Law relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by the United States Treasury Department's Office of Foreign Asset Control, as any of the foregoing Laws may from time to time be amended, renewed, extended, or replaced.

**SIGNATURE PAGE FOLLOWS**

KENERGY CORP.  
Owensboro, Kentucky  
Agreement No. 14213240SLA

**SIGNATURE PAGE TO CREDIT AGREEMENT**

IN WITNESS WHEREOF, the parties hereto, by their duly authorized officers, have executed this Agreement.

**KENERGY CORP.**

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

Name: Jeff Hohn

Title: President and CEO

10/12/17  
JD

KENERGY CORP.  
Owensboro, Kentucky  
Agreement No. 14213240SLA

**SIGNATURE PAGE TO CREDIT AGREEMENT**

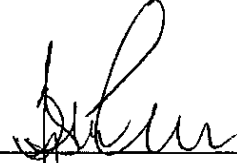
**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized officers, have executed this Agreement.

**COBANK, ACB**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Tonya Butler

**Assistant Corporate Secretary**

## LOAN AGREEMENT

**LOAN AGREEMENT** (this "Agreement") dated as of September 8, 2015 between KENERGY CORP. ("Borrower"), a corporation organized and existing under the laws of the Commonwealth of Kentucky and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION ("CFC"), a cooperative association organized and existing under the laws of the District of Columbia.

### RECITALS

**WHEREAS**, the Borrower has applied to CFC for a loan or a series of loans for the purpose of refinancing certain of its existing indebtedness, as more fully described on Schedule 1 hereto, and CFC is willing to make such a loan to the Borrower on the terms and conditions stated herein; and

**WHEREAS**, the Borrower has agreed to execute one or more secured promissory notes to evidence an indebtedness in the aggregate principal amount of the CFC Commitment (as hereinafter defined).

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

### ARTICLE I

#### DEFINITIONS

**Section 1.01** For purposes of this Agreement, the following capitalized terms shall have the following meanings (such definitions to be equally applicable to the singular and the plural form thereof). Capitalized terms that are not defined herein shall have the meanings as set forth in the Mortgage.

**"Accounting Requirements"** shall mean any system of accounts prescribed by a federal regulatory authority having jurisdiction over the Borrower (including but not limited to that prescribed by the financial and statistical report required by RUS, commonly known as the "RUS Form 7"), or in the absence thereof, the requirements of GAAP applicable to businesses similar to that of the Borrower.

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

**"Amortization Basis Date"** shall mean the first calendar day of the month following the end of the Billing Cycle in which the Advance occurs, provided, however, that if the Advance is made on the first day of a Billing Cycle, and such day is a Business Day, then the Amortization Basis Date shall be the date of the Advance.

**"Average DSC Ratio"** shall mean the average of the Borrower's two highest annual DSC Ratios during the most recent three calendar years.

**"Billing Cycle"** shall mean any 3-month period ending on, and including, a Payment Date.

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

**“CFC Commitment”** shall have the meaning ascribed to it in Schedule 1.

**“CFC Fixed Rate”** shall mean (i) such fixed rate as is then available for loans similarly classified pursuant to CFC's policies and procedures then in effect, or (ii) such other fixed rate as may be agreed to by the parties and reflected on the written requisition for funds in the form attached as Exhibit A hereto.

**“CFC Fixed Rate Term”** shall mean the specific period of time that a CFC Fixed Rate is in effect for an Advance.

**“CFC Variable Rate”** shall mean (i) the rate established by CFC for variable interest rate long-term loans similarly classified pursuant to the long-term loan programs established by CFC from time to time, or (ii) such other variable rate as may be agreed to by the parties on the written requisition for funds in the form attached as Exhibit A hereto.

**“CoBank”** shall mean CoBank, ACB, a federally chartered instrumentality of the United States.

**“Conversion Request”** shall mean a written request to CFC from any duly authorized officer or other employee of the Borrower requesting an interest rate conversion available pursuant to the terms of this Agreement.

**“Debt Service Coverage (“DSC”) Ratio”** shall mean the ratio determined as follows: for any calendar year add (i) Operating Margins, (ii) Non-Operating Margins—Interest, (iii) Interest Expense, (iv) Depreciation and Amortization Expense, and (v) cash received in respect of generation and transmission and other capital credits, and divide the sum so obtained by the sum of all payments of Principal and Interest Expense required to be made during such calendar year; provided, however, that in the event that any amount of Long-Term Debt has been refinanced during such year, the payments of Principal and Interest Expense required to be made during such year on account of such refinanced amount of Long-Term Debt shall be based (in lieu of actual payments required to be made on such refinanced amount of Long-Term Debt) upon the larger of (i) an annualization of the payments required to be made with respect to the refinancing debt during the portion of such year such refinancing debt is outstanding or (ii) the payment of Principal and Interest Expense required to be made during the following year on account of such refinancing debt.

**“Default Rate”** shall mean a rate per annum equal to the interest rate in effect for an Advance plus two hundred (200) basis points.

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

**“Distributions”** shall mean, with respect to the Borrower, any dividend, patronage refund, patronage capital retirement or cash distribution to its members, or consumers (including but not limited to any general cancellation or abatement of charges for electric energy or services furnished by the Borrower). The term “Distribution” shall *not* include (a) a distribution by the



Borrower to the estate of a deceased patron, (b) repayment by the Borrower of a membership fee upon termination of a membership, or (c) any rebate to a patron resulting from a cost abatement received by the Borrower, such as a reduction of wholesale power cost previously incurred.

**“Draw Period”** shall mean the period of beginning on the date hereof and ending on the date that is one year thereafter.

**“Environmental Laws”** shall mean all laws, rules and regulations promulgated by any Governmental Authority, with which the Borrower is required to comply, regarding the use, treatment, discharge, storage, management, handling, manufacture, generation, processing, recycling, distribution, transport, release of or exposure to any Hazardous Material.

**“Equity”** shall mean the aggregate of the Borrower's equities and margins computed pursuant to Accounting Requirements.

**“Event of Default”** shall have the meaning ascribed to it in Article VI hereof.

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

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

**“Hazardous Material”** shall mean any (a) petroleum or petroleum products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls, lead and radon gas, and (b) any other substance designated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

**“Interest Expense”** shall mean an amount constituting the interest expense with respect to Long-Term Debt of the Borrower computed pursuant to Accounting Requirements. In computing Interest Expense, there shall be added, to the extent not otherwise included, an amount equal to 33-1/3% of the excess of Restricted Rentals paid by the Borrower over 2% of the Borrower's Equity.

**“Interest Rate Reset Date”** shall mean, with respect to any Advance, the first day following the expiration of the CFC Fixed Rate Term for such Advance.

**“LCTC Purchase Provisions”** shall mean the specific conditions and covenants in any Prior Loan Document requiring the Borrower to purchase subordinated debt instruments issued by CFC that may be referred to in Prior Loan Documents as “LCTCs”, “Loan Capital Term Certificates”, “Capital Certificates”, “Equity Certificates”, “Subordinated Term Certificates” or instruments with other like designations.

**“Lien”** shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set off, claim or charge of any

kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the Uniform Commercial Code.

**“Loan Documents”** shall mean this Agreement, the Note, the Mortgage and all other documents or instruments executed, delivered or executed and delivered by the Borrower and evidencing, securing, governing or otherwise pertaining to the loan made by CFC to the Borrower pursuant to this Agreement.

**“Long-Term Debt”** shall mean an amount constituting the long-term debt of the Borrower computed pursuant to Accounting Requirements.

**“Make-Whole Premium”** shall mean, with respect to any principal sum of a CFC Fixed Rate Advance paid prior to the expiration of the CFC Fixed Rate Term applicable thereto (the “Prepaid Principal Amount”), an amount calculated as set forth below. The Make-Whole Premium represents CFC’s reinvestment loss resulting from making a fixed rate loan.

(1) Compute the amount of interest (“Loan Interest”) that would have been due on the Prepaid Principal Amount at the applicable CFC Fixed Rate for the period from the prepayment date through the end of the CFC Fixed Rate Term (such period is hereinafter referred to as the “Remaining Term”), calculated on the basis of a 30-day month/360-day year, adjusted to include any amortization of principal in accordance with the amortization schedule that would have been in effect for the Prepaid Principal Amount.

(2) Compute the amount of interest (“Investment Interest”) that would be earned on the Prepaid Principal Amount (adjusted to include any applicable amortization) if invested in a United States government security with a term equivalent to the Remaining Term, calculated on the basis of a 30-day month/360-day year. The yield used to determine the amount of Investment Interest shall be based upon United States government security yields dated no more than two Business Days prior to the prepayment date in Federal Reserve statistical release H.15 (519), under the caption “U.S. Government Securities/Treasury Constant Maturities”. If there is no such United States government security under said caption with a term equivalent to the Remaining Term, then the yield shall be determined by interpolating between the terms of whole years nearest to the Remaining Term.

(3) Subtract the amount of Investment Interest from the amount of Loan Interest. If the difference is zero or less, then the Make-Whole Premium is zero. If the difference is greater than zero, then the Make-Whole premium is a sum equal to the present value of the difference, applying as the present value discount a rate equal to the yield utilized to determine Investment Interest.

**“Maturity Date”** with respect to each Note shall have the meaning ascribed to it therein.

**“Mortgage”** shall have the meaning ascribed to it in Schedule 1 hereto.

**“Mortgagee”** shall mean each of CFC, RUS, and CoBank, and each other lender which shall hereafter become a mortgagee under the terms of the Mortgage.

**“Mortgaged Property”** shall have the meaning ascribed to it in the Mortgage.

**“Non-Operating Margins–Interest”** shall mean the amount representing the interest component of non-operating margins of the Borrower computed pursuant to Accounting Requirements.

**“Note” or “Notes”** shall mean each secured promissory note, payable to the order of CFC, executed by the Borrower, dated as of even date herewith, pursuant to this Agreement as identified on Schedule 1 hereto, and shall include all substitute, amended or replacement promissory notes.

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

**“Operating Margins”** shall mean the amount of patronage capital and operating margins of the Borrower computed pursuant to Accounting Requirements.

**“Payment Date”** shall mean the last day of each of the months referred to in Schedule 1.

**“Permitted Encumbrances”** shall have the meaning ascribed to it in the Mortgage.

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

**“Prepayment Administrative Fee”** shall mean an amount equal to thirty three one-hundredths of one percent (0.33%) of the amount being prepaid.

**“Principal”** shall mean the amount of principal billed on account of Long-Term Debt of the Borrower computed pursuant to Accounting Requirements.

**“Prior Loan Documents”** shall mean, collectively, all long term loan agreements entered into prior to the date hereof by and between CFC and the Borrower, and all promissory notes delivered pursuant thereto secured under the Mortgage, other than loan agreements and notes or bonds representing loans sold, transferred assigned or otherwise endorsed by CFC to a purchaser thereof.

**“Restricted Rentals”** shall mean all rentals required to be paid under finance leases and charged to income, exclusive of any amounts paid under any such lease (whether or not designated therein as rental or additional rental) for maintenance or repairs, insurance, taxes, assessments, water rates or similar charges. For the purpose of this definition the term “finance lease” shall mean any lease having a rental term (including the term for which such lease may be renewed or extended at the option of the lessee) in excess of three (3) years and covering property having an initial cost in excess of \$250,000 other than automobiles, trucks, trailers, other vehicles (including without limitation aircraft and ships), office, garage and warehouse space and office equipment (including without limitation computers).

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

“Subsidiary” as to any Person, shall mean a corporation, partnership, limited partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Total Assets” shall mean an amount constituting the total assets of the Borrower computed pursuant to Accounting Requirements.

“Total Utility Plant” shall mean the amount constituting the total utility plant of the Borrower computed pursuant to Accounting Requirements.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

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

**B. Subsidiaries and Ownership.** Schedule 1 hereto sets forth a complete and accurate list of the Subsidiaries of the Borrower showing the percentage of the Borrower’s ownership of the outstanding stock, membership interests or partnership interests, as applicable, of each Subsidiary.

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

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

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

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

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

**F. Licenses and Permits.** The Borrower has duly obtained and now holds all licenses, permits, certifications, approvals and the like necessary to own and operate its property and business that are required by Governmental Authorities and each remains valid and in full force and effect.

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

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

operations of the Borrower from that set forth in said financial statements except changes disclosed in writing to CFC prior to the date hereof.

**I. Borrower's Legal Status.** Schedule 1 hereto accurately sets forth: (i) the Borrower's exact legal name, (ii) the Borrower's organizational type and jurisdiction of organization, (iii) the Borrower's organizational identification number or accurate statement that the Borrower has none, and (iv) the Borrower's place of business or, if more than one, its chief executive office as well as the Borrower's mailing address if different.

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

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

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

**M. No Other Liens.** As to property which is presently included in the description of Mortgaged Property, the Borrower has not, without the prior written approval of CFC, executed or authenticated any security agreement or mortgage, or filed or authorized any financing statement to be filed with respect to assets owned by it, other than security agreements, mortgages and financing statements in favor of any of the Mortgagees, except as disclosed in writing to CFC prior to the date hereof or relating to Permitted Encumbrances.

**N. Environmental Matters.** Except as to matters which individually or in the aggregate would not have a material adverse effect upon the business or financial condition of the Borrower or its Subsidiaries, (i) the Borrower is in compliance with all Environmental Laws (including, but not limited to, having any required permits and licenses), (ii) there have been no releases (other than releases remediated in compliance with Environmental Laws) from any underground or aboveground storage tanks (or piping associated therewith) that are or were present at the Mortgaged Property, (iii) the Borrower has not received written notice or claim of any violation of any Environmental Law, (iv) there is no pending investigation of Borrower in regard to any Environmental Law, and (v) to the best of the Borrower's knowledge, there has not been any release or contamination (other than releases or contamination remediated in compliance with Environmental Laws) resulting from the presence of Hazardous Materials on property owned, leased or operated by the Borrower.

## ARTICLE III

### LOAN

**Section 3.01 Advances.** CFC agrees to make one or more Advances for the purpose of refinancing certain of Borrower's existing indebtedness, as more fully described on Schedule 1 hereto, in an aggregate principal amount not to exceed the CFC Commitment. The total amount of outstanding indebtedness evidenced by the Note shall not be greater than 105% of the then outstanding principal balance of the note or notes under the Mortgage being refunded or refinanced. The Borrower shall not request, and CFC shall have no obligation to advance, an amount greater than 105% of the then outstanding principal balance of the note or notes under the Mortgage being refunded or refinanced.

The Borrower shall give CFC written notice of the date on which each Advance is to be made. Advances shall be remitted by CFC directly to the lender whose indebtedness the Borrower is refinancing. Borrower shall provide CFC with wiring instructions and/or such other information as is necessary to remit funds pursuant hereto.

At the end of the Draw Period, CFC shall have no further obligation to make Advances. The obligation of the Borrower to repay the Advances shall be evidenced by one or more Notes.

**Section 3.02 Interest Rate and Payment.** Notes shall be payable and bear interest as follows:

**A. Payments; Maturity; Amortization.**

(i) Each Note shall have a Maturity Date as set forth therein, *provided, however*, that if such date is not a Payment Date, then the Maturity Date shall be the Payment Date immediately preceding such date.

