

# AGREEMENT FOR ELECTRIC SERVICE

AGREEMENT made June 5, 2002, between KENERGY CORP, 6402 Old Corydon Road, Henderson, Kentucky 42420 (hereinafter called the "Seller"), and Ohio County Coal Company, with a service address at 1550 Grove Rd., Centertown, Kentucky and corporate address at 19070 St. Rt. 1078, Henderson, Kentucky 42420, (hereinafter called the "Consumer"), a corporation.

The Seller shall sell and deliver to the Consumer, and the Consumer shall purchase all of the electric power and energy, which the Consumer may need at the aforementioned location, up to 5,000 kilowatts, upon the following terms:

## 1. SERVICE CHARACTERISTICS

- A. Service hereunder shall be alternating current, 3 phase, sixty cycles, 69,000 volts.
- B. The Consumer shall not use the electric power and energy furnished hereunder as an auxiliary or supplement to any other source of power and shall not sell electric power and energy purchased hereunder.

## 2. PAYMENT

- A. The Consumer shall pay the Seller for service hereunder at the rates and upon the terms and conditions set forth in Schedule 31, attached to and made a part of this Agreement as Exhibit "A". Notwithstanding any provision of the Schedule and irrespective of Consumer's requirements for or use of electric power and energy, the demand for billing purposes hereunder shall be not less than 500 kilowatts for any billing period. In any event the Consumer shall pay the Seller not less than \$5,075.00 per month for service or for having service available hereunder during the term hereof.
- B. The initial billing period shall start when Consumer begins using electric power and energy, or 30 days after the Seller notifies the Consumer in writing that service is available hereunder, whichever shall occur first; subject, however, to conditions of section 8.B., below.
- C. Bills for service hereunder shall be paid at the office of the Seller at Kenergy Corp, 6402 Old Corydon Rd., Henderson, KY 42420.

Such payments shall be due on the 25<sup>th</sup> day of each month for service furnished during the preceding monthly billing period.

If the Consumer shall fail to make any such payment within fifteen (15) days after such payment is due, the Seller may discontinue service to the Consumer upon giving fifteen (15) days' written notice to the Consumer of its intention so to do, provided, however, that such discontinuance of service shall not relieve the Consumer of any of its obligations under this Agreement.

- D. The Consumer agrees that if, at any time, the rate under which the Seller purchases electric service at wholesale is modified, the Seller may make a corresponding modification in the rate for service hereunder.

## 3. MEMBERSHIP

The Consumer shall become a member of the Seller, shall pay the membership fee and be bound by such rules and regulations as may from time to time be adopted by the Seller.

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PURSUANT TO 807 KAR 5.011.  
SECTION 9 (1)

BY Stanford Bell  
SECRETARY OF THE COMMISSION

4. CONTINUITY OF SERVICE

The Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail or be interrupted, or become defective through act of God, Governmental authority, action of the elements, public enemy, accident, strikes, labor trouble, required maintenance work, inability to secure right-of-way, or any other cause beyond the reasonable control of Seller, the Seller shall not be liable therefore or for damages caused thereby.

5. RIGHT OF ACCESS

Duly authorized representatives of the Seller shall be permitted to enter the Consumer's premises at all reasonable times in order to carry out the provisions hereof. Any such representatives shall be equipped at no expense to the Consumer with any safety clothing and equipment required by applicable federal and state mine safety laws, shall report to the Consumer's mine office to receive any legally required hazard training before performing any work on the Consumer's property, and shall observe and comply with all applicable mine safety laws and regulations, and the Consumer's applicable safety rules, while present on the Consumer's property.

6. TERM

This Agreement shall become effective on the date first above written and shall remain in effect until one (1) year following the start of the initial billing period and thereafter until terminated by either party giving to the other three (3) months' notice in writing.

