

SPECIAL INDUSTRIAL POWER AGREEMENT

THIS AGREEMENT, made and entered into this 21st day of September, 2000, by and between Fleming-Mason Energy Cooperative, a Kentucky corporation with its principal offices at Elizaville Road, P.O. Drawer 328, Flemingsburg, KY 41041, hereinafter referred to as "FMEC," and Tennessee Gas Pipeline Company, a Delaware corporation with its principal offices at 1001 Louisiana Street, P.O. Box 2511, Houston, Texas 77002, hereinafter referred to as "TGP" or "Customer." FMEC and TGP may also be individually referred to as "Party" or collectively as "Parties."

WITNESSETH:

WHEREAS, FMEC is a rural electric cooperative providing retail electric service in Rowan County, Kentucky, and

WHEREAS, FMEC is a member of East Kentucky Power Cooperative, Incorporated, hereinafter referred to as "EKPC," and has contracted with and purchases all of its wholesale electric power and energy from EKPC, and

WHEREAS, TGP is a member of FMEC and desires to purchase all of its retail electric power and energy needs from FMEC, under the terms and conditions contained herein, to serve its Rowan County pipeline facilities.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, the parties agree as follows:

1. **Term.** This Agreement shall become effective upon 30 days' notice from TGP and completion of facilities by EKPC, subject to Section 17 hereunder. This Agreement shall continue in effect for a term of twenty (20) years from said date and shall continue thereafter unless terminated by either party by providing written notice of such termination at least one (1) year prior to the desired termination date.

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2. **Availability of Power.** Subject to the other provisions of this Agreement, FMEC shall make available to TGP, and TGP shall take and purchase from FMEC, all of TGP's requirements for electric demand and electric energy, hereinafter referred to as demand or energy, for the operation of TGP's said pipeline facilities. FMEC in conjunction with EKPC will provide facilities to serve TGP's electric demand requirements up to a maximum of 33,000 kW. TGP shall not exceed such maximum demand unless the Parties and EKPC agree.

The demand and energy made available to TGP hereunder shall be delivered, taken, and paid for in accordance with the terms hereof, as approved by the Kentucky Public Service Commission (the "P.S.C."). The following monthly charges shall apply to service hereunder:

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• **Energy Charge**

Energy charges will be based upon two segments:

- a. For the 16-hour on-peak period from 0700 to 2300 Eastern Prevailing Time ("EPT") for all weekdays throughout the calendar year, except for NERC approved holidays, energy provided and within the Deviation Band, as defined in Schedule A, of the scheduled energy for that hour will be priced on the basis of the "Into Cinergy" Daily Index published by Power Markets Week Daily Price Report, plus losses.
- b. For all other hours within the calendar year, which covers all weekdays from 2300 to 0700 EPT, all weekends, and all NERC approved holidays, energy provided and within the Deviation Band of the scheduled energy for that hour, will be priced on the basis of EKPC's Incremental Energy Cost, as defined in Schedule A, for supplying TGP's scheduled energy for that hour, plus losses, plus \$3.00 per MWh.

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In a. and b. above, in no case shall the energy billed in any hour be less than the lower level of the Deviation Band, as defined in Schedule A.

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• **Transmission Charge**

A transmission charge of \$1.75 per kW/mo. shall be applied to the Billing Demand defined as the highest hourly integrated demand measured at the

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delivery point adjusted for losses and power factor as described below. The minimum Billing Demand shall be 25,000 kW except for the first three months of this contract's term during TGP's equipment testing phase for which there is no minimum Billing Demand.

- **Facilities Charge**
TGP will pay an up-front charge to cover the actual total investment that EKPC will make to construct a radial 138 kV line from TGP's 138 kV distribution substation to EKPC's transmission system. Such investment is estimated for convenience only at \$3,042,000. TGP will also pay a monthly fixed charge of \$4,583 to recover taxes and routine operation and maintenance costs
- **Customer Charge**
A monthly Customer Charge shall be calculated based on the greater of (a) \$2.00 times the Metered Energy in MWh at the delivery point, or (b) \$23,650.
- **Minimum Charge**
In no case shall the monthly bill be less than the sum of the bills previously delineated in this section under the headings of Transmission Charge, Facilities Charge and Customer Charge, plus charges for any energy actually provided.
- **Loss Adjustment**
Metered Energy and Demand will be increased for losses to determine Energy Charges and Billing Demand. The percent of increase shall be that listed in Schedule 9, Loss Compensation Service, of EKPC's approved Open Access Transmission Tariff ("OATT") as amended from time to time. Currently the loss percentages are 2 ½ percent for energy and 4 percent for demand.
- **Power Factor Adjustment**
Billing Demand will be the greater of the peak metered kW demand plus losses, or the peak metered kVA demand plus losses times 0.95.
- **Energy Imbalance Services**
The rates listed above recover all FERC pro forma OATT ancillary services except for the Energy Imbalance Service. Charges for such service shall be in accordance with Schedule A.

