

CONTRACT FOR ELECTRICAL ENERGY

FOR OPERATION OF FLOOD PUMPS

IN THE CITY OF

ASHLAND, KENTUCKY

THIS AGREEMENT made and entered into this 7th day of March, 1972, by and between the Kentucky Power Company, a corporation of the Commonwealth of Kentucky (hereinafter sometimes called "Company") and the CITY OF ASHLAND, KENTUCKY, a municipal corporation, by and through its Mayor, (hereinafter sometimes called "Customer").

WITNESSETH:

WHEREAS, the United States of America, by and through its Corps of Engineers, U. S. Army, Huntington District, has constructed a backwater protection works for the protection of the CITY OF ASHLAND, KENTUCKY, and

WHEREAS, the Army Engineers have also constructed as a part of the aforementioned improvement, pumping stations for the purpose of removing water on the landward side of the floodwall during abnormal river stages, and

WHEREAS, the Customer has agreed to operate the aforementioned flood pumping stations during abnormal river stages or for maintenance and testing purposes and desires to purchase from the Company all the electrical energy necessary to motivate the pumps, motors and control equipment located in the said flood pumping stations during abnormal river stages or as otherwise herein specified.

NOW THEREFORE

For and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree with each other as follows:

ARTICLE I: The Company agrees to furnish to the Customer during the term of this agreement, and the Customer agrees to take from the Company subject to the following terms and conditions, all the electrical energy of the character specified herein that shall be required for the operation of Customer's flood pumps and control equipment located in the CITY OF

ASHLAND, KENTUCKY, at the following points:

1. At the intersection of 6th St., and Central Ave., and being designated as the Long Branch Pumping Station.
2. At the intersection of 10th St., and Front St., and being designated as the 10th Street Pumping Station.
3. At the intersection of 15th St., and Front St., and being designated as the 15th Street Pumping Station.
4. At the intersection of 18th St., and Front St., and being designated as the 18th Street Pumping Station.
5. Located on Front St., approximately 150 feet west of its intersection with 26th St., and being designated as Tannery Pumping Station.
6. Located on 34th St., approximately 250 feet north of its intersection with Greenup Ave., and being designated as 34th Street Pumping Station.

The nominal capacity of said pumps to be as follows:

1. Long Branch Pumping Station - 160 horsepower.
2. Tenth Street Pumping Station - 240 horsepower.
3. Fifteenth Street Pumping Station - 130 horsepower.
4. Eighteenth Street Pumping Station - 315 horsepower.
5. Tannery Pumping Station - 915 horsepower.
6. Thirty-fourth Street Pumping Station - 160 horsepower.

ARTICLE II: The Company shall furnish and the Customer shall take electrical energy and pay therefore under the terms of this agreement for a period of ten years from and after the 7th day of March, 1972, and thereafter in successive periods of one year each until either party gives the other not less than sixty (60) days' notice in writing of his or its election to discontinue the service at the expiration of any of said periods.

ARTICLE III: The electrical energy delivered hereunder shall be three phase, alternating current and shall be delivered at the approximate voltage hereunder specified for the aforementioned flood pumping stations. All electrical energy shall be delivered at a reasonably close maintenance to constant potential and frequency. The said electrical energy shall be

delivered at the Long Branch, Tenth Street, Fifteenth Street, Eighteenth Street, Tannery and Thirty-fourth Street Pumping Stations at 2400/4160 volts wye, 3 phase, 4 wire, which shall constitute the point of delivery under this agreement. All electrical energy so delivered shall be measured by one standard polyphase, integrating, watt-hour meter to measure the energy delivered to Customer, and shall be owned and installed by the Company.

As the Company's distribution in Ashland is changed to 12 KV, the delivery voltage at the Long Branch, Tenth Street, Fifteenth Street, Eighteenth Street, and Thirty-fourth Street Pumping Stations will then be 480 volts delta, 3 phase, 3 wire and will also be metered at this voltage. The delivery voltage at the Tannery Pumping Station will remain at 2400/4160 volts wye, 3 phase, 4 wire. The change of voltage at the various stations will take place as the conversion progresses and not necessarily at the same time.

ARTICLE IV: The Customer hereby agrees to pay the Company monthly for electrical energy delivered hereunder at the rate of \$.021 per kilowatt-hour.

This rate is based upon the weighted average cost of fuel of Kentucky Power Company's Big Sandy Plant.

If during any monthly period such average cost is above 16.6 cents per 1,000,000 BTU, by at least .5 cent, an additional charge during the second month thereafter will be made on the actual kilowatt-hours used during said second month at the rate of .005 cent per kilowatt-hour for each full .5 cent increase in the cost of fuel above 16.6 cents per 1,000,000 BTU.

If during any monthly period such average cost is less than 15.6 cents per 1,000,000 BTU, by at least .5 cent, the bill rendered to the customer for the second succeeding month shall be decreased by an amount equal to the actual kilowatt-hours used during said second month multiplied by .005 cent per kilowatt-hour for each full .5 cent decrease in the cost of fuel below

15.6 cents per 1,000,000 BTU.

