

ORIGINAL

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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FEDERAL ENERGY  
REGULATORY COMMISSION

134

Docket No. EL04-134-000

East Texas Electric Cooperative, Inc.     )  
  Complainant     )  
  v.     )  
Entergy Arkansas, Inc.     )  
  Respondent     )

**COMPLAINT REQUESTING FAST TRACK PROCESSING  
AND MOTION FOR SUMMARY DISPOSITION**

Pursuant to Sections 201, 206 and 306 of the Federal Power Act, 16 U.S.C. §§ 824b, 824e and 825e and Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 206, East Texas Electric Cooperative, Inc. ("ETEC") submits this complaint against Entergy Arkansas, Inc. ("Entergy Arkansas" or "EAI") and a request for fast track processing. Pursuant to Rule 217, 18 C.F.R. § 217, ETEC also moves for summary disposition of this matter. As demonstrated by Entergy Arkansas's recent bill to ETEC and as explained below, Entergy Arkansas has refused to honor the terms of its agreements with ETEC on file with the Commission. As a result, ETEC has suffered an immediate, substantial and unauthorized rate increase.

Under the terms of an operating agreement between the co-owners of the coal-fired Independence Steam Electric Station ("ISES"), Entergy Arkansas provides other co-owners such as ETEC substitute energy when, because of Entergy's system dispatch, the Station provides the co-owners less than their contracted-for share of ISES-generated power. The agreement specifies that the rate charged for the substitute energy will be based upon the cost of fuel used to power ISES. In 2003, that rate was 14 mills/kwh. On

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June 23, 2004, Entergy Arkansas announced that, beginning July 1, 2004, the co-owners will be charged for substitute energy at a rate equal to the Entergy System's incremental cost plus 10 percent. In 2003, that rate was 51 mills/kwh. Entergy Arkansas has tendered a July bill to ETEC. That billing shows that Entergy Arkansas now charges ETEC far more for ISES substitute energy than the co-owners' agreement specifies. The cost to ETEC of Entergy Arkansas's breach of the Operating Agreement is an estimated \$96,776 for July and \$1,444,837 over the next year.

ETEC requests the Commission: (1) find that Entergy Arkansas's re-pricing of substitute energy violates the express terms of the agreement and the filed rate doctrine; and (2) order Entergy Arkansas to charge ETEC only the rate as set out in the agreement and filed at the Commission. In addition, because one of the purported bases for Entergy Arkansas increasing rates for substitute energy is an Entergy Arkansas response to the mis-allocation of PURPA Qualified Facility power purchases among Entergy Arkansas and other Entergy affiliates under the terms of the Entergy System Agreement, the Commission should institute an investigation of the Entergy companies' apparent violation of the Entergy System Agreement.

None of the issues presented in this case are pending in an existing Commission proceeding or a proceeding in any other forum in which ETEC is a party. Entergy Arkansas's new claims concerning the ramping up of independent power producer generation without compensation to Entergy are related to Energy claims raised in the June 1, 2004 filing of Entergy Services, Inc., Docket No. ER04-901-000. *See Entergy Services, Inc.*, 108 FERC ¶ 61,107 (2004) (setting Entergy's request for a new Generator

Regulation Service for hearing, held in abeyance pending settlement discussions). ETEC is not a party in that case.

**I. COMMUNICATIONS**

All written communications regarding this petition should be addressed to the following individuals who should be placed on the official service list.

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**II. PARTIES**

**A. East Texas Electric Cooperative, Inc.**

ETEC is a non-profit generation and transmission rural electric cooperative corporation organized under the laws of the State of Texas. ETEC has three generation and transmission members: Tex-La Electric Cooperative of Texas, Inc., Northeast Texas Electric Cooperative, Inc., and Sam Rayburn G&T Cooperative, Inc. The three G&T members resell power purchased from ETEC and from other power supply resources to their member distribution cooperatives which resell that power to their end use customers located in East Texas and Southwestern Louisiana.

**B. Entergy Arkansas, Inc.**

Entergy Arkansas is an investor-owned electric utility organized under the laws of the State of Arkansas. As a wholly owned subsidiary of Entergy Corporation, it is a

signatory of the Entergy System Agreement and part of the Entergy system-wide control area.

### III. BACKGROUND

#### A. The Underlying Agreements

ETEC is a co-owner with Entergy Arkansas and others<sup>1</sup> of the Independence Steam Electric Station (“ISES”) located in Newark, Arkansas. ISES consists of two coal-fired electric generating plants, ISES I and ISES 2. ETEC owns 60 MW (a 7.13% share) of the 842 MW of net rated capability in the ISES 2 plant. Wayne M. Miller Affidavit at § 7, included at Attachment I.

ISES is connected to the Entergy Arkansas transmission system and operated within the Entergy control area. ETEC transfers 31 MW of capacity and energy from its share of ISES 2 over the Entergy system into the AEP-West-SPP control area to serve ETEC loads located on the Southwestern Electric Power Company system, and transfers 29 MW of capacity and energy from its share of ISES 2 under its network transmission agreement with Entergy to serve ETEC loads located on the Entergy Gulf States system.