3. **Scheduling Provisions.** FMEC has designated EKPC as the System Operator for scheduling any service under this Agreement. By 0630 EPT on the workday prior to any service under this Agreement, TGP shall provide, or cause to be provided electronically (e-mail unless mutually agreed otherwise by Parties) to the EKPC

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System Operator on duty, a pre-schedule of anticipated electricity consumption for each hour of the following day, or if the next day is not a workday observed by EKPC, of the next workday and all intervening days. At TGP's sole discretion, TGP may alter this nomination on the workday prior to service between the hours of 0630 and 0830 EPT up to 15 times per contract year without charge. In addition, TGP may alter its nomination at any time if the alteration is mutually agreeable to both TGP and EKPC as FMEC's designated System Operator. All pre-schedules shall be to the nearest whole megawatt.

In the event of a pending loss of load (electric demand to drive TGP's electric motors which in turn drive gas compressors) or an unexpected loss of load, TGP shall immediately notify the EKPC System Operator of the extent and duration of the outage.

4. **Conditions of Delivery.** The point of delivery for firm demand and energy made available hereunder shall be the point at which TGP's facilities connect to EKPC's facilities. TGP will provide a lockable, visible isolating disconnect switch between the parties' facilities for use by either party or its designee. The demand and energy made available hereunder shall be in the form of 3-phase alternating current at a frequency of approximately 60 hertz and at a nominal voltage of 138 kV. Voltage shall be such that TGP, with voltage regulation, can maintain voltage within limits as prescribed by the applicable rules and regulations of the Kentucky Public Service Commission. Maintenance by FMEC at said point of delivery of the above-styled frequency and voltage within the above-stated limits shall constitute availability of electricity for purposes of this Agreement. The

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demand and energy taken by TGP hereunder shall be measured by meters and associated metering equipment, including instrument transformers, to be or caused to be installed, operated, and maintained by FMEC or its designee, EKPC. None of such electric demand and energy shall be resold to third parties.

Neither FMEC nor EKPC shall be obligated to provide or be responsible for providing protective equipment for TGP's lines, facilities, and equipment to protect against single phasing, low voltage, short circuits or any other abnormal system conditions, but FMEC or EKPC, as the case may be, may provide such protective equipment as it deems necessary for the protection of its own property and operations. The electrical equipment installed by TGP shall be capable of satisfactory coordination with any protective equipment installed by FMEC or EKPC.

5. **Electric Disturbances.** TGP shall not use the energy delivered under this Agreement in such manner as to cause electric disturbances which may be reasonably expected to (a) cause damage to or interference with FMEC's or EKPC's system, systems connected with FMEC's or EKPC's system, or facilities or other property in proximity to FMEC's or EKPC's system, or (b) prevent FMEC or EKPC from serving other purchasers satisfactorily.

FMEC or EKPC as System Operator may, at any time during the term of this Agreement, notify TGP of any such electrical disturbances and, before attempting to take any other action, shall afford TGP a reasonable time and opportunity, under the circumstances involved, to correct or suppress disturbances. If TGP does not so correct or suppress the disturbances, within a

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reasonable time period, then FMEC or EKPC as System Operator may suspend service until the disturbance has been rectified.

Any interruption of service which may become necessary by reason of this Section 5 shall not relieve TGP from its obligation to pay FMEC the Minimum Charge as specified in Section 2, hereinabove.

6. **Right of Access.** Duly authorized representatives of the FMEC shall be permitted to enter the TGP's premises at all reasonable times in order to carry out the provisions hereof. FMEC shall notify TGP's Area Operations Manager at least 48 hours prior to commencement of any work to be performed under the terms of this agreement. In case of emergency situations, FMEC shall use reasonable efforts under the circumstances to notify TGP prior to any emergency construction or maintenance and use routes designated by TGP to FMEC worksites. FMEC shall indemnify, defend and hold harmless TGP, its affiliates and subsidiaries from and against any and all liabilities, claims and causes of action for personal injury, death or property damage occurring on or to such property as a result of FMEC's entry onto TGP's premises. FMEC agrees to comply fully with all rules, regulations and instructions issued by TGP regarding the actions of FMEC while upon, entering or leaving the premises of TGP.