(ii) The principal amount of each Advance shall amortize over a period not to exceed twenty three (23) years and six (6) months from the date of such Advance according to the amortization method set forth in Schedule 1 hereto, *provided, however*, that such period shall not extend beyond the Maturity Date.

For each Advance, the Borrower shall promptly pay interest in the amount invoiced on each Payment Date until the first Payment Date of the Billing Cycle in which the Amortization Basis Date occurs. On such Payment Date, and on each Payment Date thereafter, the Borrower shall promptly pay interest and principal in the amounts invoiced. If not sooner paid, any amount due on account of the unpaid principal, interest accrued thereon and fees, if any, shall be due and payable on the Maturity Date. The amortization method for each Advance shall be as stated on Schedule 1 or, if not so stated, then as stated on the written requisition for such Advance submitted by the Borrower to CFC pursuant to the terms hereof.

(iii) CFC will invoice the Borrower at least ten (10) days before each Payment Date, *provided, however*, that CFC's failure to send an invoice shall not constitute a waiver by CFC or be deemed to relieve the Borrower of its obligation to make payments as and when due as provided for herein.

(iv) No provision of this Agreement or of any Note shall require the payment, or permit the collection, of interest in excess of the highest rate permitted by applicable law.

(v) Notwithstanding anything to contrary contained herein, the weighted average life of a Note shall not be greater than the weighted average remaining life of the notes being refinanced with the proceeds of such Note.

**B. Application of Payments.** Each payment shall be applied to the Obligations as follows: (i) first, to any fees, costs, expenses or charges due other than interest or principal, (ii) second, to interest accrued and unpaid, and (iii) third, the balance, if any, to the outstanding principal balance.

**C. Selection of Interest Rate and Interest Rate Computation.** Prior to each Advance on a Note, the Borrower must select in writing either a CFC Fixed Rate or the CFC Variable Rate, as follows:

(i) CFC Fixed Rate. If the Borrower selects a CFC Fixed Rate for an Advance, then such rate shall be in effect for the CFC Fixed Rate Term selected by the Borrower. CFC shall provide the Borrower with at least sixty (60) days prior written or electronic notice of the Interest Rate Reset Date for such Advance. The Borrower may then select any available interest rate option for such Advance pursuant to CFC's policies of general application. The Advance shall bear interest according to the interest rate option so selected beginning on the Interest Rate Reset Date. If the Borrower does not select an interest rate in writing prior to the Interest Rate Reset Date, then beginning on the Interest Rate Reset Date the Advance shall bear interest at the CFC Variable Rate. CFC agrees that its long-term loan policies will include a fixed interest rate option until the Maturity Date. For any Advance, the Borrower may not select a CFC Fixed Rate with a CFC Fixed Rate Term that extends beyond the Maturity Date. Interest on Advances bearing interest at a CFC Fixed Rate shall be computed for the actual number of days elapsed on the basis of a year of 365 days, until the first day of the Billing Cycle in which the Amortization Basis Date occurs; interest shall then be computed on the basis of a 30-day month and 360-day year.

(ii) CFC Variable Rate. If the Borrower selects the CFC Variable Rate for an Advance, then such CFC Variable Rate shall apply until the Maturity Date, unless the Borrower elects to convert to a CFC Fixed Rate pursuant to the terms hereof. Interest on Advances bearing interest at the CFC Variable Rate shall be computed for the actual number of days elapsed on the basis of a year of 365 days.

**Section 3.03 Conversion of Interest Rates.** The Borrower may at any time exercise any or all of the following interest rate conversion options by submitting a Conversion Request. The effective date of the interest rate conversion shall be determined by CFC pursuant to its policies of general application.

**A. CFC Variable Rate to a CFC Fixed Rate.** The Borrower may convert the interest rate on an outstanding Advance from the CFC Variable Rate to a CFC Fixed Rate without a fee. Upon such conversion, the new interest rate shall be the CFC Fixed Rate in effect on the date of the Conversion Request for the CFC Fixed Rate Term selected by the Borrower.



**B. CFC Fixed Rate to CFC Variable Rate.** The Borrower may convert the interest rate on an outstanding Advance from a CFC Fixed Rate to the CFC Variable Rate, provided that the Borrower promptly pays the invoiced amount for any applicable conversion fee calculated pursuant to CFC's long-term loan policies as established from time to time for similarly classified long-term loans. Upon such conversion, the new interest rate shall be the CFC Variable Rate in effect on the date of the Conversion Request.

**C. A CFC Fixed Rate to Another CFC Fixed Rate.** The Borrower may convert the interest rate on an outstanding Advance from a CFC Fixed Rate to a different CFC Fixed Rate by selecting a different CFC Fixed Rate Term, provided that the Borrower promptly pays the invoiced amount for any applicable conversion fee calculated pursuant to CFC's long-term loan policies as established from time to time for similarly classified long-term loans. Upon such conversion, the new interest rate shall be the CFC Fixed Rate in effect on the date of the Conversion Request for the new CFC Fixed Rate Term selected by the Borrower.

**Section 3.04 Optional Prepayment.** The Borrower may at any time, on not less than thirty (30) days prior written notice to CFC, prepay any Advance, in whole or in part. In the event the Borrower prepays all or any part of an Advance (regardless of the source of such prepayment and whether voluntary, by acceleration or otherwise), the Borrower shall pay any Prepayment Administrative Fee and/or Make-Whole Premium as CFC may prescribe pursuant to the terms of this Section 3.04. All prepayments shall be accompanied by payment of accrued and unpaid interest on the amount of and to the date of the repayment. All prepayments shall be applied (i) first to any fees, costs, expenses or charges due hereunder other than interest or principal, (ii) second, to the payment of accrued and unpaid interest, and (iii) third, the balance, if any, to the outstanding principal balance of the applicable Advance.

If the Advance bears interest at the CFC Variable Rate, then the Borrower may on any Business Day prepay the Advance or any portion thereof, provided that the Borrower pays together therewith the Prepayment Administrative Fee. If the Advance bears interest at a CFC Fixed Rate, then the Borrower may prepay the Advance on (a) the Business Day before an Interest Rate Reset Date, provided that the Borrower pays together therewith the Prepayment Administrative Fee, or (b) any other Business Day, provided that the Borrower pays together therewith the Prepayment Administrative Fee and any applicable Make-Whole Premium.

**Section 3.05 Mandatory Prepayment.** If there is a change in the Borrower's corporate structure (including without limitation by merger, consolidation, conversion or acquisition), then upon the effective date of such change, (a) the Borrower shall no longer have the ability to request, and CFC shall have no obligation to make, Advances hereunder and (b) the Borrower shall prepay the outstanding principal balance of all Obligations, together with any accrued but unpaid interest thereon, any unpaid costs or expenses provided for herein, and a prepayment premium as set forth in any agreement between the Borrower and CFC with respect to any such Obligation or, if not specified therein, as prescribed by CFC pursuant to its policies of general application in effect from time to time.

Notwithstanding the foregoing, if after giving effect to such change in the Borrower's corporate structure, Borrower, or its successor in interest, is engaged in the furnishing of electric utility services to its members and patrons for their use as ultimate consumers and is organized as a cooperative, nonprofit corporation, public utility district, municipality, or other public governmental body, Borrower shall retain the ability to request, and CFC shall retain the

obligation to make, Advances hereunder and no prepayment shall be required under this Section 3.05.

**Section 3.06 Default Rate.** If the Borrower defaults on its obligation to make a payment due hereunder by the applicable Payment Date, and such default continues for thirty days thereafter, then beginning on the thirty-first day after the Payment Date and for so long as such default continues, Advances shall bear interest at the Default Rate.

## ARTICLE IV

### CONDITIONS OF LENDING

**Section 4.01 Conditions Precedent to Closing.** The obligation of CFC to make Advances hereunder shall not become effective until the date on which the following conditions precedent have been satisfied:

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

**B. Representations and Warranties.** The representations and warranties contained in Article II shall be true on the date hereof.

**C. Closing Deliverables.** CFC shall have been furnished with the following, in form and substance satisfactory to CFC:

**(i) Documents.** (a) the executed Loan Documents, (b) certified copies of all such organizational documents and proceedings of the Borrower authorizing the transactions hereby contemplated as CFC shall require, (c) an opinion of counsel for the Borrower addressing such legal matters as CFC shall reasonably require, and (d) all other such documents as CFC may reasonably request.

**(ii) Government Approvals.** True and correct copies of all certificates, authorizations, consents, permits and licenses from Governmental Authorities (including RUS) necessary for the execution or delivery of the Loan Documents or performance by the Borrower of the obligations thereunder.

**D. Mortgage Recordation.** The Mortgage (and any amendments, supplements or restatements as CFC may require from time to time) shall have been duly filed, recorded or indexed in all jurisdictions necessary (and in any other jurisdiction that CFC shall have reasonably requested) to provide CFC a Lien, subject to Permitted Encumbrances, on all of the Borrower's real property, all in accordance with all applicable laws, rules and regulations, and the Borrower shall have paid all applicable taxes, recording and filing fees and caused satisfactory evidence thereof to be furnished to CFC.

**E. UCC Filings.** Uniform Commercial Code financing statements (and any continuation statements and other amendments thereto that CFC shall require from time to time) shall have been duly filed, recorded or indexed in all jurisdictions necessary (and in any other jurisdiction that CFC shall have reasonably requested) to provide CFC a perfected security interest, subject to Permitted Encumbrances, in the Mortgaged Property which may be perfected by the filing of a financing statement, all in accordance with all applicable laws, rules

and regulations, and the Borrower shall have paid all applicable taxes, recording and filing fees and caused satisfactory evidence thereof to be furnished to CFC.

**F. Notification of Refinancing.** On or before the first Advance, Borrower shall have notified each Mortgagee of the refunding or refinancing contemplated herein, as required by Section 2.02 of the Mortgage, with such notice to be in form and substance satisfactory to CFC.

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

**Section 4.02 Conditions to Advances.** The obligation of CFC to make each Advance hereunder is additionally subject to satisfaction of the following conditions:

**A. Requisitions.** The Borrower will requisition each Advance by submitting its written requisition to CFC, in form and substance satisfactory to CFC. Requisitions for Advances shall be made only for the purposes set forth in Schedule 1 hereto.

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

**C. Other Information.** The Borrower shall have furnished such other information as CFC may reasonably require, including but not limited to (i) feasibility studies, cash flow projections, financial analyses and pro forma financial statements sufficient to demonstrate to CFC's reasonable satisfaction that after giving effect to the Advance requested, the Borrower shall continue to achieve the DSC ratio set forth in Section 5.01.A herein, to meet all of its debt service obligations, and otherwise to perform and to comply with all other covenants and conditions set forth in this Agreement, and (ii) any other information as CFC may reasonably request.

**D. Special Conditions of Advances.** CFC shall be fully satisfied that the Borrower has complied with all special conditions to advance identified in Schedule 1 hereto.

## ARTICLE V

### COVENANTS

**Section 5.01 Affirmative Covenants.** The Borrower covenants and agrees with CFC that until payment in full of all Notes and performance of all obligations of the Borrower hereunder:

**A. Financial Ratios; Design of Rates.** The Borrower shall achieve an Average DSC Ratio of not less than 1.35. The Borrower shall not decrease its rates for electric service if it has

failed to achieve a DSC Ratio of 1.35 for the calendar year prior to such reduction subject only to an order from a Governmental Authority properly exercising jurisdiction over the Borrower.

**B. Loan Proceeds.** The Borrower shall use the proceeds of this loan solely for the purposes identified on Schedule 1 hereto.

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

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

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

**E. Annual Certificate.** Within one hundred twenty (120) days after the close of each calendar year, commencing with the year in which the initial Advance hereunder shall have been made, the Borrower will deliver to CFC a written statement, in form and substance satisfactory to CFC, either (a) signed by the Borrower's General Manager or Chief Executive Officer, or (b) submitted electronically through means made available to the Borrower by CFC, stating that during such year, and that to the best of said person's knowledge, the Borrower has fulfilled all of its obligations under this Agreement, the Note, and the Mortgage throughout such year or, if there has been a default in the fulfillment of any such obligations, specifying each such default known to said person and the nature and status thereof. The Borrower shall also deliver to CFC such other information as CFC may reasonably request from time to time.

**F. Reserved.**

**G. Financial Books; Financial Reports; Right of Inspection.** The Borrower will at all times keep, and safely preserve, proper books, records and accounts in which full and true entries will be made of all of the dealings, business and affairs of the Borrower, in accordance with Accounting Requirements. When requested by CFC, the Borrower will prepare and furnish CFC from time to time, periodic financial and statistical reports on its condition and operations. All of such reports shall be in such form and include such information as may be specified by CFC. Within one hundred twenty (120) days of the end of each calendar year during the term hereof, the Borrower shall furnish to CFC a full and complete report of its financial condition and statement of its operations as of the end of such calendar year, in form and substance satisfactory to CFC. In addition, within one hundred twenty (120) days of the end of each the Borrower's fiscal years during the term hereof, the Borrower shall furnish to CFC a full and complete consolidated and consolidating report of its financial condition and statement of its operations as of the end of

such fiscal year, audited and certified by independent certified public accountants nationally recognized or otherwise satisfactory to CFC and accompanied by a report of such audit in form and substance satisfactory to CFC, including without limitation a consolidated and consolidating balance sheet and the related consolidated and consolidating statements of income and cash flow. CFC, through its representatives, shall at all times during reasonable business hours and upon prior notice have access to, and the right to inspect and make copies of, any or all books, records and accounts, and any or all invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Borrower or in any way pertaining to its property or business.

**H. Notice of Additional Secured Debt.** The Borrower will notify CFC promptly in writing if it incurs any additional secured indebtedness other than indebtedness to CFC.

**I. Funds Requisition.** The Borrower agrees (i) that CFC may rely conclusively upon the interest rate option, interest rate term and other written instructions submitted to CFC in the Borrower's written request for an Advance hereunder, (ii) that such instructions shall constitute a covenant under this Agreement to repay the Advance in accordance with such instructions, the applicable Note, the Mortgage and this Agreement, and (iii) to request Advances only for the purposes set forth in Schedule 1 hereto.

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

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

**L. Further Assurances.** The Borrower shall execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), which may be required under any applicable law, rule or regulation, or which CFC may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created thereby. The Borrower also agrees to provide to CFC, from time to time upon request, evidence reasonably satisfactory to CFC as to the perfection and priority of the Liens created or intended to be created by the Loan Documents.

**M. Environmental Covenants.** The Borrower shall:

- (i) at its own cost, comply in all material respects with all applicable Environmental Laws, including, but not limited to, any required remediation; and
- (ii) if it receives any written communication alleging the Borrower's violation of any Environmental Law, provide CFC with a copy thereof within ten (10) Business Days after receipt, and promptly take appropriate action to remedy, cure, defend, or otherwise affirmatively respond to the matter.

**N. Limitations on Loans, Investments and Other Obligations.** The aggregate amount of all purchases, investments, loans, guarantees, commitments and other obligations described in Section 5.02.D(i) of this Agreement shall at all times be less than fifteen percent (15%) of Total Utility Plant or fifty percent (50%) of Equity, whichever is greater.

**O. Special Covenants.** The Borrower agrees that it will comply with any special covenants identified in Schedule 1 hereto.