*Id.*

Three contracts govern ETEC’s ownership share of ISES:

- (1) **Independent Steam Electric Station Ownership Agreement, as amended (“ISES Ownership Agreement”).** The agreement among all the ISES co-owners defines the project assets and sets forth the sale of assets, construction, inspection, party representations, and further particular agreements. The agreement is not on file with the Commission. A copy of the agreement is included as Attachment A.

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<sup>1</sup> The other co-owners are the Arkansas Electric Cooperative Corporation; City of Conway, Arkansas; City Water and Light Plant of the City of Jonesboro, Arkansas; Entergy Mississippi, Inc.; Entergy Power, Inc.; City of Osceola, Arkansas; and City of West Memphis, Arkansas.

- (2) **Independence Steam Electric Station Operating Agreement (November 1, 2000) (“ISES Operating Agreement”).** The agreement among all the ISES co-owners establishes Entergy Arkansas as the operator of the plant, provides for payment of the cost of operation including fuel, and sets forth the sharing and scheduling of energy of the plant. Entergy filed the most recent version of the agreement at the Commission in Docket No. ER02-277-000.<sup>2</sup> A copy of the agreement is included as Attachment B.
- (3) **Power Coordination and Interchange Agreement (October 22, 1998) (“ETEC PCITA”).** The agreement between Entergy Arkansas and ETEC provides for operation and scheduling specific to ETEC, billing, and an Entergy Arkansas/ETEC Operating Committee. Entergy Services, Inc. filed the agreement at the Commission in Docket No. ER99-634-000. A copy of the agreement is included as Attachment C.

On February 26, 1998, ETEC purchased its 60 MW ownership interest in ISES 2 from Entergy Power, Inc., a co-owner of ISES 2, pursuant to an Ownership Interest Purchase Agreement.<sup>3</sup> ETEC’s purchase constitutes payment for its Ownership Share of ISES 2 capacity costs. Pursuant to the ISES Operating Agreement § 4, ETEC also pays its Ownership Share of the cost of operating the ISES. In return for these ownership and operating cost payments, Entergy Arkansas makes ETEC’s Ownership Share of ISES 2 capacity and energy available to ETEC.

The ISES Operating Agreement designates Entergy Arkansas as the Operator of the plant. The Operator is “responsible for management, control, operation and maintenance” of ISES. ISES Operating Agreement § 2.10. As Operator, Entergy Arkansas “shall have sole responsibility and authority, to be discharged in a prudent manner in accordance with good utility practices, for the management, control, operation and maintenance of ISES.” ISES Operating Agreement § 3.1. In the exercise of that

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<sup>2</sup> Entergy added ETEC as a co-owner of ISES 2 by Amendment A to the ISES Operating Agreement filed on May 27, 1999 in Docket No. ER99-3068-000. The Commission approved the addition by a June 25, 1999 Letter Order.

<sup>3</sup> As a result, the ISES Ownership Agreement was not amended.

authority, Entergy Arkansas acts as the co-owner's agent with an attendant fiduciary duty to operate the plant in the best interests of co-owners. ISES Operating Agreement § 3.2.

In general, each co-owner is entitled to its Ownership Share of net capacity and energy of their unit at any given time. ISES Operating Agreement § 8.1. Also, Entergy Arkansas, after consultation with other co-owners, must dispatch the ISES on a best efforts basis "to meet the different requirements of Participants [co-owners] in each Unit for the optimum utilization by each Participant in each Unit of its Ownership Share in such Unit." ISES Operating Agreement § 8.4. ISES is a low-cost coal plant that was designed to be and is ordinarily operated by Entergy Arkansas as a base load power supply resource for all of the plant's co-owners. Miller Affidavit at § 7.

Operating Agreement § 8.4 recognizes that, nevertheless, at certain times, Entergy Arkansas may elect to dispatch ISES at less than its full capability due to Entergy system needs. In such circumstances, Entergy Arkansas must make up for the reduced dispatch of the ISES with energy from such Entergy Arkansas resources as Entergy Arkansas chooses and price the substitute energy<sup>4</sup> to the other co-owners at an ISES coal stockpile equivalency rate:

In certain circumstances where EAI may, for its overall system requirements, elect not to schedule generation from either or both of the Independence Unit No. 1 or Independence Unit No. 2 of ISES when either such Unit is capable of generation, EAI shall schedule and make available to the Participants who have Ownership Shares in any Unit not so scheduled an amount of energy from other of its resources in accordance with the requirements of such Participants equal to each Participant's Ownership Share of the net capability of the Unit not so scheduled at the time of the election of EAI not to schedule generation from such Unit. In such event, *energy shall be paid for on the basis of the average cost per*

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<sup>4</sup> Operating Agreement § 8.4 does not provide a term for this energy. Entergy's bills appear to account for this energy under the term "Sale of Energy: (1)." Miller Affidavit at §§ 10 & 14. For the purposes of this Complaint, ETEC has chosen the functional term "substitute energy."