7. **Right of Removal.** Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed, by either of the parties hereto or by EKPC on or in the premises of the other party shall be and remain the property of the party owning and installing such equipment, apparatus, devices or facilities regardless of the mode or manner of annexation or attachment to real property of

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the other. Upon the termination of this Agreement the owner thereof shall have, subject to the conditions set forth in Section 6 above, the right to enter upon the premises of the other and shall within a reasonable time remove all or any portion of such equipment, apparatus, devices or facilities, unless otherwise agreed by the parties.

8. **Rates and Charges.** Upon the effective date, TGP shall pay FMEC monthly for demand and energy made available under this Agreement in accordance with the terms contained herein as approved by the P.S.C.
9. **Payment of Bills.** Payment for electric demand and energy furnished hereunder shall be due and payable at the office of FMEC monthly in accordance with the applicable pricing provisions in this contract. FMEC shall deliver a bill to TGP's offices by the 7th of each month for service for the previous month. TGP shall pay said bill in usable funds at the office of FMEC by the 21st of the month ("Due Date"). If TGP shall fail to pay any such bill as provided in this contract, FMEC may discontinue delivery of electric demand and energy hereunder upon fifteen (15) days' written notice to TGP of its intention to do so. Such discontinuance for non-payment shall not in any way affect the obligations of TGP to pay the minimum monthly charge in the pricing provisions. All amounts unpaid when due will be subject to a late payment charge of prime plus one percent. Prime will be based upon the published rate in the Wall Street Journal **Public Utility Commission OF KENTUCKY** **EFFECTIVE** **SEP 09 2006** day of the month in which the service was rendered. Charges will be computed from the Due Date until usable funds are received by FMEC on the basis of a 365-day year (i.e. $(\text{days late}/365) \times (\text{prime}\% + 1\%) \times \text{bill} = \text{late payment charge}$).

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10. **Operating Representatives.** The Parties mutually agree that each party shall appoint two Operating Representatives from its respective company who will have the responsibility and the authority to act on its behalf. One of the representatives will have the authority and responsibility to act on issues relating to engineering matters, such as equipment and maintenance, whereas the other representative will have the authority and responsibility to act upon matters of electricity supply, wheeling and losses (collectively, "Operational Matters"). The Operating Representatives are empowered to act solely on issues related to the Operational Matters set forth in this Section 10. The Operating Representatives shall have no authority to affect any modifications or amendments to this Agreement, or take any action that may affect or impair the rights and obligations of the parties under this Agreement. EKPC will be asked to provide a representative to this Operating Committee. The representatives will put any agreements reached by unanimous consent as to Operational Matters in writing in Operating Procedures which will be numbered, dated and signed by each of the five representatives, or by a duly authorized officer of each Party and EKPC. Such Operating Procedures may supplement this Agreement, but may not amend or modify this Agreement. In the event of any conflicts between the Operating Procedures and this Agreement, this Agreement shall control.

The Operating Representatives will be appointed by each Party and EKPC giving notice in writing to the other Party within ten (10) days of the signature of

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this Agreement, each Party's and EKPC's Operating Representative(s) can be changed at any time by giving written notice to the other Party.

11. **Right to Audit.** Each Party shall have the right to commission an audit or audits to confirm the information provided by the other Party in accordance with this Agreement. The cost of such audit(s) shall be paid by the Party requesting the audit(s). The Parties shall fully cooperate with any audit(s) and shall maintain all records necessary for such audit(s) for two (2) years. Following any audit adjustments, the Party providing the adjustment shall provide the other Party the information used to calculate any such adjustment(s). Amounts determined due by the audit will be billed promptly and are due thirty (30) days from the receipt of the invoice.

12. **Changes in Legislation.** Notwithstanding any other provision herein, this Agreement and its terms and conditions are subject to all applicable laws, regulations and orders, whether federal, state or local. To the extent there are future regulatory and or legislative changes that impact the electric utility industry that allow TGP to choose alternative sources to meet its electric power and energy needs for its facilities covered by this Agreement, TGP shall continue to purchase its electric power and energy needs for said facilities pursuant to the terms and conditions of this Agreement.

13. **Capital Credits.** The FMEC's board of directors may defer retirement of so much of the capital credited to patrons for any year which reflects capital credited to the FMEC by EKPC until EKPC shall have retired such capital credited to

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FMEC. TGP shall participate in capital credits in accordance with the Kentucky Revised Statutes and FMEC's Articles of Incorporation and Bylaws.