**Section 5.02 Negative Covenants.** The Borrower covenants and agrees with CFC that until payment in full of the Note and performance of all obligations of the Borrower hereunder, the Borrower will not, directly or indirectly, without CFC's prior written consent:

**A. Limitations on Mergers.** Consolidate with, merge, or sell all or substantially all of its business or assets, or enter into an agreement for such consolidation, merger or sale, to another entity or person unless such action is either approved, as is evidenced by the prior written consent of CFC, or the purchaser, successor or resulting corporation is or becomes a member in good standing of CFC and assumes the due and punctual payment of the Note and the due and punctual performance of the covenants contained in the Mortgage and this Agreement.

**B. Limitations on Sale, Lease or Transfer of Capital Assets; Application of Proceeds.** Sell, lease or transfer (or enter into an agreement to sell, lease or transfer) any capital asset, except in accordance with this Section 5.02.B. If no Event of Default (and no event which with notice or lapse of time and notice would become an Event of Default) shall have occurred and be continuing, the Borrower may, without the prior written consent of CFC, sell, lease or transfer (or enter into an agreement to sell, lease or transfer) any capital asset in exchange for fair market value consideration paid to the Borrower if the value of such capital asset is less than five percent (5%) of Total Utility Plant and the aggregate value of capital assets sold, leased or transferred in any 12-month period is less than ten percent (10%) of Total Utility Plant. Subject to the terms of the Mortgage, if the Borrower does sell, lease or transfer any capital assets, then the proceeds thereof (less ordinary and reasonable expenses incident to such transaction) shall immediately (i) be applied as a prepayment of the Note, to such installments as may be designated by CFC at the time of any such prepayment; (ii) in the case of dispositions of equipment, material or scrap, applied to the purchase of other property useful in the Borrower's business, although not necessarily of the same kind as the property disposed of, which shall forthwith become subject to the Lien of the Mortgage; or (iii) applied to the acquisition or construction of other property or in reimbursement of the costs of such property.

**C. Limitation on Dividends, Patronage Refunds and Other Distributions.** Make any Distribution except under the following conditions:

(i) if (a) no Event of Default has occurred and is continuing and (b), after taking into account the effect of the Distribution, the total Equity of the Borrower will be at least twenty percent (20%) of its Total Assets, then the Borrower may make a Distribution in any amount.

(ii) if (a) no Event of Default has occurred and is continuing and (b), after taking into account the effect of the Distribution, the total Equity of the Borrower will be less than twenty percent (20%) of its Total Assets, then the Borrower may make a Distribution in

an amount up to thirty percent (30%) of the Borrower's total margins for the preceding calendar year.

**D. Limitations on Loans, Investments and Other Obligations.**

(i) (a) Purchase, or make any commitment to purchase, any stock, bonds, notes, debentures, or other securities or obligations of or beneficial interests in, (b) make, or enter into a commitment to make, any other investment, monetary or otherwise, in, (c) make, or enter into a commitment to make, any loan to, or (d) guarantee, assume, or otherwise become liable for, or enter into a commitment to guarantee, assume, or otherwise become liable for, any obligation of any Person if, after giving effect to such purchase, investment, loan, guarantee or commitment, the aggregate amount thereof would exceed the greater of fifteen percent (15%) of Total Utility Plant or fifty percent (50%) of Equity.

(ii) The following shall not be included in the limitation of purchases, investments, loans and guarantees in (i) above: (a) bonds, notes, debentures, stock, or other securities or obligations issued by or guaranteed by the United States or any agency or instrumentality thereof; (b) bonds, notes, debentures, stock, commercial paper, subordinated capital certificates, or any other security or obligation issued by CFC or by institutions whose senior unsecured debt obligations are rated by at least two nationally recognized rating organizations in either of their two highest categories; (c) investments incidental to loans made by CFC; (d) any deposit that is fully insured by the United States; (e) loans and grants made by any Governmental Authority to the Borrower under any rural economic development program, but only to the extent that such loans and grants are non-recourse to the Borrower; and (f) unretired patronage capital allocated to the Borrower by CFC, a cooperative from which the Borrower purchases electric power, or a statewide cooperative association of which the Borrower is a member.

(iii) In no event may the Borrower take any action pursuant to subsection (i) if an Event of Default under this Agreement has occurred and is continuing,

**E. Organizational Change.** Change its type of organization or other legal structure, except as permitted by Section 5.02.A hereof, in which case the Borrower shall provide at least thirty (30) days prior written notice to CFC together with all documentation reflecting such change as CFC may reasonably require.

**F. Notice of Change in Borrower Information.** Change its (i) state of incorporation, (ii) legal name, (iii) mailing address, or (iv) organizational identification number, if it has one, unless the Borrower provides written notice to CFC at least thirty (30) days prior to the effective date of any such change together with all documentation reflecting any such change as CFC may reasonably require.

## ARTICLE VI

### EVENTS OF DEFAULT

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

**A. Representations and Warranties.** Any representation or warranty made by the Borrower herein, or in any of the other Loan Documents, or in any certificate or financial

statement furnished to CFC hereunder or under any of the other Loan Documents shall prove to be false or misleading in any material respect.

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

**C. Other Covenants.**

**(i) No Grace Period.** Failure of the Borrower to observe or perform any covenant or agreement contained in Sections 5.01.A, 5.01.B, 5.01.D, 5.01.E, 5.01.G, 5.01.I, 5.01.N or 5.02 of this Agreement.

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

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

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

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

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

**H. Insolvency.** The Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts



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

**I. Dissolution or Liquidation.** Other than as provided in subsection H. above, the dissolution or liquidation of the Borrower, or failure by the Borrower promptly to forestall or remove any execution, garnishment or attachment of such consequence as will impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within sixty (60) consecutive days. The term "dissolution or liquidation of the Borrower", as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another corporation following a transfer of all or substantially all its assets as an entirety, under the conditions set forth in Section 5.02.A.

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

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

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

## ARTICLE VII

### REMEDIES

**Section 7.01** If any Event of Default shall occur after the date of this Agreement and shall not have been remedied within the applicable grace period therefor, then in every such event (other than an event described in Section 6.01.G, 6.01.H or 6.01.I) and at any time during the continuance of such event, CFC may:

- (i) Cease making Advances hereunder;
- (ii) Declare all unpaid principal outstanding on the Note, all accrued and unpaid interest thereon, and all other Obligations to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived;

- (iii) Exercise rights of setoff or recoupment and apply any and all amounts held, or hereafter held, by CFC or owed to the Borrower or for the credit or account of the Borrower against any and all of the Obligations of the Borrower now or hereafter existing hereunder or under the Note, including, but not limited to, patronage capital allocations and retirements, money due to the Borrower from equity certificates purchased from CFC, and any membership or other fees that would otherwise be returned to the Borrower. The rights of CFC under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which CFC may have. The Borrower waives all rights of setoff, deduction, recoupment or counterclaim;
- (iv) Pursue all rights and remedies available to CFC that are contemplated by the Mortgage and the other Loan Documents in the manner, upon the conditions, and with the effect provided in the Mortgage and the other Loan Documents, including, but not limited to, a suit for specific performance, injunctive relief or damages; and
- (v) Pursue any other rights and remedies available to CFC at law or in equity.

If any Event of Default described in Section 6.01.G, 6.01.H or 6.01.I shall occur after the date of this Agreement, then CFC's commitment to make Advances hereunder shall automatically terminate and the unpaid principal outstanding on the Note, all accrued and unpaid interest thereon, and all other Obligations shall thereupon become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived. In addition, CFC may pursue all rights and remedies available to CFC that are contemplated by the Mortgage and the other Loan Documents in the manner, upon the conditions, and with the effect provided in the Mortgage and the other Loan Documents, including, but not limited to, a suit for specific performance, injunctive relief or damages and any other rights and remedies available to CFC at law or in equity.

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

## **ARTICLE VIII**

### **MISCELLANEOUS**

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

clauses (i) or (ii) above in each case given or addressed as provided for herein. The Address for Notices of each of the respective parties is as follows:

The Borrower:

CFC:

The address set forth  
in Schedule 1 hereto.

National Rural Utilities Cooperative Finance Corporation  
20701 Cooperative Way  
Dulles, Virginia 20166  
Attention: General Counsel  
Fax # 866-230-5635

**Section 8.02 Expenses.** The Borrower shall reimburse CFC for any reasonable costs and out-of-pocket expenses paid or incurred by CFC (including, without limitation, reasonable fees and expenses of outside attorneys, paralegals and consultants) for all actions CFC takes, (a) to enforce the payment of any Obligation, to effect collection of any Mortgaged Property, or in preparation for such enforcement or collection, (b) to institute, maintain, preserve, enforce and foreclose on CFC's security interest in or Lien on any of the Mortgaged Property, whether through judicial proceedings or otherwise, (c) to restructure any of the Obligations, (d) to review, approve or grant any consents or waivers hereunder, (e) to prepare, negotiate, execute, deliver, review, amend or modify this Agreement, and (f) to prepare, negotiate, execute, deliver, review, amend or modify any other agreements, documents and instruments deemed necessary or appropriate by CFC in connection with any of the foregoing.

The amount of all such expenses identified in this Section 8.02 shall be secured by the Mortgage and shall be payable upon demand, and if not paid, shall accrue interest at the then prevailing CFC Variable Rate plus two hundred (200) basis points.

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

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

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

and delivery of this Agreement and the payment of all other amounts due under the Loan Documents.

**Section 8.06 Waiver; Modification.** No failure on the part of CFC to exercise, and no delay in exercising, any right or power hereunder or under the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise by CFC of any right hereunder, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. No modification or waiver of any provision of this Agreement, the Note or the other Loan Documents and no consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be in writing by the party granting such modification, waiver or consent, and then such modification, waiver or consent shall be effective only in the specific instance and for the purpose for which given.

**SECTION 8.07 GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.**

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

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

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

**SECTION 8.08 INDEMNIFICATION.** THE BORROWER HEREBY INDEMNIFIES AND AGREES TO HOLD HARMLESS, AND DEFEND CFC AND ITS MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS AND REPRESENTATIVES (EACH AN "INDEMNITEE") FOR, FROM, AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COSTS AND EXPENSES OF LITIGATION AND REASONABLE ATTORNEYS' FEES) ARISING FROM ANY CLAIM OR DEMAND IN RESPECT OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, THE MORTGAGED PROPERTY, OR THE TRANSACTIONS DESCRIBED IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ARISING AT ANY TIME, WHETHER BEFORE OR AFTER PAYMENT AND PERFORMANCE OF ALL OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS IN FULL, EXCEPTING ANY SUCH MATTERS ARISING SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CFC OR ANY INDEMNITEE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN SECTION 8.10 HEREOF, THE OBLIGATIONS IMPOSED UPON

THE BORROWER BY THIS SECTION SHALL SURVIVE THE REPAYMENT OF THE NOTE, THE TERMINATION OF THIS AGREEMENT AND THE TERMINATION OR RELEASE OF THE LIEN OF THE MORTGAGE.

**Section 8.09 Complete Agreement.** This Agreement, together with the schedules to this Agreement, the Note and the other Loan Documents, and the other agreements and matters referred to herein or by their terms referring hereto, is intended by the parties as a final expression of their agreement and is intended as a complete statement of the terms and conditions of their agreement. In the event of any conflict in the terms and provisions of this Agreement and any other Loan Documents, the terms and provisions of this Agreement shall control.

**Section 8.10 Survival; Successors and Assigns.** All covenants, agreements, representations and warranties of the Borrower which are contained in this Agreement shall survive the execution and delivery to CFC of the Loan Documents and the making of the Loan hereunder and shall continue in full force and effect until all of the obligations under the Loan Documents have been paid in full. All covenants, agreements, representations and warranties of the Borrower which are contained in this Agreement shall inure to the benefit of the successors and assigns of CFC. The Borrower shall not have the right to assign its rights or obligations under this Agreement without the prior written consent of CFC, except as provided in Section 5.02.A hereof.

**Section 8.11 Use of Terms.** The use of the singular herein shall also refer to the plural, and vice versa.

**Section 8.12 Headings.** The headings and sub-headings contained in this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

**Section 8.13 Severability.** If any term, provision or condition, or any part thereof, of this Agreement, the Note or the other Loan Documents shall for any reason be found or held invalid or unenforceable by any Governmental Authority or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement, the Note and the other Loan Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

**Section 8.14 Prior Loan Documents.** It is understood and agreed that the covenants set forth in this Agreement under the Article entitled "COVENANTS" shall restate and supersede all of the covenants set forth in the corresponding Article or Articles of each Prior Loan Document dealing with covenants, regardless of the specific title or titles thereof, *except for* (a) the LCTC Purchase Provisions and (b) any special covenant or other specific term set forth on Schedule 1 to any Prior Loan Document, unless otherwise explicitly agreed to in writing by CFC, or superseded by explicit reference thereto in this Agreement. For purposes of the foregoing, this Section 8.14 shall be deemed to amend all Prior Loan Documents, and notwithstanding termination of this Agreement for any reason, this Section 8.14 shall nevertheless survive and shall continue to amend each Prior Loan Document for as long as the respective Prior Loan Document is in effect, but only with respect to the matters set forth in this Section 8.14.

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

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

**Section 8.17 Rescission of Excess Commitment.** Any amount of the CFC Commitment not required for the purpose set forth in Schedule 1 shall be rescinded by CFC and the CFC Commitment shall automatically be reduced by such amount without fee.

**Section 8.18 Schedule 1.** Schedule 1 attached hereto is an integral part of this Agreement.

[Signatures appear on the following page.]

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

KENERGY CORP.

(SEAL)

By: Robert S. White  
Name: Robert S. White  
Title: Board Chairman

Attest: Brent Higginson  
Secretary

NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

(SEAL)

By: Ranyer Bravo  
Assistant Secretary-Treasurer

Attest: Kristen Matthews  
Credit Analyst

**SCHEDULE 1**

1. The purpose of this loan is to refinance up to 105% of the outstanding principal balance of certain indebtedness of the Borrower to RUS.
2. The aggregate CFC Commitment is \$27,814,894.33.
3. The Mortgage shall mean the Restated Mortgage and Security Agreement, dated as of July 1, 2003, among the Borrower, CFC, CoBank and RUS, as it may have been supplemented, amended, consolidated, or restated from time to time.
4. The Note executed pursuant hereto and the amortization method for such Note is as follows:

LOAN NUMBER	AMOUNT	AMORTIZATION METHOD
KY065-A-9014	\$27,814,894.33	Level Debt Service

5. The Payment Date months are February, May, August and November.
6. The Subsidiaries of the Borrower referred to in Section 2.01.B are: NONE.
7. The date of the Borrower's balance sheet referred to in Section 2.01.H is December 31, 2014.
8. The Borrower's exact legal name is: KENERGY CORP.
9. The Borrower's organizational type is: Corporation.
10. The Borrower is organized under the laws of the Commonwealth of: Kentucky.
11. The Borrower's organizational identification number is: 0471117.
12. The place of business or, if more than one, the chief executive office of the Borrower referred to in Section 2.01.I is: 6402 Old Corydon Road, Henderson, KY 42419.
13. The Governmental Authority referred to in Section 2.01.J is: Kentucky Public Service Commission.
14. The special conditions of closing referred to in Section 4.01.G are as follows: None.
15. The special conditions of advance referred to in Section 4.02.D are as follows: None.
16. The special covenant(s) referred to in Section 5.01.O is (are) as follows: None.
17. The address for notices to the Borrower referred to in Section 8.01 is: P.O. Box 18, Henderson, KY 42419.