*ton of the coal stockpile for the ISES and the heat rate of the relevant Unit assuming operation at 60% loading during summer test conditions.*

Operating Agreement § 8.4 (emphasis added). In other words, if ETEC schedules 29 MW in an hour, but Entergy Arkansas dispatches the ISES such that only 20 MW of ISES capacity and energy are generated for ETEC, then Entergy Arkansas must make up the 9 MW from its resources and sell that 9 MWH of substitute energy to ETEC at an ISES coal stockpile equivalency price. In the past, Entergy Arkansas has applied § 8.4 of the Operating Agreement to sell ETEC substitute energy at the ISES coal stockpile equivalency price. Miller Affidavit at §§ 6 and 24.

**B. Events Leading To The Complaint**

On June 23, 2004, in a phone call to ETEC's Engineering consultant Bruce Walter of GDS Associates, Inc.,<sup>5</sup> Mr. Kurt Castleberry, director of wholesale sales at Entergy Arkansas, announced that, effective July 1, 2004, Entergy Arkansas would no longer supply ETEC substitute energy whenever Entergy re-dispatched ISES 2 to reduce the output of the unit for Entergy system constraints. Miller Affidavit at § 18. As Entergy Arkansas explained in subsequent phone calls and at a co-owner meeting on July 9, 2004, rather than follow its long-standing past interpretation and application of Operating Agreement § 8.4, Entergy Arkansas now would charge ETEC for "replacement energy," in substitute energy situations, priced at the Entergy system's incremental cost plus 10%.<sup>6</sup> Miller Affidavit at §§ 6 & 24. The only exception to Entergy Arkansas's unilateral elimination of substitute energy priced at the ISES coal pile equivalency cost

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<sup>5</sup> GDS Associates, Inc. is a consulting firm for ETEC.

<sup>6</sup> "Replacement energy" is not a term in any of Entergy Arkansas's contracts with ETEC, but rather is an undefined term found in Entergy's bills to ETEC. Miller Affidavit at § 15.

would be when Entergy Arkansas reduced ISES 2 generation in order to import economy energy. *Id.* at § 21.

In post-June 23 phone calls and at the July 9 meeting, Entergy Arkansas laid out a partial rationale for its decision to re-price substitute energy. *Id.* at §§ 19-24. According to Entergy Arkansas, the purchases of power by affiliates Entergy Louisiana, Inc. (“ELI”) and Entergy Gulf States, Inc. (“EGI”) from Qualified Facilities (“QFs”) under the Public Utility Regulatory Policies Act have greatly increased in the last two years. In order to buy the QF power, Entergy Arkansas claimed that Entergy Services, Inc. (“ESI”), the operator of the Entergy control area, has had to reduce the dispatch of Entergy system generation units that have automatic generation control (“AGC”). Entergy Arkansas maintained that QF power purchases have increased to the point where ESI must now reduce the dispatch of Entergy base load coal units with AGC, including specifically the ISES plant.

Further, under the Entergy System Agreement (included in relevant part at Attachment D), Entergy Arkansas, which is short on power supply due to lowered generation dispatch, must buy power from ELI and EGI, which are long on power supply, at the average Entergy pool incremental cost.<sup>7</sup> At times Entergy Arkansas may still be long on power supply despite the lowered generation, but, in those circumstances, Entergy Arkansas could not sell as much energy to its affiliates that are short and thus

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<sup>7</sup> Though not described by Entergy Arkansas, Entergy Arkansas appears to rely on Entergy System Agreement § 4.08, which provides for inter-operating company purchases of energy due to Entergy system economic dispatch. Entergy System Agreement, Service Schedule MMS-3 applies to the exchange of electric energy among the companies. Section 30.08 of MMS-3 provides for rates for such sales at various rates depending on the nature of the resource. The rate for a sale in an hour can be expressed as a single rate based on the average weighted sales in that hour from particular resources. Entergy’s inter system sales in an hour take place only after an Entergy operating company’s resources are allocated to serve the operating Company’s load. Thus, Entergy’s inter-system rate is not based on a true Entergy incremental cost, but rather on an average Entergy pool incremental cost.

would suffer an opportunity cost equal to the Entergy Arkansas incremental cost. Entergy Arkansas further explained that, if Entergy Arkansas must buy energy at the average Entergy pool incremental cost (or forgo sales at Entergy Arkansas' incremental cost), due to ELI and EGI purchases of QF power, then so too must the co-owners of ISES. Accordingly, Entergy Arkansas now interprets the ISES Operating Agreement to allow Entergy Arkansas to charge for substitute energy as if it were replacement energy priced at Entergy's system incremental cost plus 10%.

In a September 2, 2004 meeting with ETEC, however, EAI shifted its economic rationale for repricing substitute energy. Miller Affidavit at § 20. EAI argued that the most important cause of Entergy system problems were independent power producers ("IPPs") ramping up to serve IPP block power sales and thereby forcing EAI to back down its generation to accommodate the ramp up of IPP generation, all without compensation to EAI. EAI further vaguely argued that co-owner Arkansas Electric Cooperative Corporation and ETEC power schedules were a major cause of Entergy system problems. Regardless of the precise mix of rationales, Entergy Arkansas argued that these Entergy system problems allow Entergy Arkansas to charge for substitute energy as if it were replacement energy priced at Entergy's system incremental cost plus 10%.