All bills for such electrical energy furnished by Company to the Customer shall be computed on a monthly basis in accordance with the foregoing charges and shall be due and payable by Customer within a period of 15 days from the date thereof. If full payment is made within 30 days of date of bill, the above price will be subject to a discount of \$.001 per kilowatt-hour.

ARTICLE V: The electrical energy supplied hereunder shall be for the sole purpose of operating the flood pumps and control equipment mentioned above, and shall not be resold or used for any other purpose.

ARTICLE VI: The Company will use reasonable diligenc<sup>e</sup> in furnishing a regular and uninterrupted supply of energy, but in case the supply of such energy is interrupted or fails by reason of an act of God, the public enemy, accidents, strikes, legal process, State of municipal interferences, breakdowns, injury to the machinery, transmission lines or distribution lines of the Company, extraordinary repairs or other causes beyond the reasonable control of the Company, the Company shall not be liable for any damages due to such interruptions or failure in the supply of energy to Customer.

ARTICLE VII: Suitable switches or other disconnecting devices will be installed at a convenient point on Customer's lines. Said switches or disconnecting devices to be owned, operated and maintained by Customer and shall remain open except when service is required for testing purposes or for the purpose of operating the aforementioned flood pumping equipment. The time of testing shall be set by agreement between the Customer and the Company, and the Customer shall advise the Company whenever the disconnecting device is opened or closed.

ARTICLE VIII: It is mutually agreed that the infrequent operation of the flood pumps at maximum capacity will not justify installation of facilities by the Company which would be necessary if the Company were to stand ready always to serve not only its normal load, but also a flood pumping load. It

may, therefore, become necessary at certain times and under certain circumstances, in order to meet the demands of the flood pumps, for the Company to attempt to limit the service it can simultaneously make available to its then existing customers. The Company agrees that in times of emergency due to flood conditions, when legally ordered by the City of Ashland, the Public Service Commission of Kentucky, or other bodies having jurisdiction thereover, and after having obtained the consent of the Customer or Customers involved, it will curtail its other services in order to provide additional electrical energy for the operation of said flood pumps. The Customer agrees to operate the flood pumping units at all times in such manner as will cause a minimum disturbance to the supply of energy to the other customers of the Company.

It is further understood and agreed that the Company assumes no duty or obligations to furnish nor does it guarantee continuous or uninterrupted power service.

It is further mutually agreed that for the purpose of testing any and all flood pumping units, the Customer will limit the use of the electrical energy supply to the operation of not more than one pumping unit at each station at one time.

ARTICLE IX. The Company hereby assumes all risks of and liability for injury (except such as is caused by the negligence of the Customer) to persons and property occasioned by electrical energy on its own lines up to the point of delivery fixed as above provided, and shall indemnify and save harmless the Customer from and against all liability so assumed by it; but it shall not be liable to any extent whatever for any injury (except such as is caused by its own negligence) to persons or property which may be caused by the energy delivered by it beyond the point of delivery of such energy.

The customer hereby assumes all risks of any liability for all injury (except such as is caused by the negligence of the Company) to persons and

property occasioned by electrical energy on its own lines and equipment beyond the said point where such energy is delivered to it by the Company and shall indemnify and save harmless the Company from and against all liability so assumed by it; but it shall not be liable to any extent whatever for any injury (except such as is caused by the negligence of Customer) to persons or property which may be caused by the energy delivered to it up to the said point of delivery.

ARTICLE X: The Customer agrees that properly authorized agents of the Company shall at all reasonable hours have free access to any premises owned by or under the control of Customer wherein or whereon any equipment of the Company is located, for the purpose of examining, repairing or removing any such equipment of the Company.

All such equipment of the Company shall be and remain the personal property of the Company and be subject to removal by it upon the termination of this contract.

ARTICLE XI: If the Customer shall make default in the payment of any bills as hereinbefore provided, the Company may, at its option, after having given ten (10) days' written notice of its intention so to do, discontinue the service herein contracted for and continue to withhold the supply to electrical energy until such time as the Customer has made payment for all bills in which it is in arrears. Any such suspension of service by the Company shall not terminate this contract unless the Company so elects. Otherwise, upon payment by the Customer of the amount it is in arrears, the contract shall remain in full force and effect for the period herein specified.

ARTICLE XII: This Agreement is made subject to the jurisdiction of any governmental authority having jurisdiction in the premises, and any party may, at any time or from time to time, take any action before or with such authorities with respect to any terms or conditions of this Agreement that it deems desirable, and in such event, the terms and conditions under which service shall be rendered hereunder shall be those authorized by

such authorities.

ARTICLE XIII: All and singular, the terms and conditions of this contract shall be binding upon and inure to the benefit of the parties hereto, their respective successors and/or assigns.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed by their duly authorized officers on this day and year first above written.

KENTUCKY POWER COMPANY

BY Waldorf  
Executive Vice President

ATTEST:

A. H. Via, Jr.  
Assistant Secretary

CITY OF ASHLAND, KENTUCKY

BY James J. Webb  
Mayor

ATTEST:

Robert W. Johnson  
City Clerk

Approved as to Form

David H. Smith  
Corporate Counsel  
City of Ashland, Ky.