**EXHIBIT A**



**Loan Funds Requisition Statement  
Refinance of RUS Loans**

Borrower Name: \_\_\_\_\_  
Date of Advance: \_\_\_\_\_

Co-op ID: \_\_\_\_\_

Amount requested to prepay the following RUS loans:

Loan Designation and Account No.	Principal to be Paid	Interest to be Paid	Total Payment
Total amount to be wired directly to RUS by CFC for Borrower			

**Officer's Certification**

I hereby certify that as of the date below: (1) I am duly authorized to make this certification and to request funds on behalf of the Borrower (each such request, an "Advance") in accordance with the loan agreement governing the Advance (the "Loan Agreement"); (2) no Event of Default (as defined in the Loan Agreement) has occurred and is continuing; (3) I know of no other event that has occurred which, with the lapse of time and/or notification to CFC of such event, or after giving effect to the Advance, would become such an Event of Default; (4) all of the representations and warranties made in the Loan Agreement are true; (5) the Borrower has satisfied each other condition to the Advance as set forth in the Loan Agreement; and (6) the proceeds of the Advance will be used only for the purposes permitted by the Loan Agreement. I hereby authorize CFC to make Advances on the following terms, and hereby agree that such terms shall be binding upon Borrower under the provisions of the Loan Agreement:

Facility No.	Advance No.	Advance Amount	Advance Term (Years)	Loan Maturity	Amortization Type	Interest Rate	Rate Term	Rate Maturity	Principal Deferral (Years)	1st Prin Pymt Date
<b>Total</b>										

Certified By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Please fax to CFC at 703.467.5652 ATTN: \_\_\_\_\_ (AVP)

**Kenergy Corp.**  
**RUS Calculation of TIER, OTIER, and DSCR**  
**Case No. 2021-00066**  
**Exhibit 34 (Updated with 2020 & 2021 monthly data)**

	<b>RUS Form 7 Reference</b>	<b>January 2020</b>	<b>February 2020</b>	<b>March 2020</b>	<b>April 2020</b>	<b>May 2020</b>	<b>June 2020</b>	<b>July 2020</b>	<b>August 2020</b>	<b>September 2020</b>	<b>October 2020</b>	<b>November 2020</b>	<b>December 2020</b>	<b>Total 2020</b>
Interest on Long-Term Debt	A Part A, Column b, Line 16	398,413	372,434	396,007	388,860	396,488	384,514	382,291	331,049	321,500	328,556	317,790	322,560	4,340,462
Depreciation and Amortization Expense	B Part A, Column b, Line 13	1,133,835	1,132,711	1,137,039	1,138,990	1,141,816	1,144,482	1,147,038	1,149,547	1,152,564	1,154,564	1,157,904	1,160,542	13,751,032
Operating Margin	C Part A, Column b, Line 21	696,740	274,462	99,161	(273,366)	(596,787)	73,652	1,151,837	156,166	(626,456)	(404,178)	(246,168)	250,070	555,133
Net Margin	D Part A, Column b, Line 29	840,897	413,060	211,139	(141,366)	(457,644)	232,036	1,283,055	223,285	(531,206)	(349,978)	(193,826)	300,297	1,829,749
Cash Patronage Retirements from Lenders	E Part I, Column a, Line 2.b.													312,788
Debt Service Billed	F Part N, Column d, Total													11,382,889
TIER = (D + A) / A														1.42
OTIER = (C + A + E) / A														1.20
DSCR = (D + A + B) / F														1.75

	<b>RUS Form 7 Reference</b>	<b>January 2021</b>	<b>February 2021</b>	<b>March 2021</b>	<b>April 2021</b>	<b>May 2021</b>	<b>June 2021</b>	<b>July 2021</b>	<b>August 2021</b>	<b>September 2021</b>	<b>October 2021</b>	<b>November 2021</b>	<b>December 2021</b>	<b>Total 2021</b>
Interest on Long-Term Debt	A Part A, Column b, Line 16	323,159	296,030											619,189
Depreciation and Amortization Expense	B Part A, Column b, Line 13	1,164,099	1,168,116											2,332,215
Operating Margin	C Part A, Column b, Line 21	1,291,144	465,146											1,756,290
Net Margin	D Part A, Column b, Line 29	1,344,233	517,325											1,861,558
Cash Patronage Retirements from Lenders	E Part I, Column a, Line 2.b.													
Debt Service Billed	F Part N, Column d, Total													
TIER = (D + A) / A														N/A
OTIER = (C + A + E) / A														N/A
DSCR = (D + A + B) / F														N/A

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

1

2 **Item 14)** Refer to the Thompson Testimony, page 5, lines 5–10. The last refinancing case was  
3 approved in Case No. 2015-00191. Explain whether Kenergy has examined other opportunities to  
4 lower its debt costs.

5

6 **Response)** In case No. 2015-00191, Kenergy refinanced all remaining FFB and RUS notes that did  
7 not have a prepayment penalty. Prepayment penalties on all the remaining notes made them  
8 uneconomical to refinance.

9 The 2018 Farm Bill made significant changes to the RUS Cushion of Credit (“CoC”) program  
10 (see page from the Federal Register attached to this response); prohibiting any new deposits into the  
11 CoC after December 20, 2018, and reducing the interest rate paid on CoC balances from 5% down to  
12 4% on October 1, 2020 and down to the 1-year Treasury rate on October 1, 2021. The 2018 Farm Bill  
13 also permitted borrowers to use CoC funds to pay off any RUS or FFB notes without prepayment  
14 penalty prior to September 30, 2020. Kenergy took advantage of this provision and strategically paid  
15 off its highest interest rate FFB and RUS notes (approximately \$15.9 million in notes during 2019, and  
16 \$18.0 million in notes during 2020) using Kenergy’s CoC funds. Kenergy avoided approximately \$10  
17 million in prepayment penalties and reduced annual interest expense from \$5,145,692 in its last rate  
18 case to \$3,980,637 in this case; a reduction in interest expense of \$1,165,055. See Exhibit JW-2,  
19 Reference Schedules 1.10 and 1.11 for the proforma adjustments to interest expense.

20 Since both TIER and OTIER include interest expense in the calculation, the margin  
21 requirement in this case is also \$1.3 million lower than Kenergy’s last rate case. Required net margins  
22 were \$5.2 million in 2015 based on a 2.0 TIER, versus \$3.9 million in this case based on a 1.85  
23 OTIER.

24

25 **Witness)** Steve Thompson

Telephone: (202) 690-4492. Email: [Thomas.Dickson@usda.gov](mailto:Thomas.Dickson@usda.gov).

• **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

**Title:** Rural Cooperative Development Grants.

**OMB Number:** 0570-0006.

**Expiration Date of Approval:** December 31, 2019.

**Type of Request:** Intent to extend the clearance for collection of information under RD Instruction 4284-F, Rural Cooperative Development Grants.

**Abstract:** The primary purpose of the Rural Business-Cooperative Service (RBS) is to promote understanding, use, and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The primary objective of the Rural Cooperative Development Grants program is to improve the economic condition of rural areas through cooperative development. Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria.

**Estimate of Burden:** Public reporting burden for this collection of information is estimated to average 15 minutes to 96 hours per response.

**Respondents:** Nonprofit corporations and institutions of higher education.

**Estimated Number of Respondents:** 55.

**Estimated Number of Responses per Respondent:** 8.56.

**Estimated Number of Responses:** 471.

**Estimated Total Annual Burden on Respondents:** 7,264 hours.

Copies of this information collection can be obtained from Robin M. Jones, Innovation Center, at (202) 772-1172, Email: [robin.m.jones@usda.gov](mailto:robin.m.jones@usda.gov).

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Bette B. Brand,**

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2019-11983 Filed 6-6-19; 8:45 am]

BILLING CODE 3410-XY-P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### Announcement of New Cushion of Credit Program Provisions

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Utilities Service (RUS), a Rural Development agency of

the United States Department of Agriculture, is issuing this notice regarding the new provisions affecting RUS borrower participation in the Cushion of Credit (CoC) program pursuant to the Agriculture Improvement Act of 2018, (the 2018 Farm Bill).

**DATES:** Effective December 20, 2018, all future deposits into CoC accounts have been prohibited; however, withdrawal from these accounts is permitted for prepayment on RUS direct or guaranteed loans, and without penalty.

**FOR FURTHER INFORMATION CONTACT:** If you have other questions or concerns, please send your questions or comments to: [rd.nfaoc.tesb@stl.usda.gov](mailto:rd.nfaoc.tesb@stl.usda.gov), or you can contact Steven Tempia, telephone number: (314) 457-4088. A Rural Development representative will follow up with a response by email or phone. Additionally, RUS will maintain FAQs on its web page with respect to CoC prepayments.

**SUPPLEMENTARY INFORMATION:** Effective December 20, 2018, all future deposits into CoC accounts have been prohibited; however, withdrawal from these accounts is permitted for prepayment on RUS direct or guaranteed loans, and without penalty. Pursuant to Section 6503 of the 2018 Farm Bill (H.R. 2 (115th)), no new CoC deposits could be accepted as of December 20, 2018. With respect to existing CoC deposits, Section 6503 altered the prior, fixed interest rate with phased in interest rate reductions over the next two years. The current 5 percent rate will be paid until the end of fiscal year 2020, September 30, 2020. Beginning on October 1, 2020, CoC deposits will earn 4 percent interest until September 30, 2021. Starting on October 1, 2021 and thereafter, account balances will earn the applicable, variable 1-year Treasury rate.

Additionally, pursuant to Section 6503, from December 20, 2018 until September 30, 2020, RUS borrowers, may, at their sole discretion, apply their CoC balances to prepay their outstanding loans made or guaranteed under the Rural Electrification Act, 7 U.S.C. 901 *et seq.*, whether direct RUS loans or Federal Financing Bank guaranteed loans. The principal portion of the loan that is prepaid with CoC balances during this period will not be subject to a prepayment premium. With respect to RUS direct loans that prepay using CoC accounts during the period, all terms and conditions of the loan, or a prepayment agreement, if any, that restrict or qualify such prepayment shall be waived. Prepayments using funds not in CoC accounts will remain subject to existing agreements.

**Instructions:** Unless otherwise directed, borrowers requesting to prepay loan balances with CoC accounts will have the amount specified applied first to outstanding interest and fees, and then to outstanding principal, pursuant to their loan agreements. Borrowers must also indicate which accounts they would like to prepay, otherwise such amounts will be applied to the oldest debt accounts first. If a borrower requests an entire prepayment to outstanding principal but does not provide for an additional payment to cover outstanding interest and fees, such payment will be applied first to interest and fees. At the borrower's request, a prepayment calculation will be provided to confirm the amount due for individual accounts.

Should borrowers choose to supplement additional non-CoC funds to prepay additional loan accounts, or portions thereof, the associated premium will be applied to that portion of the prepayment.

In order that borrower's prepayments are fulfilled as requested, borrowers should submit the following information to: [rd.nfaoc.tesb@stl.usda.gov](mailto:rd.nfaoc.tesb@stl.usda.gov) with the subject line title "CUSHION OF CREDIT PREPAY REQUEST" and the following:

(1) The dollar amount of the CoC to be applied;

(2) The specific loan advance accounts to be prepaid;

(3) The method in which they wish CoC balances to be applied (optional);

(4) Whether the borrower intends to supplement the prepayment with additional funds and the amount of such supplemental funds; and

(5) Contact information to coordinate prepayment, and for any necessary correspondence (*i.e.* notice as to whether any amounts are missing pursuant to their specific request).

All requests will be promptly processed, and the transactions will be reflected on the next Statement of Account and Transactions (Statement) after the prepayment is made. If the Statement does not reflect the correct application, please contact [rd.nfaoc.tesb@stl.usda.gov](mailto:rd.nfaoc.tesb@stl.usda.gov) immediately.

**Chad Rupe,**

Acting Administrator, Rural Utilities Service.

[FR Doc. 2019-11924 Filed 6-6-19; 8:45 am]

BILLING CODE P

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

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**Item 15)** Refer to the Thompson Testimony, page 5, lines 10–12.

- a. Explain whether the statement means that since 2015, vegetation management contractor costs increased \$1.8 million each year or in total since 2015.
- b. Explain how often Kenergy bids out its vegetation management contract and for what length of time.
- c. Provide the annual amounts budgeted for vegetation management annually, the amounts actually spent annually, the annual number of miles cleared and treated, and the annual number of miles required per the vegetation management contract.
- d. Provide the amount of annual right-of-way tree trimming expense budgeted, the amount actually spent, and the annual number of miles cleared since Kenergy's last rate case.
- e. Explain whether Kenergy only bid out the circuits to be trimmed in 2021, and if so, explain why a multi-year request for proposal was not issued and whether this contributed to the higher 2021 cost.
- f. Provide the Request for Proposals and the recommendation report to management.

**Response)**

- a. The statement means in total since 2015. The pro-forma contractor vegetation management expense allowed in Case No. 2015-00312 was \$2,755,357. Kenergy has requested a pro-forma expense of \$4,477,636 in this proceeding, which represents an increase of \$1,722,279.
- b. Kenergy has been bidding out its vegetation management contract annually, for a one-year term, for 2020 and 2021 work.
- c. Item 15 c and d page 1 of 1 attached contains the above referenced information.
- d. Item 15 c and d page 1 of 1 attached contains the above referenced information.

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

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e. Yes, only 2021 work was bid out. The multi-year contract was considered but not utilized for the 2021 bid because the contractors were required to physically review each circuit before submitting their fixed bid. Contractors are not inclined to physically review multi-years of planned circuits without any assurance of receiving the bid. Kenergy does not feel this decision contributed to the higher cost.

f. Item 15 f attached contains the Request for Proposals. There is not a recommendation report to the CEO for the 2021 Vegetation Management bids. The Vice President of Operations included the Vegetation Management awarded contract cost in his 2021 Overall Operations department Budget sent to the CEO. The CEO approved the Overall Kenergy 2021 budget and the Board of Directors approved the 2021 Overall Kenergy Budget at its December 7, 2020 meeting.