Entergy's re-pricing of "substitute energy" would result in significant economic damage to ETEC. The ISES coal stockpile equivalency price for substitute energy was 14 mills/kwh in 2003. Miller Affidavit at § 25. The Entergy system incremental cost plus 10% price for replacement energy was 51 mills/kwh in 2003. *Id.* The difference between an Entergy Arkansas-preferred 51 mill rate and the contract-specified 14 mill

rate applied to ETEC purchases of substitute energy in 2003 would cost ETEC an estimated \$1,444,837 a year. *Id.* The overcharge for July 2004 is an estimated \$96,776. *Id.* at §§ 27-29.

ETEC protested Entergy Arkansas's decision and, twice, in writing, sought dispute resolution under the dispute resolution terms of the ISES Operating Agreement and the ETEC PCITA. The letters making that request are included in Attachments E and G. Entergy Arkansas responded to the first letter by dismissing the request out of hand, see Attachment F, and never responded to the second letter. Entergy Arkansas held a fruitless meeting of chief executive officers of the co-owners on August 10, another fruitless meeting of the ISES co-owners on August 27, and a fruitless meeting of ETEC and EAI representatives on September 2.

In anticipation of the July bill, on July 26, 2004, ETEC's consultants asked Entergy Arkansas to provide data for July and subsequent periods in order to be able to accurately determine the amount ETEC was over billed for substitute energy. Miller Affidavit at § 27 and Attachment 3. The ISES Operating Agreement § 11.4 also requires Entergy Arkansas to furnish that data. To date, Entergy Arkansas has not responded to that request.

On August 19, 2004, ETEC exercised its contractual right under the PCITA, Appendix A, Article IV, § 1, and, given Entergy Arkansas's refusal to supply adequate billing data, withheld payment of ETEC's best estimate of the amount it was over billed for substitute energy. ETEC's letter to ESI explaining its actions is included in Attachment H.

**IV. COMPLAINT**

**A. Entergy Arkansas's Unilateral Decision To Re-Price Substitute Energy Breaches The ISES Operating Agreement § 8.4**

ISES Operating Agreement § 8.4 unambiguously applies to the under dispatch of ISES due to Entergy system requirements, including the purchase of QF power by Entergy operating companies and IPP scheduling practices. In such circumstances, ISES Operating Agreement § 8.4 unambiguously sets the rate for Entergy Arkansas's supply of substitute energy at a coal equivalency price, not the Entergy system incremental cost plus 10%. Entergy Arkansas's argument that it does not "elect" to lower the dispatch of ISES when Entergy operating companies buy QF power or IPP's inaccurately schedule their generation is without foundation. Where, as here, a contract is unambiguous, the Commission should enforce the terms of the agreement.

**1. ISES Operating Agreement § 8.4 Unambiguously Applies To All Of ESI's Reduced Dispatch Of ISES For Entergy System Requirements, Including EGI And ELI's Purchase Of QF Power and IPP Scheduling of Their Generation**

Operating Agreement § 8.4 applies, without qualification, to "circumstances where EAI may, for its overall system requirements, elect not to schedule generation from either or both of the Independence Unit No. 1 or Independence Unit No. 2 of Independence SES when either such Unit is capable of generation." When ESI chooses to reduce the dispatch of ISES so that IPPs can ramp up their generation or ELI and EGI, and to a lesser extent, Entergy Arkansas, can buy QF power, Entergy is, without question, satisfying Entergy's overall system requirements.

The ISES Operating Agreement § 8.4 provides that, if Entergy does not fully dispatch *an otherwise capable* ISES plant, then the amount of energy scheduled by a co-owner, up to that co-owner's Ownership Share, will still be provided by Entergy

Arkansas to co-owners from other Entergy Arkansas resources. The point of such a provision is that the co-owners were buying a dependable power supply resource, subject only to the risk of the unit's forced outage.

The reason for the particular language of ISES Operating Agreement § 8.4 is that the co-owners were not willing to assume the risk of Entergy dispatching ISES at less than what ISES was capable of generating. They specifically provided that, if ISES could generate, then the co-owners were to receive their ISES Ownership Share of capacity and energy from ISES and other Entergy Arkansas resources as necessary.

Section § 8.4 should be contrasted with situations where ISES is *not capable* of generation due to a planned or forced outage. In those situations, PCITA, Appendix A, Article III, §§ 3 and 5 provide for ETEC schedules to be cut and the unit to be deemed not available. In these circumstances, ETEC has separate provisions to obtain emergency and backup power for its loads located remote from ISES. Miller Affidavit at § 7. ETEC is not obliged to buy power from Entergy Arkansas at any price when ISES is unavailable. *Id.* at § 15.

As of July 1, 2004, Entergy Arkansas has begun treating ISES when it is dispatched at less than its capability as if ISES was incapable of generation, and, contrary to the provision of the PCITA, Entergy Arkansas demands a non-existent contractual right to charge ETEC at a rate that is not provided for in the Entergy Arkansas/ETEC contracts.