7. CONSUMER DEPOSIT

As security for payment of its monthly billing obligations and termination charges, Consumer shall be required to provide Seller a cash deposit or other sufficient guaranty in a sum representing two (2) months' estimated billing and projected termination charges, initially being the total amount of \$185,000.00, and Seller hereby acknowledges receipt of same. The portion of the deposit or guaranty representing termination charges (\$72,000.00) shall be reduced by \$.90 per kw of demand the Consumer is billed and pays for each month beginning with the initial billing period (see attached Addendum 2), and annually the parties shall adjust the deposit or guaranty accordingly.

8. SUCCESSION AND APPROVAL

- A. This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the respective parties hereto.
- B. This contract shall not be effective unless approved or accepted in writing by the Kentucky Public Service Commission.
- C. See attached Addenda to Agreement for Electric Service.

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

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KENERGY CORP.

JUL 10 2002

ATTEST:

SELLER  
PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

By Dean [Signature] Bill  
President [Signature]  
SECRETARY OF THE COMMISSION

SECRETARY

OHIO COUNTY COAL COMPANY

Consumer

By [Signature]  
PRESIDENT

ATTEST:

TITLE OF OFFICER\*

\*If other than president, vice president, partner or owner, a power of attorney must accompany contract.



Henderson, Kentucky

FOR ALL TERRITORY SERVED

Community, Town or City

PSC NO. 1

Original SHEET NO. 31

CANCELLING PSC NO. \_\_\_\_\_

\_\_\_\_\_ SHEET NO. \_\_\_\_\_

**CLASSIFICATION OF SERVICE**

**Schedule 31 – Dedicated Delivery Point or 2,001 KW and Above**

AVAILABLE

This rate shall apply to: 1) Large customers whose load requirements exceed 500 KW and where service is provided through a dedicated substation connected to the 69 kv. transmission system of Big Rivers or other accessible system; 2) any large power customer (non-dedicated) contracting for not less than 2001 KW; and 3) any large power customer formerly served under special contract whose load requirements exceed 2,001 KW.

CONDITIONS OF SERVICE

An "Agreement for Purchase of Power" shall be signed by any new customer prior to service under this rate.

CHARACTER OF SERVICE

Service shall be the 60 Hz, 3-phase, at voltage as mutually agreed by the Seller.

DETERMINATION OF BILLING DEMAND

For all delivery points, the Billing Demand in kilowatts shall be the highest of: a) The customer's maximum integrated thirty-minute demand at such delivery point during each billing month, determined by meters which record at the end of each thirty-minute period the integrated kilowatt demand during the preceding thirty minutes; b) the Contract Demand; or c) 500 KW where service is provided through a dedicated substation and 2,001 KW for all other customers.

POWER FACTOR ADJUSTMENT

The customer agrees to maintain a power factor as nearly as practical to unity. The company will permit the use of apparatus that shall result, during normal operation, in a power factor not lower than 90%. At the Company's option, in lieu of the customers providing the above corrective equipment when the power factor is less than 90%, the Company may adjust the maximum measured demand for billing purposes in accordance with the following formula:

$$\frac{\text{Max. Measured KW} \times 90\%}{\text{Power Factor (\%)}}$$

The power factor shall be measured at time of maximum load.

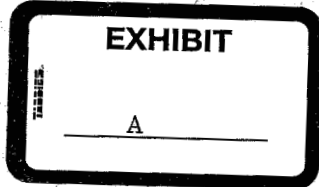
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PURSUANT TO 807 KAR 5011  
SECTION 9(1)  
BY: Stephan B. Bell  
SECRETARY OF THE COMMISSION

JUN 29 2001

DATE OF ISSUE July 16, 2001 DATE EFFECTIVE June 29, 2001

ISSUED BY Dean Stanley TITLE President and CEO  
SIGNATURE OF OFFICER





Henderson, Kentucky

FOR ALL TERRITORY SERVED  
Community, Town or City  
PSC NO. 1  
Original SHEET NO. 31A  
CANCELLING PSC NO.  
SHEET NO.

**CLASSIFICATION OF SERVICE**  
Schedule 31 - Dedicated Delivery Point or 2,001 KW and Above

**METERING**

Electrical usage will be metered at the transmission voltage supplied or at the customer's secondary voltage with a 1.0% adder to the metered KWH to account for transformer losses, as determined by Seller.