**Witness)** Jeff Hohn

Kenergy Corp.  
Case No. 2021-00066  
VEGETATION MANAGEMENT  
2015-2021

Item 15 c and d PSC informaton request No. 1

ROW	DESCRIPTION	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)
		2015	2015	2015	2016	2016	2016	2017	2017	2017				
		ACTUAL	BUDGET	ACTUAL	ACTUAL	BUDGET	ACTUAL	BUDGET	ACTUAL	BUDGET	ACTUAL			
1	VEG MNGT-TREE TRIMMING	\$ 2,725,958	\$ 2,710,983	1,108.35	\$ 2,794,710	\$ 2,735,381	1,121.86	\$ 2,764,793	\$ 2,735,046	1,095.31				
2	VEG M(MAINT ON CAPITAL)	\$ -	\$ 6,000		\$ 4,977	\$ 6,000		\$ 3,891	\$ 6,000					
3	VEG MNGT-SPRAYING	\$ 111,791	\$ 110,000	1,039.53	\$ 62,852	\$ 110,000	242 acres	\$ 94,768	\$ 110,000	361.13 acres				
4	VEG MNGT-JOB ORDERS	\$ 129,149	\$ 135,000		\$ 133,042	\$ 135,000		\$ 91,996	\$ 135,000					
5	SUBSTATION LOT SPRAYING													
6	VEG MNGT - STORMS	\$ -	\$ 4,000		\$ 1,530	\$ 4,000		\$ 2,089	\$ 4,000					
7	TOTAL	\$ 2,966,899	\$ 2,965,983		\$ 2,997,111	\$ 2,990,381		\$ 2,957,537	\$ 2,990,046					
8	Annual miles required per contract			(1)			(1)			(1)				
9		2018	2018	2018	2019	2019	2019	2020	2020	2020	2021	2021	2021	
10		ACTUAL	BUDGET	ACTUAL	ACTUAL	BUDGET	ACTUAL	ACTUAL	BUDGET	ACTUAL	ACTUAL	BUDGET	ACTUAL	
11		ACTUAL	BUDGET	MILES CLEARED	ACTUAL	BUDGET	MILES CLEARED	ACTUAL	BUDGET	MILES CLEARED	ACTUAL	BUDGET	MILES CLEARED	
12	VEG MNGT-TREE TRIMMING	\$ 2,557,352	\$ 2,555,800	1,002.38	\$ 2,359,977	\$ 2,606,916	805.01	\$ 2,992,622	\$ 3,005,712	685.29		\$ 4,333,607		
13	VEG M(MAINT ON CAPITAL)	\$ 16,595	\$ 6,000		\$ 9,585	\$ 9,900		\$ 13,778	\$ 10,173			\$ 10,377		
14	VEG MNGT-SPRAYING	\$ 86,771	\$ 110,000	327.13 acres	\$ 90,926	\$ 110,000	336.08 acres	\$ 127,079	\$ 126,828	311.74 acres		\$ 129,764		
15	VEG MNGT-JOB ORDERS	\$ 123,354	\$ 135,000		\$ 113,376	\$ 135,000		\$ 154,343	\$ 152,600			\$ 155,652		
16	SUBSTATION LOT SPRAYING				\$ 19,334	\$ 19,330								
17	VEG MNGT - STORMS	\$ 8,797	\$ 4,000		\$ 4,511	\$ 4,000		\$ 14,716	\$ 4,000			\$ 4,080		
18	TOTAL	\$ 2,792,869	\$ 2,810,800		\$ 2,597,709	\$ 2,885,146		\$ 3,302,537	\$ 3,299,313		\$ -	\$ 4,633,480		
19	Annual miles required per contract			(1)			(1)							
20	TREE TRIMMING									685.00				911.67
21	SPRAYING									312.00	ACRES		MILES	520.51

(1) These contracts did not specify miles by circuit.

**Explanation:**

Total line miles and the average mileage per year to satisfy a 6-year cycle: Total OH line miles as of report pulled, 10/27/2020 = 5,439.83 miles, average yearly per mile for 6-year cycle = 907 miles

Kenergy's plan is to clear 1,000 miles per year to have a 5.5 cycle average to give us some room and not go over the 6-year cycle due to circuits being due in the first quarter and second quarter of the following year.

2019's 805.01 miles was less than the 907 miles because it took some of the 6-month buffer.

2020's budgeted 630 miles was less than the 907 miles because it took more or all of the 6-month buffer.

2021's budgeted 912 miles has us right on the 6-year cycle with a very slim 5-mile buffer and is how the circuit totals added up.

**Miles Cleared By Year**

2010	1,152
2011	1,125
2012	1,126
2013	1,110
2014	1,123
2015	1,108
2016	1,108
2017	1,095
2018	1,002
2019	805
2020	685
Budgeted 2021	912





# **Vegetation Management**

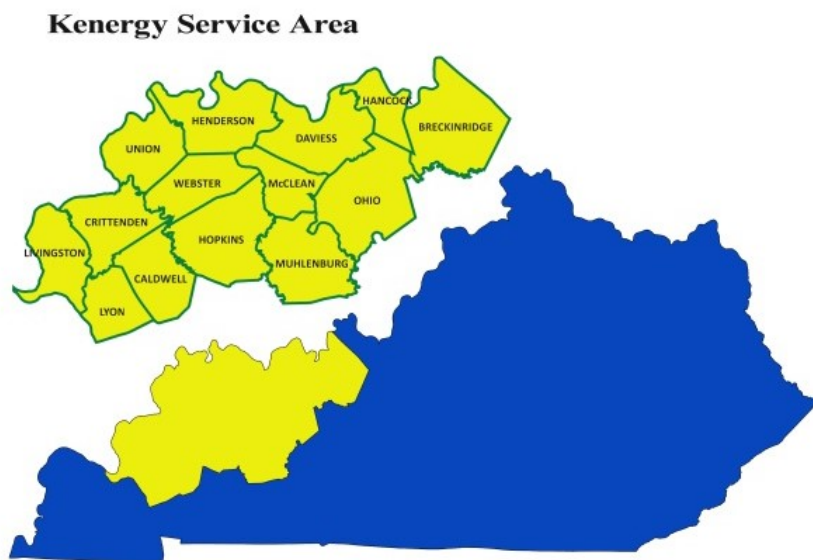
## **Request for Proposal**

**July 17, 2020**

## Section I: Overview

### 1. Company Overview

Kenergy Corp. (Kenergy), a member-owned electric distribution cooperative, serves in excess of 57,000 households, commercial enterprises and industries in all or portions of 14 western Kentucky counties. They include Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Muhlenberg, Ohio, Union and Webster.



### 2. Purpose

Kenergy is issuing this Request for Proposals (RFP) to procure **one or more** qualified Independent Contractor(s) (Contractor) to perform vegetation management control activities including line clearance and herbicide application on Kenergy's electric distribution system for 2021.

Kenergy is seeking **one or more** Contractor(s) committed to controlling total cost while maintaining a high-performance focus. This relationship will focus on delivering the highest total value in the following areas: safety, quality, productivity, member satisfaction, cost effectiveness and adherence to schedule.

**Kenergy will accept proposals for line clearance only, herbicide application only or both activities.**

## Section II: Technical Requirements

### 1. Scope of Work

The scope of work includes performing the following vegetation management activities on Kenergy's electric distribution facilities.

#### A. Line Clearance

##### i. Routine Circuit Maintenance

Vegetation management control activities performed on an entire circuit, including all primary, secondary, neutral, service line conductors and associated overhead electrical facilities using the below specifications. Work should also include clearing of rights-of-way floors (i.e. mowing, stubble spraying, etc.).

Tree Pruning: Contractor is responsible to obtain the following minimum tree and conductor clearances. **Contractor will be required to remove limbs back to the previous cut. All clearances are minimum distances. Proper pruning techniques may require greater clearances.**

- Primary: All multi-phase & single-phase conductors:
  - \*\* All pine trees shall be conductor to sky clearance\*\***
- Primary: All multi-phase conductors:
  - 20 feet overhead clearance
  - 20 feet side clearance (40 feet total)
  - 14 feet under phase clearance
- Primary: All single-phase conductors:
  - (20) feet overhead
  - 10 feet side clearance (20 feet total)
  - 14 feet under phase clearance
- Secondary: All open wire conductors:
  - 10 feet overhead
  - 10 feet of side clearance (20 feet total)
  - 10 feet under phase clearance
- Service Line: All service line conductors:
  - All vegetation conditions that pose an immediate safety and/or reliability threat shall be eliminated

Strategic Tree Removal: Contractor is responsible to remove all undesirable trees and brush that are not suitable for herbicide application. This includes all trees located within 10 feet of either side of the outside phase.

Contractor must obtain signed permission from members for removals and submit to Kenergy the names and addresses for all member refusals associated with tree removals. All trees removed must be stump treated with appropriate herbicide application. The names and address of all members that refuse stump treatment must be submitted to Kenergy.

Herbicide Application: All undesirable trees and brush less than 10 feet in height that are located within 20 feet of either side of the multi-phase pole centerline and within 10 feet of either side of the single-phase pole centerline must be treated with an appropriate herbicide, using application techniques and chemical formulas approved by Kenergy.

Hazardous Tree Removal: Contractor is responsible to identify and remove all hazardous trees that pose a high degree of reliability risk to single-phase and multi-phase conductors. A hazardous tree will be defined as a large mature tree that poses imminent risk to the conductors. Contractor shall report the locations, number, and tree type of all hazardous tree removals to Kenergy.

*Circuit single phase, multi-phase and total mileage identified on Exhibit 1 is correct to the best of Kenergy's knowledge. The Contractor is solely responsible to verify mileage during bid preparation and pricing and notify Kenergy of any changes to the project mileage within the returned RFP.*

## *ii. Service Orders and Work Orders*

Vegetation management control activities performed on a specific portion of a circuit identified by Kenergy through a Kenergy generated Service Order or Work Order.

The following specifications shall be used when clearing vegetation for proposed line extensions. **All clearances are minimum distances. Proper pruning techniques may require greater clearances.**

- Primary: All multi-phase conductors:
  - 20 feet side clearance (40 feet total)
  - From centerline, ground to sky
- Primary: All single-phase conductors:
  - 10 feet side clearance (20 feet total)
  - From centerline, ground to sky
- Secondary: All bundled conductors (triplex or quadraplex):

- 6-foot radius clearance

Construction & Access Requirements: Where appropriate, Contractor is responsible to clear a path along proposed line route for ingress, egress and safe working conditions for Kenergy Personnel and equipment. Path shall be clear of downed vegetation and any undergrowth.

Stump Requirements: Cut trees at ground level, leaving no stumps above ground.

Hazardous Tree Removal: Contractor is to remove all hazardous trees that pose a high degree of reliability risk to single-phase, multi-phase, and service conductors. A hazardous tree will be defined as a large mature tree that poses imminent risk to the conductors.

Contractor is solely accountable for the following activities:

- Member Notification: Contractor must consistently maintain a minimum of two weeks advanced member notification of field crew execution. Contractor is to supply an appropriate number of pre-work planners to conduct this notification.
- Pre-Work Planning: Contractor must utilize a pre-work planner(s) to assess and plan work scope a minimum of two weeks in advance of field crew execution. Contractor is responsible to manage all member refusals and file a written notification to Kenergy of all cases. Kenergy will work with Contractor pre-work planner to optimize the use of Kenergy's Trade-A-Tree program. Contractor will be responsible to provide a list to Kenergy of hazardous tree removals.
- Quality Assurance: Contractor must complete all quality assurance activities including written certification of quality assurance per circuit. Kenergy will conduct quality control inspections and issue a quality deficiency notice, as appropriate, on circuit miles completed and submitted by the Contractor within two weeks. Contractor must complete all quality control rework identified by Kenergy within one week of the notice

## **B. Herbicide Application**

Herbicide Application – Vegetation management control activities involving foliar application to Kenergy's rights of way and bare ground application to Kenergy's substations and lots. Foliar application is performed in the year following line clearance. Bare ground application is performed every year.

Contractor is solely accountable for the following activities:

- Contractor will achieve a 95% kill for all foliar application and 100% kill for bare ground application.

- Kenergy must approve, in advance, all chemical formulas used for foliar and bare ground application.
- Kenergy must approve, in advance, all application techniques used for foliar and bare ground application.
- Member Notification: Contractor must consistently maintain a minimum of two weeks advanced member notification of field crew execution. Contractor is to supply an appropriate number of pre-work planners to conduct this notification.
- Pre-Work Planning: Contractor must utilize a pre-work planner(s) to assess and plan work scope a minimum of two weeks in advance of field crew execution. Contractor is responsible to manage all member refusals and file a written notification to Kenergy of all cases.
- Quality Assurance: Contractor must complete all quality assurance activities including written certification of quality assurance per circuit. Kenergy will conduct quality control inspections and issue a quality deficiency notice, as appropriate, on work completed and submitted by the Contractor within two weeks. Contractor must complete all quality control rework identified by Kenergy within one week of the notice

## **2. Proper Pruning Techniques**

Directional pruning techniques are used on Kenergy's system, where appropriate. Pruning activities are based on accepted arboricultural standards, including ANSI A300 – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices (Pruning), International Society of Arboriculture Best Management Practices, Utility Pruning of Trees – Special Companion Publication to the ANSI A300 Standard and Pruning Trees Near Electric Utility Lines, A Field Pocket Guide for Qualified Line-Clearance Tree Workers by Dr. Alex Shigo.

## **3. Schedule**

For line clearance work, the successful Contractor(s) must initiate personnel and equipment mobilization on the Kenergy system no later than January 11, 2021. The entire scope of work must pass final Kenergy quality control no later than December 31<sup>st</sup> of each year.

For herbicide, the successful Contractor(s) must initiate personnel and equipment mobilization on the Kenergy system no later than April 5, 2021. The entire scope of work must pass final Kenergy quality control no later than September 30 of each year.

## **4. Reporting**

Contractor(s) will maintain and submit to Kenergy weekly timesheets that track labor and equipment utilization that addresses the scope of work. A copy of each crew timesheet will also be submitted with each invoice. In addition, the following minimum circuit work summary details will be included:

- # of cuts and trims
- # of strategic removals
- # of hazardous tree removals
- # of spans and ft brush (skytrim)
- Equipment down time status
- Herbicide: # of acres, gallons used and locations applied

Kenergy reserves the right to modify reporting requirements by adding or deleting items.

### **5. Invoicing**

Contractor shall invoice Kenergy monthly, no later than the 5<sup>th</sup> calendar day of each month, for all work completed during the previous month.

### **6. Sub-Contractors**

List any sub-contractors that are included as a part of your RFP response.

Sub-Contractor	Role

### **7. Trade Classification and Union Affiliation**

Please list trade classifications and union affiliations for your or your sub-contractor employees in the table provided below.

Trade Classification	Union Affiliation (if none, so state)

## **8. Communication**

The following modes and instances of communication will be used for the duration of work:

- A. Contractor shall ensure that all crews and General Foremen have immediate telephone communications with Kenergy's Control Center. Kenergy will provide the proper telephone numbers.
- B. Contractor shall e-mail to Kenergy the specific crew locations each Monday by 7:00 AM (CST). Additionally, Contractor shall e-mail Kenergy the specific crew locations each time crews change locations from one circuit to another. Also, Contractor shall notify Kenergy when crews will be working non standard work days or hours.
- C. Contractor shall immediately notify Kenergy by telephone of any safety violation or incident and provide a written follow-up report within 48 hours of the occurrence detailing the event, the root cause of the event and the steps the Contractor will take in the future to prevent a reoccurrence. Contractor shall develop a Report Form, approved by Kenergy, to be used for this purpose.
- D. Contractor shall immediately notify Kenergy of any instances in which a member issue has a likelihood of being elevated in status with Kenergy
- E. Periodic project update meetings will be held between Kenergy and Contractor. Such meetings will be held on an as-needed basis, but will be no less frequent than every eight (8) weeks.

## **9. Resource Availability and Response Time**

Kenergy requires Contractor to have all system resources available 24/7 during the contract term for any emergency restoration work that may emerge on the Kenergy system. Contractor cannot at any time remove these personnel and/or equipment resources without prior approval from Kenergy. Crew(s) will be required to report to the designated Kenergy work location within 1 hour of notification.