**2. Entergy Arkansas's Claim That It Never "Elects" to Reduce The Dispatch of ISES For Entergy System Requirements Except When Entergy Arkansas Imports Economy Energy Has No Basis**

Entergy Arkansas has argued to ETEC that when Entergy operating companies import QF power or accommodate the ramp up of IPP power by reducing the dispatch of Entergy system generation, Entergy Arkansas does not "elect" to reduce the dispatch of ISES, but rather is "forced" to reduce that dispatch and so ISES Operating Agreement § 8.4 does not apply. Miller Affidavit at § 21. The argument is wrong for four reasons.

First, Entergy Arkansas's new interpretation ISES Operating Agreement § 8.4 is so broad that it lines out that provision. The QF power import or IPP ramp up situation is no different than if EGI was to suffer a transmission constraint resulting in a redispatch of the Entergy system. The situation is no different than if Entergy Arkansas was to add a low-cost generator on its system resulting in a long-term redispatch of Entergy generation. In short, the QF or IPP situation is just one of dozens of possible reasons why Entergy may choose, in the exercise of its best engineering judgment, to reduce the dispatch of a coal plant capable of generating and ordinarily operated as a base load plant.

Reduced to essentials, Entergy Arkansas's argument is that, with the exception of economy energy imports, Entergy Arkansas *never* "elects" to reduce the dispatch of ISES for Entergy system requirements, but rather those system requirements "force" Entergy Arkansas to act. Though Entergy Arkansas's principle complaints to ETEC is about imports of QF power and the ramp up of IPP power, Entergy Arkansas's remedy is to eliminate substitute energy and its coal equivalency price for *all* instances of reduced ISES dispatch for Entergy system requirements except for imports of economy energy. Miller Affidavit at § 24.

An interpretation of a contract that would effectively eliminate a portion of the contract is not favored under the law. *See Garza v. Marine Transport Lines, Inc.*, 861 F.2d 23, 27 (2d Cir. 1988) (rejecting District Court contractual interpretation that would render one of two “red letter” clauses superfluous or meaningless); *Fortec Constructors v. United States*, 760 F.2d 1288, 1292 (Fed. Cir. 1985) (“an interpretation that gives a reasonable meaning to all parts of the contract will be preferred to one that leaves portions of the contract meaningless”); *Seminole Electric Cooperative, Inc. v. Florida Power & Light Co.*, 53 FERC ¶ 61,026 at 61,102 (1990) (rejecting FP&L’s contract interpretations that would render a sentence “surplus” and three other sentences a “nullity”).

Second, throughout the history of Entergy Arkansas’s performance with respect ETEC from October 1, 1999 up to July 1, 2004, Entergy Arkansas had never applied or interpreted § 8.4 in the fashion it does now, a point Entergy Arkansas acknowledges. Miller Affidavit at § 22 and 24. In the past, Entergy had provided “surplus energy” sold at the ISES coal equivalency rate when ISES was backed down for Entergy system constraints. *Id.* at §§ 6 & 24. A party’s own interpretation of a provision by its long-standing performance of that provision is telling evidence of what the parties intended so long as that interpretation is not contrary to the words of the contract. *See Seminole Electric Cooperative, Inc. v. Florida Power & Light Co.*, 53 FERC ¶ 61,026 (1990)(rejecting FP&L’s new interpretation of a clause of an interconnection contract as allowing it to charge for system O&M costs instead of project-specific O&M costs, since FP&L’s new interpretation was contrary to FP&L’s prior course of conduct under the

contract). Entergy Arkansas's prior course of performance of § 8.4 belies its new interpretation of § 8.4.

Third, Entergy Arkansas wrongly looks to its own state of mind when it focuses on the word "elects" in § 8.4 instead of looking to the state of the Entergy system when the ISES plant is dispatched at less than its capability for reasons of Entergy system requirements. The assumption of § 8.4 was that Energy Arkansas, in the exercise of "good utility practice," would find times where it needed to dispatch ISES at less than its capability even though ISES was ordinarily dispatched first as a base load plant. ISES Operating Agreement § 3.1 specifically provides that Entergy Arkansas would perform its Operator duties using "good utility practice," while ISES Operating Agreement § 8.4 provides that Entergy Arkansas would seek to meet the requirements of co-owners "for the optimum utilization by each" co-owner. These actions necessarily come within the scope of the word "elects." Entergy Arkansas's election of particular dispatch levels of ISES at less than its capability was expected to be part of Entergy Arkansas's normal and proper operating procedure. Entergy Arkansas, by contrast, insists that its election of particular dispatch levels pursuant to good utility practice and normal and proper operating procedure is now something that it is "forced" to do.

Entergy Arkansas's artificial distinction ignores the expected and contracted-for operation of an electrical system. Control area operators make choices subject to general guidelines. There is more than one choice that can satisfy a "good utility practice" guideline. Whatever that choice, Entergy Arkansas is obligated to supply surplus energy to the ISES co-owners so long as ISES was capable of generating at levels higher than the Entergy Arkansas choice of dispatch level.