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

President and CEO
Fleming Mason Energy Cooperative
Elizaville Road, Drawer 328
Flemingsburg, KY 41041

All nominations and daily coordination of operations should be directed to:

EKPC System Operator
859/744-4864, Ext. 300

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

Tennessee Gas Pipeline Company
P. O. Box 2511
Houston, TX 77252-2511
Attn: Director of Planning and Gas Control

All daily coordination of operation should be directed to:

TGP System Controller
Phone: (713) 336-5000 or (800) 231-2800
Fax: (713) 336-5601

Each party shall have the right to change the person to whom, or the location where the notices are to be given or served by notifying the other party, in writing, of such change.

15. **Successors in Interest.** The terms and conditions of this Agreement shall inure to and be binding upon the parties, together with their respective successors in interest. Neither party may assign this Agreement to any other party without the express written consent of the other party, except that FMEC may assign the Agreement to the Rural Utilities Service ("RUS") and/or any other lenders to FMEC without such consent.

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16. **Force Majeure.** The obligations of either party to this Agreement shall be suspended during the continuance of any occurrence, beyond the affected party's control (a "force majeure"), which wholly or partially prevents the affected party from fulfilling such obligations, provided that the affected party gives notice to the other party of the reasons for its inability to perform within a reasonable time from such occurrence, is diligently seeking to cure said force majeure, and gives notice to the other party within a reasonable time of such cure. As used in this section, the term force majeure shall include, but is not limited to: acts of God; strikes; wars; acts of a public enemy; riots; storms; floods; civil disturbances; explosions; failures of machinery or equipment; force majeure interruptions in power deliveries from FMEC's power supplier; or actions of federal, state or local governmental authorities, which are not reasonably within the control of the party claiming relief.

Notwithstanding the above provisions, no event of force majeure shall relieve TGP of the obligation to pay the minimum monthly charge provided herein. In the event that a force majeure event continues for a period of 30 days, then the Party(s) not declaring force majeure may at its option terminate this Agreement by providing the other Parties with written notice of its intent to terminate the Agreement pursuant to this Section 16. Thereupon, the Party declaring force majeure shall have five days after receipt of said termination in which to remedy the force majeure event. If the Party declaring force majeure is able to remedy the force majeure event within the five day period, then the termination notice shall be withdrawn and the contract shall continue in full force and effect. In the event that the Party declaring force majeure is unable to remedy the force majeure event within the five day period, then the contract shall immediately terminate.

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17. **Approvals.** The obligations of the Parties are contingent on the receipt of any necessary approvals of this Agreement and any associated wholesale contract or tariff by EKPC, the RUS, any other lenders to FMEC and the P.S.C.
18. **Modifications.** Any future revisions or modifications of this Agreement shall require the advance approval of EKPC, and any necessary approvals, by the RUS, any other lenders to the FMEC and the P.S.C.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, in six original counterparts, by their respective officers, thereunto duly authorized, as of the day and year first above written.

ATTEST:
Margaret B. Park
 Title: *Assistant Secretary*

By *RBM Math*
 Title: *Sr. Vice President*
 Tennessee Gas Pipeline Company

ATTEST:
Joni K. Hurst
 Title: *Asst. Supervisor*

By *Andy P. Ouelly*
 Title: *Gen. & CEO*
 Fleming-Mason Energy Cooperative

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SCHEDULE A
Energy Imbalance Service

Energy Imbalance Service is provided when the difference between the scheduled and the actual delivery of energy to the load over a single hour is greater than the Deviation Band of the scheduled transaction. Energy imbalances will be subject to compensation and charges set forth below. All compensation and charges shall also reflect losses associated with such energy imbalance.

Definitions

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

Deviation Band: The Deviation Band shall be considered as +/- the greater of
a) 1.5 percent of the scheduled transaction, or b) 2 MW.

Dump Energy: The amount by which the Receipt by TGP is below the lower limit of the Deviation Band in any hour shall be accounted for as Dump Energy.

Dump Energy Billing: Monthly billing credits for Dump Energy, given by FMEC to TGP, shall equal the product of ninety percent (90%) of the annual average incremental cost from the lowest cost EKPC unit, and the sum of the Dump Energy not taken by TGP in the billing period, if any.

EKPC Incremental Energy Cost: EKPC's highest incremental cost to serve one (1) megawatt for each hour.

Excess Energy Imbalance: The amount of Unscheduled Receipt by TGP in excess of the Deviation Band in any hour, shall be accounted for as Excess Energy Imbalance.

Excess Energy Imbalance Billing: TGP shall pay a charge at the rate equal to the greater of \$100/MWh, or one hundred ten percent (110%) of EKPC's Incremental Energy Cost for all Excess Energy Imbalance taken.

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