## **10. Work Time**

Normal working days will be Monday through Saturday. Contractor must coordinate their standard working schedule with Kenergy.

## **11. Debris Disposal**





The disposal and associated cost will be the full responsibility of Contractor and will be performed in accordance with all local, state and federal regulations. Kenergy will work with Contractor in identifying debris disposal opportunities.

## ***12. Contractor Safety and Environmental Rules***

Kenergy's goal is to be a leader in safety and environmental stewardship. Contractor is expected to be knowledgeable of and adhere to all federal, state, local and Contractor company specific rules and regulations pertaining to safety and the environment. **A complete bid submission must include responses to and required attachments as found in Exhibit 1 – Safety Information.**

## ***13. Contractor Proposed Organization Structure***

Provide an organization chart describing your proposed company structure to support this RFP response. Include at a minimum title, reporting relationship and number of Full Time Equivalent (FTEs).

## ***14. Contractor Mobilization Plan***

Provide a mobilization plan outline that includes key milestones and associated timeframes to support the January 11, 2021 deadline for project mobilization and initiation. For example, describe how you plan to hire and retain qualified employees to fulfill your obligations within this project.

### Section III: Pricing

#### Line Clearance

Kenergy is requesting pricing for Contractor to perform vegetation management control activities on Kenergy's electric distribution facilities.

- a. Routine Circuit Maintenance - Please provide TWO lump sum per circuit prices for those circuits identified below. One price is to trim the circuit **NOT** removing overhang, and the second price is to trim the circuit and **REMOVE ALL** overhang.

#### 2021 Proposed Circuits

2021 RCM CIRCUITS WITH COMPLETION DATES			
Substation	Feeder	Miles	COMPLETION DATE
011-Thruston	1- Hwy 405 North	14.18	DECEMBER 2021
011-Thruston	2- Wrights Acres	49.37	DECEMBER 2021
011-Thruston	3- Graham Lane	9.34	DECEMBER 2021
011-Thruston	4- Thruston	4.15	DECEMBER 2021
011-Thruston	5- Lamplite Estates	20.7	DECEMBER 2021
012-Lewisport	1- Morton Lane	10.46	DECEMBER 2021
017- Dermont	1- Reid Road	7.15	DECEMBER 2021
017- Dermont	4- Locust Hills	14.02	DECEMBER 2021
017- Dermont	5- Ensor	30.99	DECEMBER 2021
019- East Owensboro	1- Gateway Commons	1.06	DECEMBER 2021
019- East Owensboro	2- Covent Gardens	4.8	NOVEMBER 2021
019- East Owensboro	3- Fire Station	4.73	DECEMBER 2021
019- East Owensboro	4- Memorial Garden	4.94	DECEMBER 2021
019- East Owensboro	5- Brownwood Manor	5.71	DECEMBER 2021
023- Masonville	1- Velvet Farm	8.53	OCTOBER 2021
023- Masonville	2- Stoney Bk Subd.	8.21	OCTOBER 2021
023- Masonville	3- Masonville	33.01	NOVEMBER 2021
025- Philpot	1- Pleasant Valley	41.68	OCTOBER 2021
025- Philpot	5- Karnes Grove Rd	40.12	NOVEMBER 2021
025- Philpot	7- Cedar Hills	32.82	DECEMBER 2021
032- St. Joe	1- Curdsville	40.32	DECEMBER 2021
032- St. Joe	2- West Louisville	40.85	DECEMBER 2021
032- St. Joe	3- Possum Trot Rd	21.41	DECEMBER 2021
051- Hanson	3- Stringtown	8.77	DECEMBER 2021
051- Hanson	4- Brown Road	56.49	DECEMBER 2021
062- Dixon	1- Hwy 41A North	31.74	SEPTEMBER 2021
062- Dixon	2- Dixon	34.18	NOVEMBER 2021
062- Dixon	3- Clay	62.34	DECEMBER 2021
064- Weaverton	2- Hwy 41 South	33.35	JULY 2021
064- Weaverton	4-Frog Island Rd	22.68	JULY 2021
081- Providence	1- Providence	52.07	JULY 2021

084- Sebree	1- Robards	24.47	JULY 2021
084- Sebree	2- Truck Stop	22.91	JULY 2021
084- Sebree	3- Ortiz	57.01	SEPTEMBER 2021
084- Sebree	4- Poole	18.93	SEPTEMBER 2021
085- Sullivan	1- Sullivan	38.18	DECEMBER 2021
		<b>911.67</b>	

Please note: Kenergy strongly recommends an on-site field assessment of the scope of work. Kenergy will provide maps of each circuit proposed to be cleared during 2021 in shape files or PDF format.

- b. Service Orders and Work Orders - Vegetation management control activities performed on a specific portion of a circuit identified by Kenergy through a Kenergy generated Job Order or Work Order. This work will be paid using time and equipment cost (T & E), based on the labor rates and equipment rates provided in 3. Labor Rates and 4. Equipment Rates below.

All work orders will be bid using these T & E rates. Work order bids must be returned to Kenergy within three (3) business days from the time received by Contractor.

### 3. Labor Rates

Complete the following billable labor rate table for each individual labor classification that you will be utilizing.

Labor Classification	Rates		
	Straight	OT	Premium

Note:



- 1) All management labor positions for this project above the Foremen level must be accounted for in overheads and will not be billed on an hourly basis.
- 2) Use this form or submit a separate spreadsheet.
- 3) Clearly define when OT and premium rates of pay would apply.

#### 4. **Equipment Rates**

Complete the following billable equipment rate table for each piece of equipment that you will be utilizing.

Equipment Type	Hourly Rate

#### Herbicide Application

Kenergy is requesting pricing for Contractor to perform **High Volume** foliar application to Kenergy’s rights of way and bare ground application to Kenergy’s substations and lots. Foliar application is performed in the year following line clearance. Bare ground application is performed every year.

Type of Application	Price Per Acre Sprayed
Foliar	
Bare Ground	

Please describe the application technique proposed (low volume, high volume, stubble spraying, etc.) and the chemical formula proposed for use on Kenergy’s system.

2021 Foliar Herbicide Application Circuits		
Substation	Feeder	Miles
014-Weberstown	1-S. Hancock	86.28
014-Weberstown	2-Roseville	76.17
014-Weberstown	3-Pellville	67.08
042-Nuckols	3-Nuckols	46.74
042-Nuckols	4-Hwy 250/Buel	46.07
050-Sacramento	1-Hwy 81 North	39.57
050-Sacramento	2-Hwy 81 South	18.05
050-Sacramento	3-Poplar Grove	42.99
052-Onton	1-Hwy 120	68.58
052-Onton	2-Sebree	52.34
052-Onton	3-Vandetta Rd	36.38
012-Lewisport	4-Hwy 657	31.02
013-Hawesville	5-Windward Heights	13.41
		<b>624.68</b>

## Section IV: Insurance Requirements

The successful Contractor(s) shall take out and maintain throughout the term of the agreement the following types and minimum amounts of insurance:

Workers’ Compensation - Workers’ compensation and employers’ liability insurance, as required by law, covering all its employees who perform any of the obligations of the Contractor(s) under the contract. If any employer or employee is not subject to the workers’ compensation laws of Kentucky, the insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers’ compensation laws.

Public Liability Insurance - Covering all operations under the agreement shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$2 million aggregate for accidents during the policy period. A single limit of \$1 million on bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

Automobile Liability Insurance - For all motor vehicles used in connection with the agreement, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million each occurrence and property damage limits of \$1 million for each occurrence. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a

policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

Kenergy shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in the previous paragraphs. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the agreement price.

Kenergy shall be named as Additional Insured on all policies of insurance. The firm shall furnish Kenergy a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to Kenergy of any cancellation or material change in the insurance.

## **Section V: RFP Process and Schedule**

### **1. Contractor Selection Timeline**

<b>Milestone</b>	<b>Due Date</b>	<b>Responsible</b>
1. Issue RFP	7/17/20	Kenergy
2. Submit RFP	10/23/20	Contractor(s)
3. Evaluate proposals and negotiate agreement	10/26/20 – 11/6/20	Kenergy/Contractor(s)
4. Award contract	11/13/20	Kenergy
5. Initiate Project	1/11/21	Contractor(s)

### **2. Kenergy RFP Response**

Kenergy is committed to providing an opportunity to every qualified company that has a genuine interest in our business. Recognizing that preparing a response to this RFP can be expensive and time consuming, we encourage you to be realistic about your ability to meet our requirements and schedule. All expenses, related to developing and submitting this RFP are entirely the responsibility of your company, and the submission of this proposal in no way obligates Kenergy to you or any other Contractor.

### **3. Process for Inquiries and/or Clarifications**

Please direct any questions and/or comments in writing via email to Steve Thompson ([sthompson@kenergycorp.com](mailto:sthompson@kenergycorp.com)). Formal responses to questions will be delivered via email.



#### **4. Proposal Submission Deadline**

Proposals will be accepted electronically via email to [sthompson@kenergycorp.com](mailto:sthompson@kenergycorp.com). The subject line of the email should read “RFP No. O202043 – Vegetation Management”.

RFP responses are due no later than 3:00 PM CST on October 23, 2020. To be considered, all materials must be received by the deadline stated above. No extension of time will be granted for the submission of responses to this RFP. Any proposals or supplemental information received after 12:00 PM CST on October 23, 2020 will not be considered.

#### **5. Selection Criteria**

Final negotiations will address each of these performance areas.

- Cost
- Safety
- Work Scope
- Quality

#### **6. Exceptions**

Identify and explain any exceptions you are taking to any portion of this RFP. Any deviation from the specifications contained in the RFP or where submitted literature does not fully support the specifications contained in this RFP must be identified and explained.

#### **7. Disclaimer**

Kenergy reserves the right to reject any and all responses to this RFP. Although it is Kenergy’s intent to perform vegetation management control activities for the scope of work stated herein, Kenergy reserves the right to modify the 2021 scope of work following receipt and review of the responses to this RFP.

#### **8. Confidentiality**

All information contained in this Request for Proposal and its Exhibits is considered Confidential. Contractors must take all reasonable precautions to prevent such Confidential Information from being disclosed to third parties, including officers and employees not having a legitimate need for the information, and shall not disclose any Confidential Information to third parties. “Confidential Information” includes any information or technical data including, but not limited to, commercially sensitive or proprietary information, processes, methods, specifications, protocols, designs, drawings, diagrams, engineering, documentation, procedures, data concepts, financial

information, business opportunities, software and related documentation, hardware information, in any form whatsoever, including in writing, orally, machine readable form or through access to party's premises.

*This institution is an equal opportunity provider and employer.*

*If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@USDA.gov](mailto:program.intake@USDA.gov).*



## ***Exhibit 1*** ***Safety Information***

Contractor Name: \_\_\_\_\_

- A. Provide a copy of the most recent OSHA Form 300A for your company.**
- B. Provide a copy of your company's safety program, policy, procedures and manual.**
- C. Provide a summary of recordable and lost-time incidents from the time of your last submitted OSHA Form 300A to the present.**
- D. Please describe the following about your occupational safety and health program:**
  - D-1. How your on-site supervisors are held accountable for safety performance & how this performance is monitored, assessed, and communicated to them.
  - D-2. How your safety programs apply to subcontractors, and how you assure successful implementation of and compliance with these programs.
  - D-4. Your incident investigation procedures and the types of incidents that are investigated.
- E. Please describe the following about your environmental experience:**
  - E-1. A list of the employees that maintain a Commercial Pesticide Applicator Supervisory License for Kentucky.
  - E-2. A list of the employees that maintain a Commercial Pesticide Applicator License for Kentucky.
  - E-3. The product label and material safety data sheet for all pesticides you propose to use during this project.
  - E-4. A copy of your pesticide safety and training manuals.
  - E-5. A description of where and how you intend to store and distribute pesticides during this project.
  - E-6. Your pesticide spill clean up policies and procedures.
  - E-7. A list of the Personal Protective Equipment and clothing worn by your workforce.
  - E-8. A description of how you propose to dispose of empty pesticide containers.
  - E-9. A list of the employees that maintain an ISA Certified Arborist license (name and license number).

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

1

2 **Item 16)** Refer to the Application, Exhibit 11. Provide a document showing employee  
3 wage increases and bonuses over the last five years and a justification for the wage increase  
4 or bonus.

5

6 **Response)** The philosophy for providing wage increases is to attract and retain and a qualified  
7 workforce coupled with rewarding employees for contribution(s) to the overall cooperative's success  
8 on an individual basis. This is done all within the confines of budgetary considerations and subject to  
9 board approval. The wage structure increased annually and the individual wage increase is tied to  
10 their performance evaluation and where they are in the salary matrix. In theory, an employee at mid-  
11 point of their salary grade; who meets expectations will progress to the new mid-point. Employees  
12 below the mid-point receive an additional increase as our compensation philosophy allows employee  
13 progression to mid-point over a three-year period assuming they meet or exceed expectations.  
14 Employees above mid-point are decelerated and may not receive the full percentage increase unless  
15 they exceed expectations.

16 An incentive bonus is paid to employees should the cooperative meet or exceed established  
17 metrics in: Safety, Member Satisfaction, Outage Restoration and Financial Cost per Member. The  
18 maximum amount is approved by the board during budget reviews. Starting in 2019, Kenergy elected  
19 to pay each employee a \$100 bonus plus tax in lieu of an annual Christmas Party.

20 Salary structure increases for each year: 2016 – 2%; 2017 – 2%; 2018 – 2%; 2019 – 3%;  
21 2020- 3%. Please see the Excel file titled "16. Response to PSC-1 Item 16" provided in electronic  
22 format. Also, please see attached board resolutions.

23

24 **Witness)** Jeff Hohn



EXCERPT FROM THE MINUTES OF A MEETING  
OF THE KENERGY BOARD OF DIRECTORS  
ON DECEMBER 12, 2017

WHEREAS, in its Order entered September 15, 2016, in Case No. 2015-00312, In the Matter of Application of Kenergy Corp. for a General Adjustment of Rates, the Kentucky Public Service Commission ("Commission") expressed concern with Kenergy's compensation of employees.

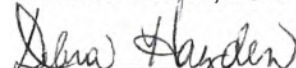
WHEREAS, the Commission's Order recognized growing concerns over compensation levels with increasing electric bills, the Commission believes that compensation and benefits need to be more sufficiently researched and studied.

WHEREAS, future rate applications will be required to include salary and benefits comparisons that is not limited exclusively to electric cooperatives, electric utilities, or other regulated utility companies.

WHEREAS, Kenergy engaged a third party to conduct a wage and benefit survey of local industries.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of Kenergy Corp. hereby approves a two percent adjustment to the current wage and salary plan and a one-half of one percent merit increase for exceptional performance effective January 1, 2018.

I, Debra Hayden, Assistant Secretary, certify that the foregoing is a true and correct excerpt from the minutes of a meeting of the board of directors of Kenergy Corp. on December 12, 2017.

  
\_\_\_\_\_  
Assistant Secretary



EXCERPT FROM THE MINUTES OF A MEETING  
OF THE KENERGY BOARD OF DIRECTORS  
ON DECEMBER 11, 2018

WHEREAS, in its Order entered September 15, 2016, in Case No. 2015-00312, In the Matter of Application of Kenergy Corp. for a General Adjustment of Rates, the Kentucky Public Service Commission ("Commission") expressed concern with Kenergy's compensation of employees.