Fourth, Entergy Arkansas's willingness to continue its practice of pricing surplus energy at the coal equivalency price in the case of economy energy imports is a telling admission that Entergy Arkansas seeks an unauthorized unilateral amendment of § 8.4. That section does not distinguish economy energy imports from other situations where Entergy Arkansas elects to reduce the dispatch of ISES for Entergy system requirements. Limiting § 8.4 to economy energy imports rewrites and drastically limits the co-owners bargained for rights encompassed in that section.

**3. ISES Operating Agreement § 8.4 Unambiguously Sets The Rate For Entergy Arkansas's Supply Of Substitute Energy At A Coal Equivalency Price**

ISES Operating Agreement § 8.4 is unambiguous on the rate Entergy Arkansas must charge for ISES substitute energy when it choose to dispatch ISES at less than its capability for Entergy system requirements: "energy shall be paid for on the basis of the average cost per ton of the coal stockpile for the Independence SES and the heat rate of the relevant Unit assuming operation at 60% loading during summer test conditions." This rate is the cost of operating ISES in an hour, disregarding the long-term ISES capacity and operating costs. Miller Affidavit at § 10.

The choice of this particular rate was no accident. The ISES co-owners fully pay for their Ownership Shares of ISES with their ownership purchase and operating cost payments. When ISES is capable of generation, the co-owners contracted to receive the full amount of their schedules for ISES power at the ISES price. If Entergy Arkansas chooses to import power that is cheaper than ISES power, then Entergy Arkansas is free to do so, but the ISES co-owners will continue to pay the ISES price. If Entergy Arkansas chooses to import power that is more expensive than ISES power, then Entergy Arkansas is free to do so, but the ISES co-owners will continue to pay the ISES price. In

either circumstance, the co-owners have a contracted-for right to receive ISES-priced power up to their Ownership Share regardless of Entergy's overall system requirements and the resultant dispatch of ISES.

Operating Agreement § 8.4 makes no distinction between economy and non-economy reasons for reduced dispatch for overall Entergy system requirements. That section does not provide for any price but the coal equivalency price for Entergy Arkansas's election to reduce dispatch of ISES for overall Energy system requirements, be they economy or non-economy.

**4. The Commission Should Enforce The Plain Language Of Operating Agreement § 8.4**

Entergy Arkansas has decided that its ISES co-owners no longer have a right to receive ISES-priced power up to their Ownership Shares. Now, whenever Entergy Arkansas chooses to dispatch ISES below its capability for reasons other than energy economy energy imports, it will charge a price higher than the ISES price. Entergy Arkansas's new rate for this substitute energy is the Entergy system incremental cost plus 10%; that is, the cost of the highest-cost gas-fired units on the Entergy system plus more.

As the Commission has said repeatedly, "[w]hen presented with a dispute concerning the interpretation of a contract, the Commission looks first to the contract itself, and only if it cannot discern the meaning of the contract from the language of contract will it look to extrinsic evidence." *Cinergy Services, Inc.*, 94 FERC ¶ 61,146 (2001) (omitting citations). The Commission can determine that Entergy Arkansas has breached the ISES Operating Agreement from the plain language of that document and the facts of this Complaint. The plain language of ISES Operating Agreement § 8.4 is

unambiguous and is not reasonably susceptible to a different construction than that provided above.<sup>8</sup>

Because the plain language of ISES Operating Agreement § 8.4 is unambiguous, it should be enforced. *See City of Lebanon v. Cincinnati Gas & Electric Co.*, 62 FERC ¶ 61,056 (1993) (enforcing a Power Supply Agreement referencing an unambiguous tariff provision and awarding refunds with interest for charges assessed not in accord with the tariff).

**B. Entergy Arkansas Has Decided To Charge A Rate For Substitute Energy That Is Not Found In Its Contract With ETEC And Is Not Filed At The Commission In Violation Of Filed Rate Doctrine**

The new rate of Entergy’s system incremental cost plus 10% rate is not found anywhere in § 8.4 of the ISES Operating Agreement nor anywhere else in the Operating Agreement. The only mention of Entergy’s system incremental cost is in the ETEC PCITA, Appendix A, Article IV, § 4 which applies when ISES is not running but still requires Plant Energy. PCITA, Appendix A, Article II, § 7 (defining Plant Energy). In that circumstance, ETEC is obliged to supply the Plant Energy from its resources or by purchases of Plant Energy from Entergy Arkansas at a price “based on the cost of Entergy’s System Incremental energy plus an adder of ten percent (10%).” This section plainly does not apply when ESI reduces the dispatch of the still running ISES plant in order for Entergy operating subsidiaries to receive QF energy or to accommodate IPP

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<sup>8</sup> As stated in *Ameren Services Company v. FERC*, 330 F.3d 494, 499 (D.C. Cir. 2003):  
A contract is ambiguous if it is “reasonably susceptible of different constructions or interpretations.” *Consol. Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1544 (D.C. Cir. 1985) (quoting *Lee v. Flintkote Co.*, 593 F.2d 1275, 1282 (D.C. Cir. 1979)), not simply “because the parties later disagree on its meaning,” *Bennett Enters., Inc. v. Domino’s Pizza, Inc.* 45 F.3d, 497 (D.C. Cir.), cert. denied, 516 U.S. 863, 116 S.Ct. 174, 133 L.Ed.2d 115 (1995).

ramping of power. Entergy Arkansas has never maintained that it was applying this section in assessing its higher rate for substitute energy.