**MONTHLY RATE**

Customer Charge per delivery point.....\$100.00  
Demand Charge per KW of Billing Demand .....\$ 10.15

**Energy Charges:**

First 5,000,000 KWH, per KWH..... 0.0182750  
Over 5,000,000 KWH, per KWH..... 0.0167750

Monthly Facilities Charge per Assigned Dollar ..... 1.35%  
of Investment by Kenergy in substation,  
transformer, feeder, etc.

School Taxes added to bill if applicable.

Kentucky Sales Taxes added to bill if applicable.

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**MINIMUM DEMAND CHARGE**

The minimum demand charge shall be no less than the amount as specified in the "Agreement for Purchase of Power."  
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SECTION 9 (1)

BY Stephan Bill  
SECRETARY OF THE COMMISSION

**TERMS OF PAYMENT**

The above rates are net, the gross rate being five percent (5%) greater. In the event the current monthly bill is not paid within twenty (20) days from the date of the bill, the gross rate will apply.

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JUN 29 2001

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SECTION 9 (1)

BY Stephan Bill  
SECRETARY OF THE COMMISSION  
June 29, 2001

DATE OF ISSUE July 16, 2001 DATE EFFECTIVE  
ISSUED BY Dean Stanley TITLE President and CEO  
SIGNATURE OF OFFICER

**ADDENDA TO AGREEMENT FOR ELECTRIC SERVICE**

**ADDENDUM 1**

**1.10 Facilities to be Provided by Consumer.**

1.11 Consumer will provide or cause to be provided (without cost to the Seller) permanent easements upon Consumer's property which in the opinion of the Seller are necessary for the construction of facilities which the Seller or its wholesale power supplier must furnish to provide electric service under this agreement.

1.12 Except as provided in Section 1.20 of this Addendum, Consumer shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased hereunder at and from the point of delivery, including such protective devices as may be reasonably necessary in the opinion of the Seller to protect the system of the Seller from disturbances caused by Consumer. Plans for equipment to be installed for such protection shall be submitted to Seller for prior approval.

**1.20 Facilities to be Provided by Seller.** Seller shall furnish and install, or cause to be furnished and installed, all of the facilities required for the delivery of electric power and energy to the point of delivery, including the following facilities.

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1.21 One 69,000 volt electric transmission line extending from Big Rivers Electric Corporation's existing transmission line system to Consumer's dead-end structure near Consumer's substation yard.

1.22 Metering, communications, relaying, and control circuits as mutually agreed upon and as necessary for proper measurement, control and coordination between Seller's and Consumer's facilities.

1.30 **Construction Standards.** Consumer shall construct and maintain any facilities it builds under an obligation created by this agreement in accordance with applicable provisions of the National Electric Safety Code of the American National Standards Institute (ANSI C2), and other applicable laws, codes and regulations, provided however Seller shall have no duty to inspect those facilities for conformance with such standards. Each party shall own, maintain and operate the facilities its purchases and installs.

1.40 **Electric Disturbances and Phase Balancing.** Consumer shall not use the energy delivered under this agreement in such manner as to cause electric power and energy disturbances which may be reasonably expected to cause damage to or interfere with Seller's system, a system connected with Seller's system, or facilities or other property in proximity to Seller's system; or which prevent Seller from serving other consumers satisfactorily.

## **ADDENDUM 2**

**Termination.** If termination of this agreement is requested by Consumer, or if Seller terminates the Agreement for nonpayment by Consumer, a termination charge shall

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be paid to the Seller by the consumer equal to the actual investment made by Seller's wholesale power supplier to erect the transmission line facilities described in paragraphs 1.21 and 1.22 of this Addenda (not to exceed \$72,000.00), reduced by \$.90 per kw of demand the Consumer is billed and pays for each month beginning with the initial billing period. Consumer's obligation under the terms of this agreement shall cease upon such Termination and after reimbursement of termination charges.