WHEREAS, the Commission's Order recognized growing concerns over compensation levels with increasing electric bills, the Commission believes that compensation and benefits need to be more sufficiently researched and studied.

WHEREAS, future rate applications will be required to include salary and benefits comparisons that is not limited exclusively to electric cooperatives, electric utilities, or other regulated utility companies.

WHEREAS, Kenergy engaged a third party to conduct a wage and benefit survey of local industries.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of Kenergy Corp. hereby approves a three percent adjustment to the current wage and salary plan and up to a one percent merit increase for exceptional performance effective January 1, 2019.

I, Debra Hayden, Assistant Secretary, certify that the foregoing is a true and correct excerpt from the minutes of a meeting of the board of directors of Kenergy Corp. on December 11, 2018.

A handwritten signature in blue ink that reads "Debra Hayden".

Assistant Secretary



EXCERPT FROM THE MINUTES OF A MEETING  
OF THE KENERGY BOARD OF DIRECTORS  
ON DECEMBER 10, 2019

WHEREAS, in its Order entered September 15, 2016, in Case No. 2015-00312, In the Matter of Application of Kenergy Corp. for a General Adjustment of Rates, the Kentucky Public Service Commission ("Commission") expressed concern with Kenergy's compensation of employees.

WHEREAS, the Commission's Order recognized growing concerns over compensation levels with increasing electric bills, the Commission believes that compensation and benefits need to be more sufficiently researched and studied.

WHEREAS, future rate applications will be required to include salary and benefits comparisons that is not limited exclusively to electric cooperatives, electric utilities, or other regulated utility companies.

WHEREAS, Kenergy engaged a third party to conduct a wage and benefit survey of local industries.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of Kenergy Corp. hereby approves a three percent adjustment to the current wage and salary plan and up to one percent merit increase for exceptional performance effective January 1, 2020.

I, Debra Hayden, Assistant Secretary, certify that the foregoing is a true and correct excerpt from the minutes of a meeting of the board of directors of Kenergy Corp. on December 10, 2019.

A handwritten signature in black ink that reads "Debra Hayden".

Assistant Secretary

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

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**Item 17)** Provide the amount of late fees assessed during the test period separately between residential and commercial customers.

**Response)** Residential - \$626,183.90  
Commercial - \$97,155.60  
Total 2019 - \$723,339.50 See Exhibit 9, Exhibit JW-2 page 21 of 22 Line 3  
Column h.

**Witness)** Steve Thompson

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

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**Item 18)** Provide the number of times each of the following nonrecurring charge was assessed, cost support for and the total amount in the test period:

- a. Turn-on charge, regular working hours, and overtime.
- b. Reconnect charge, regular working hours, and overtime.
- c. Termination or field collection, regular working hours, and overtime.
- d. Special Meter reading charge.
- e. Meter Test Charge.
- f. Returned Check Charge.
- g. Remote Disconnect Charge.
- h. Remote Special Meter reading Charge.

**Response)** Reference the Application, Exhibit 9, Exhibit JW-2, page 21 of 22, rows 6-22, columns b and h for the number of and total amount in the test period for the various charges.

The cost support for each of the charges is shown in the Application, Exhibit 3, tariff sheets 32(exh. A), 32(exh. B) and 32(exh. C).

**Witness)** Steve Thompson

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

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**Item 19)** Provide the number of disconnections and reconnections for 2018, 2019, and per month for 2020 and 2021.

**Response)** See Item 19, page 2 of 2 for the above referenced information.

**Witness)** Steve Thompson



KENERGY CORP.  
CASE NO. 2021-00066  
PSC REQUEST NO. 1 ITEM 19  
DISONNECTIONS AND RECONNECTIONS

row	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	
		2018	2019	2020												
1	Type of Charge			January	February	March	April	May	June	July	August	September	October	November	December	
2	Turn on service charge	59	43	1	1	1	1	0	2	2	0	1	6	2	8	
3	Remote turn on service charge	14	22	1	4	4	0	2	1	0	0	1	3	2	0	
4	Reconnect charge Regular	635	417	22	42	39	17	2	0	2	0	0	0	0	4	
5	Remote Reconnect charge	10	17	114	128	126	44	2	0	4	2	0	0	0	6	
6	Reconnect charge after hours	-	0	0	0	0	0	0	0	0	0	1	0	0	0	
7	Remote Reconnect charge	1,687	1574	0	0	0	0	0	0	0	0	0	0	0	0	
8	Terminate service charge	1,770	1163	81	100	100	38	4	0	0	1	-1	2	2	25	
9	Remote Terminate charge	2,196	2621	171	231	189	73	0	0	0	1	0	0	0	24	
10	Meter reading charge	1	0	0	0	0	0	0	0	0	0	0	0	0	0	
11	Remote meter reading charge	-	0	0	0	0	0	0	0	0	0	0	0	0	0	
12	Meter Test charge	9	8	0	1	1	2	-1	0	0	1	0	1	2	0	
13	Returned check charge	960	785	76	73	82	38	30	43	29	32	36	44	45	43	
14	Unnecessary trip regular	2	1	0	1	0	0	0	0	0	0	0	0	0	0	
15	Unnecessary trip after hours	-	0	0	0	0	0	0	0	0	0	0	0	0	0	
16	Service charge to change Bulb	1	2	0	0	0	0	0	0	0	0	0	0	0	0	
17																
18		2021														
19	Type of Charge	January	February	March												
20	Turn on service charge	4	2	1												
21	Remote turn on service charge	-	0	0												
22	Reconnect charge Regular	15	39	28												
23	Remote Reconnect charge	152	194	233												
24	Reconnect charge after hours	2	2	0												
25	Remote Reconnect charge	0	0	0												
26	Terminate service charge	59	104	82												
27	Remote Terminate charge	300	318	408												
28	Meter reading charge	0	0	0												
29	Remote meter reading charge	0	0	0												
30	Meter Test charge	1	2	0												
31	Returned check charge	51	40	48												
32	Unnecessary trip regular	0	0	0												
33	Unnecessary trip after hours	0	0	0												
34	Service charge to change Bulb	0	0	0												

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

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**Item 20)** Provide the number of customers who participate in the prepay pay program annually since 2015.

**Response)** 2015 - None  
2016 – None  
2017 – None  
2018 – None  
2019 – 109  
2020 – 135

**Witness)** Steve Thompson

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

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**Item 21)** Explain whether meters are tested by Kenergy personnel or sent off for testing. If the meter is tested at Kenergy, explain whether a Service Technician performs the test and whether the Service Technician and the testing equipment certifications are up to date.

**Response)**

All non-CT rated meters are tested by Kenergy personnel. All of the Kenergy Meter Technicians are certified. The meters are brought into the Kenergy facility and tested using a desktop, WECO test board. The WECO test boards are tested monthly against a Certified Standard. The Standard is tested annually by Radian Research, Inc.

The CT rated meters are tested at their installed location by Luthan Electric Meter Testing, P. O. Box 1178, Owensboro, KY 42302.

**Witness)** Jeff Hohn

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

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**Item 22)** Provide an update to all rate case expenses with invoices.

**Response)** See pages 2-12 attached to this response.

**Witness)** Steve Thompson

KENERGY CORP.

2021-00066 RATE CASE APPLICATION

EXHIBIT 39

THROUGH APRIL 16, 2021 AND PROJECTED TOTAL COSTS

Line No	(a) Vendor Name	(b) Description	(c) Date Paid	(d) Check Number	(e) Dollar Amount	(f)	(g) Legal	(h) COSS Rate Design	(i) Depreciation Study	(j) Wage and Benefits	(k) Legal Notice	(l) Other
1	The Prime Group	Depreciation study	1/22/21	160585	3,910.00		-	-	3,910.00			
2	Catalyst Consulting	COSS & rate design	1/8/21	160367	1,300.00			1,300.00				
3	Johanson Group	Wage and Benefit	12/31/20	160317	10,000.00					10,000.00		
4			December 2020		15,210.00		-	1,300.00	3,910.00	10,000.00	-	-
5												
6	Catalyst Consulting	COSS & rate design	2/5/21	160651	2,600.00		-	2,600.00				
7			January 2021		2,600.00		-	2,600.00	-	-	-	-
8												
9	The Prime Group	Depreciation study	2/26/21	160901	6,900.00			-	6,900.00			
10	Johanson Group	Wage and Benefit	2/12/21	160752	300.00					300.00		
11	Dorsey, Gray, Norment &	Legal	3/5/21	160931	170.00		170.00					
12	Catalyst Consulting	COSS & rate design	3/12/21	160999	10,100.00			10,100.00				
13			February 2021		17,470.00		170.00	10,100.00	6,900.00	300.00	-	-
14												
15	Dorsey, Gray, Norment &	Legal	4/9/21	161316	1,400.00		1,400.00					
16	Kentucky Press Service	Ads - legal notice	4/9/21	161338	24,293.67						24,293.67	
17	Walmart	Binder / flash drive	3/10/21	8377	19.96							19.96
18	The Prime Group	Depreciation study	3/12/21	161045	3,790.00				3,790.00			
19												
20			March 2021		29,503.63		1,400.00	-	3,790.00	-	24,293.67	19.96
21												
22	Catalyst Consulting	COSS & rate design	4/16/21	161398	1,200.00			1,200.00				
23			April 2021		1,200.00		-	1,200.00	-	-	-	-
24												
25												
26			May 2021		-		-	-	-	-	-	-
27												
28		Total incurred to date			65,983.63		1,570.00	15,200.00	14,600.00	10,300.00	24,293.67	19.96
29		Projected Remaining			8,230.00		3,430.00	4,800.00	-	-	-	-
30												
31												
32		Projected Total			74,213.63		\$ 5,000.00	\$ 20,000.00	\$ 14,600.00	\$ 10,300.00	\$ 24,293.67	\$ 19.96

Kenergy Corp.  
Post Office Box 18  
Henderson, KY 42419-018

April 1, 2021

**DORSEY, GRAY, NORMENT & HOPGOOD**  
ATTORNEYS AT LAW  
318 SECOND STREET  
HENDERSON, KENTUCKY 42420

ID NO. 610462803

Re: Rate case

TO FEE: For legal services rendered during March 2021 as follows:

<u>2021</u>		<u>HOUR</u>
3-1	Receipt and review rate application and exhibits; preparation of Petition for Confidential Treatment;	4.0
3-2	Telephone conference with Travis Siewert re: [REDACTED] [REDACTED]	.25
3-3	Revise Petition for Confidentiality;	.5
3-4	Revise Petition for Confidentiality;	.5
3-5	Attention to Application and Petition for Confidentiality	.5
3-8	Telephone conference with Travis Siewert re: cover letter for rate application; attention to same;	.5
3-9	E-mail from Travis Siewert and attention to Petition for Confidentiality;	.5
3-11	Telephone conference with Steve Thompson and Travis Siewert re: [REDACTED] [REDACTED] [REDACTED]	.5
3-25	Receipt and review Rate Order; telephone conference with Jeff Hohn re: same;	.5
3-27	Preparation of Motion to Modify Rate Order; research [REDACTED] [REDACTED]	.75
3-28	Revise Motion to Modify	.25
	Total hours	8.75

FEE for above services rendered (8.75 hours @ \$160.00) -	\$1,400.00
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12558

# KENTUCKY PRESS SERVICE

101 CONSUMER LANE  
FRANKFORT, KY 40601-  
Voice (502) 223-8821 Fax (502) 875-2624

51.

Tuesday, March 30, 2021 08:26 AM

Page 1

## Invoice

**Agency** Leslie Neeley  
KENERGY  
Steve Thompson  
P.O. BOX 1389  
Owensboro, KY 42302-1389

**Invoice Date** 3/29/2021  
**PO Number**  
**Order** 21034KK0

**Client** KENERGY  
**Reps** Rachel McCarty

PO 13761

### Newspaper

Caption	Run Date	Ad Size	Rate	Rate Name	Color	Disc.	Total
<b>CALHOUN MCLEAN CO. NEWS</b>							
Notice case 2021-00066	03/04/2021	6 x 7.5	\$7.60	CLDIS	\$0.00	0.0000%	\$342.00
Notice case 2021-00066	03/11/2021	6 x 7.5	\$7.60	CLDIS	\$0.00	0.0000%	\$342.00
Notice case 2021-00066	03/18/2021	6 x 7.5	\$7.60	CLDIS	\$0.00	0.0000%	\$342.00
<b>CENTRAL CITY LEADER NEWS</b>							
Notice case 2021-00066	03/09/2021	5 x 7.5	\$9.18	CLDIS	\$0.00	0.0000%	\$344.25
Notice case 2021-00066	03/16/2021	5 x 7.5	\$9.18	CLDIS	\$0.00	0.0000%	\$344.25
Notice case 2021-00066	03/23/2021	5 x 7.5	\$9.18	CLDIS	\$0.00	0.0000%	\$344.25
<b>EDDYVILLE HERALD-LEDGER</b>							
Notice case 2021-00066	03/10/2021	5 x 7.5	\$7.00	CLDIS	\$0.00	0.0000%	\$262.50
Notice case 2021-00066	03/17/2021	8 x 7.5	\$7.00	CLDIS	\$0.00	0.0000%	\$420.00
Notice case 2021-00066	03/24/2021	8 x 7.5	\$7.00	CLDIS	\$0.00	0.0000%	\$420.00
<b>HARDINSBURG HERALD-NEWS</b>							
Notice case 2021-00066	03/10/2021	7 x 7.5	\$10.13	CLDIS	\$0.00	0.0000%	\$531.82
Notice case 2021-00066	03/17/2021	7 x 7.5	\$10.13	CLDIS	\$0.00	0.0000%	\$531.82
Notice case 2021-00066	03/24/2021	7 x 7.5	\$10.13	CLDIS	\$0.00	0.0000%	\$531.82
<b>HARTFORD OHIO CO. TIMES-NEWS</b>							
Notice case 2021-00066	03/10/2021	5 x 7.5	\$9.18	CLDIS	\$0.00	0.0000%	\$344.25
Notice case 2021-00066	03/17/2021	5 x 7.5	\$9.18	CLDIS	\$0.00	0.0000%	\$344.25
Notice case 2021-00066	03/24/2021	5 x 7.5	\$9.18	CLDIS	\$0.00	0.0000%	\$344.25
<b>HAWESVILLE HANCOCK CLARION</b>							
Notice case 2021-00066	03/04/2021	5 x 7.5	\$9.82	CLDIS	\$0.00	0.0000%	\$368.25
Notice case 2021-00066	03/11/2021	5 x 7.5	\$9.82	CLDIS	\$0.00	0.0000%	\$368.25
Notice case 2021-00066	03/18/2021	5 x 7.5	\$9.82	CLDIS	\$0.00	0.0000%	\$368.25
<b>HENDERSON GLEANER</b>							
Notice case 2021-00066-- Place in Main News	03/05/2021	5 x 7.5	\$17.55	SAU	\$0.00	0.0000%	\$658.12
Notice case 2021-00066-- Place in Main News	03/12/2021	5 x 7.5	\$17.55	SAU	\$0.00	0.0000%	\$658.12
Notice case 2021-00066-- Place in Main News	03/19/2021	5 x 7.5	\$17.55	SAU	\$0.00	0.0000%	\$658.12

ANY QUESTIONS CONCERNING TEARSHEETS AND/OR REQUESTS FOR ACCOUNT CREDIT MUST BE MADE WITHIN FIVE DAYS OF THE DATE OF THIS INVOICE. IF THE REQUEST IS NOT RECEIVED WITHIN FIVE DAYS, THE CLIENT IS RESPONSIBLE FOR FULL PAYMENT OF THE INVOICE AMOUNT. **As of MAY 1, 2017, a 2.5 percent convenience fee will be added if paying by Credit Card.** Amount Due Subject to 1.5% Service Charge After 30 Days Please Pay From This Invoice. No Statement Will Be Sent.