Indeed, the higher rate that Entergy Arkansas now demands is not found in any of Entergy Arkansas's contracts with ETEC. Nor is any such rate applicable to ETEC on file at this Commission. Thus, under the filed rate doctrine, Entergy Arkansas has no legal right to charge ETEC a rate based on Entergy system incremental cost.

As the Supreme Court observed in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.* 341 U.S. 246, 251 (1951), under the filed rate doctrine, neither the utility nor the customer can claim a rate "as a legal right that is other than the filed rate, whether fixed or accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." The filed rate doctrine overlaps with the prohibition of retroactive rates, but also applies more broadly to departures from current tariff rates for current service. See *Associated Gas Distributors v. FERC*, 898 F.2d 809 (D.C. Cir. 1990)(*per curiam*). That is the case here.

Entergy Arkansas's rate increase runs counter to the very purposes of the filed rate doctrine. The purposes of the filed rate doctrine are, first, "preservation of the agency's primary jurisdictions over reasonableness of rates and the need to insure that regulated companies charge only those rates of which the agency has been made cognizant." *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577-78 (1981) (quoting *City of Cleveland v. FPC*, 525 F.2d 845, 854 (D.C. Cir. 1976)). Second, "wholesale purchasers of electricity cannot plan their activities unless they know the cost of what they are receiving, particularly if they are retailers, who must calculate their appropriate resale rates...." *Electrical District No. 1 v. FERC*, 774 F.2d 490, 493 (D.C. Cir. 1985).

Entergy Arkansas is providing a Commission jurisdictional service but has decided to charge for that service a rate not on file with the Commission, thus undermining the Commission's ability to regulate. Further, Entergy Arkansas's new rate seriously disrupts the ability of the ISES co-owners to plan their activities, since, on seven days notice, Entergy Arkansas informed its ISES co-owners that they would now pay an estimated 51 mills/kwh for energy that was previously costing them 14 mills/kwh. The ISES co-owners had every right to believe that they would be paying the relatively stable and predictable coal equivalency price and not the extraordinarily high and variable Entergy system incremental cost plus 10%.

**C. Entergy Arkansas And Its Affiliates Are Violating The Entergy System Agreement With Respect To Entergy's Allocation Of Purchases Of QF Power**

Under the terms of the Entergy System Agreement, the Entergy Operating Committee appears to be over allocating QF power purchases to EGI and ELI, while under allocating QF power purchases to Entergy Arkansas. The result is that Entergy Arkansas appears to be paying for power at a high Entergy pool incremental cost instead of buying substantially cheaper QF power. With Entergy Arkansas cross subsidizing EGI and ELI, Entergy Arkansas now seeks to make up part of that cost by overcharging its coal plant co-owners.

The Entergy System Agreement § 30.07 specifies the terms for allocating QF power purchases among the Entergy operating companies:

**The Operating Committee shall have the authority to allocate such energy to one or more Companies or to determine that the energy is for the use, and at the expense of, the Company making the purchase from Such Source in accordance with FERC Opinion Nos. 246 and 246-A.**

Opinion Nos. 246 and 246-A<sup>9</sup> held that the Entergy Operating Committee has discretion to allocate QF capacity among the Entergy operating companies,

[but that] discretion is not absolute. That discretion must be exercised in a manner consistent with the principle underlying the Commission's avoided cost rule; that is, that purchasing utilities and their customers should be in substantially the same financial position as they would have been in had the qualifying facility output not been purchased.

34 FERC at 61,641.

The Entergy Operating Committee appears to be violating Entergy System Agreement § 30.07 by under allocating QF power purchases to Entergy Arkansas such that Entergy Arkansas's customers (specifically ISES co-owners paying for substitute energy) are *not* in substantially the same financial position as they would have been in had the qualifying facility output not been purchased. Entergy Arkansas appears to be seeking to make its ISES co-owners subsidize EGI and ELI. Miller Affidavit at §§ 22-24.

Opinion No. 246 authorizes a complaint about the allocation of QF power purchases within the Entergy system: "If, in the context of a specific case, it is alleged that the Operating Committee's allocation does not result in just and reasonable rates, the issue maybe revisited in a proceeding under section 206 of the Federal Power Act." 33 FERC at 61,792. The Operating Committee's allocation of QF purchases may result in unjust and unreasonable rates and appears to be the principle reason for Entergy Arkansas's attempt to re-price ISES under dispatch energy. Thus, ETEC requests the Commission, in resolving ETEC's Complaint as to the unauthorized rate increase for substitute power, revisit the QF power allocation issue.

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<sup>9</sup> *Middle South Services, Inc.*, 33 FERC ¶ 61,408 at 61,791-92 (1985) (Opinion No. 246); *rhr*'g granted in part, 34 FERC ¶ 61,342 at 61,641 (1986) (Opinion No. 246-A).