### ADDENDUM 3

**Force Majeure.** In the event performance of this agreement is limited or prevented in whole or in part by Acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the Government (whether federal, state, or local, civil or military), civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, or inability of either party hereto to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (whether federal, state, or local, civil or military), upon such party's giving notice and reasonably full particulars of such force majeure or uncontrollable force, in writing or by telegraph to the other party within a reasonable time after the occurrence of the cause relied on, the party whose performance is so limited or prevented shall be excused, discharged and released from the performance to the extent such performance is limited or prevented, but only for the period when the performance is limited or prevented and thereafter all of the terms of this agreement shall remain in effect except that the term of the agreement shall be extended for a period equal to the duration

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SECRETARY OF THE COMMISSION

of the aforesaid force majeure. Consumer shall be excused from paying the minimum bill during any period of force majeure, but nothing contained herein shall excuse Consumer from the obligations of paying at the time provided herein, for any power consumed by it. In no event shall this agreement subject either party to liability for consequential or incidental damages, or damages for loss of anticipated profits.

#### **ADDENDUM 4**

**Successors in Interest.** Consumer may with written approval of the Seller assign or transfer this Agreement and such approval shall not be unreasonably withheld. In such event such assignee or transferee shall assume all obligations or responsibilities of Consumer under this agreement, and the Consumer shall thereupon have no further liability under this Agreement, except for unpaid billings for power consumed prior to the assignment. Notwithstanding the foregoing, Consumer may assign this Agreement without Seller's consent to any successor in interest of Consumer as owner or operator of the mine facility to be served under this Agreement, provided that no such assignment shall relieve Consumer of any obligation, liability or responsibility under this Agreement.

#### **ADDENDUM 5**

5.10 **Remedies of the Parties.** Waiver at any time by either party of rights with respect to a default or any other matter arising in connection with this agreement shall not be deemed to be a waiver with respect to any subsequent default or matter. Except as specifically provided herein, this agreement shall not be construed to abridge, limit, or deprive either party of any remedy for breach of the provisions hereof which would otherwise be available at law or equity.

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5.20 **Reports and Information.** Consumer shall furnish to the Seller such reports and information concerning its operations as the Seller may reasonably request from time to time.

5.30 **Notices.** Any written notice, demand or request required or authorized under this agreement shall be deemed properly given to or served on Seller if mailed to:

Kenergy Corp.,  
Attention: Manager of Industrial Development,  
Post Office Box 18,  
Henderson, Kentucky 42419-0018

Any such notice, demand or request shall be deemed properly given to or served on Consumer if mailed to:

Ohio County Coal Company  
c/o John Hill, President  
19070 State Route 1078  
Henderson, KY 42420

5.40 **Jurisdiction and Venue.** The terms, covenants and conditions herein contained constitute the entire agreement between the parties and shall supersede all previous communications, representatives, or agreement, either oral or written, between the parties hereto with respect to the subject matter hereof, provided, however, that service to the Consumer is subject to the provisions of the Articles of Consolidation and Bylaws of Seller and is subject to the lawful orders of the Kentucky Public Service Commission. All respective rights and obligations of the parties shall be governed by the laws of the State of Kentucky. Venue of any action, legal or equitable, having as its basis the enforcement or interpretation of this contract, shall be Henderson County, Kentucky. **PUBLIC SERVICE COMMISSION OF KENTUCKY EFFECTIVE**

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SECRETARY OF THE COMMISSION

5.50 Severability. Should any provision or provisions of this agreement be declared void or illegal by any court of competent jurisdiction, then such void or illegal provision or provisions shall be severed from this agreement, and all other provisions hereof shall remain in full force and effect.

**KENERGY CORP.**

Seller

By

Dean Stanley  
President

ATTEST:

\_\_\_\_\_  
SECRETARY

**OHIO COUNTY COAL COMPANY**

Consumer

By

J. C. Sees  
PRESIDENT  
Title of Officer\*

ATTEST:

\_\_\_\_\_  
Secretary

\*If other than president, vice president, partner or owner, a power of attorney must accompany contract.

(7/14/00)

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BY Stenhard Bell  
SECRETARY OF THE COMMISSION