2 files to attach





# KENTUCKY PRESS SERVICE

101 CONSUMER LANE  
 FRANKFORT, KY 40601-  
 Voice (502) 223-8821 Fax (502) 875-2624

Tuesday, March 30, 2021 08:26 AM

Page 2

## Invoice

**Agency** Leslie Neeley  
 KENERGY  
 Steve Thompson  
 P.O. BOX 1389  
 Owensboro, KY 42302-1389

**Invoice Date** 3/29/2021  
**PO Number**  
**Order** 21034KK0

**Client** KENERGY  
**Reps** Rachel McCarty

### Newspaper

Caption	Run Date	Ad Size	Rate	Rate Name	Color	Disc.	Total
<b>MADISONVILLE MESSENGER</b>							
Notice case 2021-00066	03/05/2021	6 x 7.5	\$23.76	CLDIS	\$0.00	0.0000%	\$1,069.20
Notice case 2021-00066	03/12/2021	6 x 7.5	\$23.76	CLDIS	\$0.00	0.0000%	\$1,069.20
Notice case 2021-00066	03/19/2021	6 x 7.5	\$23.76	CLDIS	\$0.00	0.0000%	\$1,069.20
<b>MARION CRITTENDEN PRESS</b>							
Notice case 2021-00066	03/04/2021	5 x 7.5	\$8.32	CLDIS	\$0.00	0.0000%	\$312.00
Notice case 2021-00066	03/11/2021	5 x 7.5	\$8.32	CLDIS	\$0.00	0.0000%	\$312.00
Notice case 2021-00066	03/18/2021	5 x 7.5	\$8.32	CLDIS	\$0.00	0.0000%	\$312.00
<b>OWENSBORO MESSENGER-INQUIRER</b>							
Notice case 2021-00066	03/05/2021	6 x 7.5	\$44.30	CLDIS	\$0.00	0.0000%	\$1,993.50
Notice case 2021-00066	03/12/2021	6 x 7.5	\$44.30	CLDIS	\$0.00	0.0000%	\$1,993.50
Notice case 2021-00066	03/19/2021	6 x 7.5	\$44.30	CLDIS	\$0.00	0.0000%	\$1,993.50
<b>PRINCETON TIMES LEADER</b>							
Notice case 2021-00066	03/10/2021	8 x 7.5	\$8.00	CLDIS	\$0.00	0.0000%	\$480.00
Notice case 2021-00066	03/17/2021	8 x 7.5	\$8.00	CLDIS	\$0.00	0.0000%	\$480.00
Notice case 2021-00066	03/24/2021	8 x 7.5	\$8.00	CLDIS	\$0.00	0.0000%	\$480.00
<b>SEBREE BANNER</b>							
Notice case 2021-00066	03/10/2021	5 x 7.5	\$5.00	CLDIS	\$0.00	0.0000%	\$187.50
Notice case 2021-00066	03/17/2021	5 x 7.5	\$5.00	CLDIS	\$0.00	0.0000%	\$187.50
Notice case 2021-00066	03/24/2021	5 x 7.5	\$5.00	CLDIS	\$0.00	0.0000%	\$187.50
<b>SMITHLAND LIVINGSTON LEDGER</b>							
Notice case 2021-00066	03/04/2021	8 x 7.5	\$15.20	CLDIS	\$0.00	0.0000%	\$912.00
Notice case 2021-00066	03/11/2021	8 x 7.5	\$15.20	CLDIS	\$0.00	0.0000%	\$912.00
Notice case 2021-00066	03/18/2021	8 x 7.5	\$15.20	CLDIS	\$0.00	0.0000%	\$912.00
<b>STURGIS NEWS</b>							
Notice case 2021-00066	03/10/2021	5 x 7.5	\$5.00	CLDIS	\$0.00	0.0000%	\$187.50
Notice case 2021-00066	03/17/2021	5 x 7.5	\$5.00	CLDIS	\$0.00	0.0000%	\$187.50
Notice case 2021-00066	03/24/2021	5 x 7.5	\$5.00	CLDIS	\$0.00	0.0000%	\$187.50

ANY QUESTIONS CONCERNING TEARSHEETS AND/OR REQUESTS FOR ACCOUNT CREDIT MUST BE MADE WITHIN FIVE DAYS OF THE DATE OF THIS INVOICE. IF THE REQUEST IS NOT RECEIVED WITHIN FIVE DAYS, THE CLIENT IS RESPONSIBLE FOR FULL PAYMENT OF THE INVOICE AMOUNT. **As of MAY 1, 2017, a 2.5 percent convenience fee will be added if paying by Credit Card.** Amount Due Subject to 1.5% Service Charge After 30 Days Please Pay From This Invoice. No Statement Will Be Sent.



V2552

# KENTUCKY PRESS SERVICE

101 CONSUMER LANE  
FRANKFORT, KY 40601-  
Voice (502) 223-8821 Fax (502) 875-2624

Tuesday, March 30, 2021 08:26 AM

Page 1

Invoice

PO 13761

**Agency** Leslie Neeley  
KENERGY  
Steve Thompson  
P.O. BOX 1389  
Owensboro, KY 42302-1389

**Invoice Date** 3/29/2021  
**PO Number**  
**Order** 21034KK0

**Client** KENERGY  
**Reps** Rachel McCarty

**Newspaper**  
**Caption**

**Run Date Ad Size Rate Rate Name Color Disc. Total**

<b>Total Advertising</b>	\$24,293.67
<b>Discounts</b>	\$0.00
<b>Tax: USA</b>	\$0.00
<b>Total Invoice</b>	\$24,293.67
<b>Payments</b>	\$0.00
<b>Adjustments</b>	\$0.00
<b>Balance Due</b>	\$24,293.67

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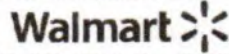
928,000 20 240  
FSC - Case 2021-00066

ANY QUESTIONS CONCERNING TEARSHEETS AND/OR REQUESTS FOR ACCOUNT CREDIT MUST BE MADE WITHIN FIVE DAYS OF THE DATE OF THIS INVOICE. IF THE REQUEST IS NOT RECEIVED WITHIN FIVE DAYS, THE CLIENT IS RESPONSIBLE FOR FULL PAYMENT OF THE INVOICE AMOUNT. **As of MAY 1, 2017, a 2.5 percent convenience fee will be added if paying by Credit Card.** Amount Due Subject to 1.5% Service Charge After 30 Days Please Pay From This Invoice. No Statement Will Be Sent.

928.00 20 240

Case No. 2021-00066

Give us feedback @ survey.walmart.com  
Thank you! ID #:70BD2T7HZYV



V7402

270-826-6036 Mgr:ERIK  
1195 BARRETT BLVD  
HENDERSON KY 42420

ST# 00694 OP# 009048 TE# 48 TR# 01267  
BINDER 007771179621 14.86 X  
ONN 16GB 2.0 068113130978 3.97 X  
VOIDED BANKCARD TRANSACTION  
TERMINAL # SC010355

TRANSACTION NOT COMPLETE  
03/10/21 07:31:45  
VOIDED BANKCARD TRANSACTION  
TERMINAL # SC010355

TRANSACTION NOT COMPLETE  
03/10/21 07:32:15  
VOIDED BANKCARD TRANSACTION  
TERMINAL # SC010355

DECLINED  
03/10/21 07:33:04  
VOIDED BANKCARD TRANSACTION  
TERMINAL # SC010355

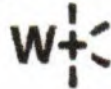
TRANSACTION NOT COMPLETE  
03/10/21 07:33:13  
SUBTOTAL 18.83  
TAX 1 6.000 % 1.13  
TOTAL 19.96  
VISA TEND 19.96

19.96

ACCOUNT # \*\*\*\*\* 4978 F  
APPROVAL # 004252  
REF # 106900035165  
TRANS ID - 461069488073636  
VALIDATION - D63P  
PAYMENT SERVICE - E  
TERMINAL # SC010355

03/10/21 07:33:30  
CHANGE DUE 0.00  
# ITEMS SOLD 2

TC# 7622 0990 4233 2966 8469



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03/10/21 07:33:30  
\*\*\*CUSTOMER COPY\*\*\*

binder  
flash drive

# The Prime Group

## Invoice for Services Rendered

1/10/21

Invoice Date: March 1, 2021

PO 13307

To: Kenergy Corporation  
3111 Fairview Drive  
Owensboro, KY 42302



Attn: Mr. Steve Thompson, Vice President of Finance

15.00 hours of consulting work by Steve Seelye @ \$230.00/hour performed during February conducting a Depreciation Study and preparing a report on recommendations for Kenergy Corporation. \$ 3,450.00

2.00 hours of consulting work by Jeff Wernert @ \$170.00/hour performed during February assisting Steve Seelye with the Depreciation Study and preparing a report on recommendations for Kenergy Corporation. \$ 340.00

**Total due for work performed in February**

\$ 3,790.00 F  
KAW

**Please remit payment to: The Prime Group, LLC  
P.O. Box 837  
Crestwood, KY 40014-0837**

**Please note that a Late Payment Charge of 3% will be applied to the net amount owed if payment is not received within 45 days of the billing date specified above.**

928.20 240  
Case 2021-00000

# ■ The Prime Group ■

March 1, 2021

Mr. Steve Thompson  
Vice President, Finance  
Kenergy Corporation  
3111 Fairview Drive  
Owensboro, KY 42302

Dear Steve:

Enclosed is an invoice for assistance that The Prime Group provided during February preparing a Depreciation Study and report on the recommendations for Kenergy. Thank you for the opportunity to work with you on this project.

Sincerely,



Jeff Wernert  
Principal



**CATALYST**  
**CONSULTING LLC**

3308 Haddon Road  
 Louisville, KY 40241  
 (502) 599-1739  
 johnwolfram@catalystllc.com

V10678

**INVOICE**

<b>Date:</b> April 1, 2021	<b>Invoice #:</b> 210306
<b>Client:</b> Kenergy Corp. 6402 Old Corydon Road P. O. Box 18 Henderson, KY 42419	<b>Project:</b> 2019 Cost of Service & Rate Review Case No. 2021-00066  For Services Provided in March 2021

PO 13304

	Item	Description	Qty	Rate	Amt
1	Consulting Services	John Wolfram – consulting support for 2019 Cost of Service & Rate Review. Review final filing materials, testimony and exhibits. Calls and emails with staff on same.	6.0 Hours <i>qty = add</i>	\$200.00	\$ 1,200.00
<b>TOTAL</b>					<b>\$ 1,200.00</b>

Please remit payment to Catalyst Consulting LLC at the address listed above. Thank you.

LBW



April 1, 2021

Steve Thompson  
Vice President, Finance & Accounting  
Kenergy Corp.  
6402 Old Corydon Road  
P. O. Box 18  
Henderson, KY 42419

Dear Steve:

Enclosed please find the invoices for services provided by Catalyst Consulting LLC to Kenergy Corp. for the month of March 2021.

I appreciate the opportunity to work with Kenergy on this project. Please let me know if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Wolfram", with a long horizontal flourish extending to the right.

John Wolfram  
Principal

Enclosure

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

1

2 **Item 23)** Refer to the Wolfram Testimony, Exhibit JW-8, page 2 of 2.

- 3 a. Explain which transformers are actually being purchased currently as existing transformers  
4 are being replaced.
- 5 b. Explain which size transformers are in the field on residential customer premises currently and  
6 which size transformers are being installed on new or being replaced on residential customer  
7 premises currently.

8

9

10 **Response)**

- 11 a) The size range of transformers being purchased is 10 kVA single phase through 2000  
12 kVA 3 phase pad mount. Kenergy has a variety of transformers in service, ranging  
13 from single phase 3 kVA to 3 phase 2000 kVA pad mounts. As any of those  
14 transformers fail, we will replace with the appropriate size unit. We no longer purchase  
15 3, 5 or 7.5 kVA units. 10 KVA is the smallest unit that we now purchase.
- 16 b) Typically, a residential member would be served by a 10, 15, 25 or 37.5 KVA unit  
17 dependent on the electrical needs of the home. In the case of subdivisions, where  
18 multiple homes are served from one transformer, the transformer sizes are 25, 37.5,  
19 50, 75 and 100 kVA. A few apartment buildings are served by 167 KVA padmounts. All  
20 of these size transformers are being installed on new or being replaced on residential  
21 member premises.

22

23 **Witness)** Jeff Hohn

24

25

26



**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

1

2 **Item 24 & 25)** Refer to Kenergy's Tariff, Schedule 5 – Three-Phase Demand (NonResidential) Non-  
3 Dedicated Delivery Points (0 – 1,000 kW), current demand charge of \$5.78. 25. Provide the tariff  
4 demand charge Kenergy is charged for BREC for this rate class.

5 a. If the demand charged to Kenergy by BREC as reported above is greater than \$5.78, explain why  
6 Kenergy is not asking to increase the demand charge to Schedule 5 customers.

7 b. Refer to the Application, Kenergy\_COS\_2019.xlsx, Tab Summary of Rates. The cost of service  
8 study estimates the demand charge for Schedule 5 customers to be \$11.38. Explain whether  
9 Kenergy supports a revenue neutral design in which the energy charges for Schedule 5 customers  
10 is decreased and the demand rate is increased so that it is closer to the cost to serve.

11

12

13 **Response)** The Big Rivers Electric Corporation tariff for Rural Delivery Service ("RDS") includes  
14 a demand charge of \$13.8050 per kW.

15 a. The rate of return on rate base for Kenergy's Rate Schedule 5 exceeds that of the overall  
16 system, and thus no rate increase was considered.

17 b. Kenergy does not support such a change at this time. Kenergy's aim in this case was to resolve  
18 the immediate revenue deficiency by addressing the most substantial inter-class subsidization  
19 issue, *i.e.*, the significant subsidization of the residential class by all of the other classes. Put  
20 more simply, Kenergy's major "rate problem" is that the residential customer charge is too low,  
21 and as a result the residential revenues do not cover the cost to serve, so Kenergy primarily  
22 filed this streamlined rate case to address that problem. While additional rate design changes  
23 are permissible in streamlined rate cases and may be supported by the cost of service study  
24 results, Kenergy elected to approach rate design more gradually, to tackle the biggest problem

**KENERGY CORP.  
RESPONSE TO THE COMMISSION STAFF'S  
INITIAL REQUEST FOR INFORMATION**

**CASE NO. 2021-00066**

1 first and foremost, and to minimize the number of other rate revisions in this particular  
2 streamlined filing.

3  
4 **Witness)** John Wolfram

5  
6  
7  
8  
9