**D. Entergy Arkansas is Violating Its Fiduciary Duty to ETEC**

Entergy Arkansas is an agent for the other co-owners of ISES. ISES Operating Agreement § 3.2. As that agent Entergy Arkansas owes a fiduciary duty to the co-owners to operate, dispatch, and bill for under dispatch energy in a fair and equitable manner. This fiduciary duty is also explained in ISES Operating Agreement § 8.4's requirement that Entergy Arkansas dispatch each Unit "for the optimum utilization by each Participant."

Entergy Arkansas is not honoring its fiduciary duty to co-owners. Re-pricing substitute energy at the Entergy system incremental cost plus 10% is the equivalent of refusing to dispatch the unit for optimum utilization by a co-owner. Forcing ISES co-owners to subsidize EGI and ELI, which is Entergy Arkansas's expressed purpose for re-pricing under dispatch energy, violates Entergy Arkansas's general fiduciary duties to ISES co-owners. Entergy Arkansas requires co-owners to pay as if they were wholly owned subsidiaries of Entergy Corporation, plus 10%, regardless of their independent contractual rights.

**V. WHY ALTERNATIVE DISPUTE RESOLUTION HAS NOT BEEN USED**

ETEC has not used the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures other than those specified in its contracts with Entergy. ETEC's efforts to use its contractual dispute resolution mechanisms have been largely frustrated by Entergy Arkansas.

ETEC has, in writing, twice requested Entergy Arkansas follow the ISES Operating Agreement and PCITA dispute resolution procedures, which are included in contracts on file at the Commission, but Entergy Arkansas dismissed the first request out

of hand, has not answered the second request, and has not followed those procedures. The day after Entergy Arkansas's June 23 phone call announcing its unilateral decision to re-price substitute energy, the co-owners of ISES, including ETEC, sent a joint letter to Robert Robinette of ESI, the services company for the Entergy system and operator of the Entergy control area, (a) protesting Entergy Arkansas's re-pricing decision and new interpretation of ISES Operating Agreement § 8.4, (b) protesting the failure of Entergy Arkansas to consult with its ISES co-owners in advance of its decision, and (c) requesting a delay in the implementation of the new charges to allow time for the co-owner's individual Operating Committees with Entergy to meet and discuss the issues. A copy of the letter is included as Attachment E. ETEC's PCITA expressly provides for an Operating Committee meeting as the first step in resolving any disputes. By a June 28 letter, Entergy Arkansas refused to delay the increased charges and rejected a meeting of the Operating Committee. See Attachment F.

Entergy Arkansas and the ISES co-owners met again in Little Rock, Arkansas on July 9, 2004, but could not resolve their differences. After several equally fruitless co-owner telephone calls with Entergy Arkansas representatives, on July 26, 2004, ETEC sent a letter to Hugh McDonald, president of Entergy Arkansas, pointing out that (a) Entergy Arkansas had not responded to the co-owner's June 24 requests for a delay of the Entergy Arkansas decision and a meeting of co-owner Operating Committees to discuss the issue (ETEC misplaced the Entergy Arkansas June 28 letter) and, (b) for a second time, requested a delay of Entergy Arkansas's decision to raise rates and a meeting of the Entergy Arkansas/ETEC Operating Committee. Entergy Arkansas has not responded to that letter. A copy of the letter is included as Attachment G.

The ETEC PCITA, Appendix A, Article V, § 4, specifies that “[i]t shall be the duty of the Operating Committee to act for the parties in matters pertaining to the operation of INDEPENDENCE, and to establish and maintain procedures for the administration of this agreement.” Entergy Arkansas’s decision to change the rate for substitute energy falls within the matters the Operating Commission is obliged to consider. A meeting of the Operating Committee is the dispute resolution mechanism specified in the ETEC PCITA. ETEC PCITA, Appendix A, Article V, § 1. If the Operating Committee cannot resolve the dispute, then “that matter shall be referred to the chief executives of the parties or their designated representatives.” *Id.*

On July 26, 2004, ETEC’s consultants asked Entergy Arkansas to provide data for July and subsequent periods in order to be able to accurately determine the amount ETEC was over billed for substitute energy. Entergy never answered the letter,

On August 10, 2004, Entergy Arkansas called a meeting of chief executive officers to discuss the issue, even though ETEC had not yet had an Entergy Arkansas/ETEC operating committee meeting. The meeting resolved nothing. On August 27, 2004, Entergy Arkansas held a meeting of co-owner representatives to discuss the issue. That meeting resolved nothing. Finally, on September 2, 2004 ETEC and Entergy Arkansas representatives met via conference call. That meeting resolved nothing.

Entergy’s failure to respond to repeated requests for resolution and information actions are in defiance of other provisions of its agreements with ETEC. The ISES Operating Agreement, § 11.4 requires Entergy Arkansas to inform ISES co-owners of significant matters with respect to the operation of ISES “when practicable in time for

Participants to comment thereon before decisions are made, and shall confer with Participants during the development of any of Entergy Arkansas's proposals regarding such matters when practicable to do so." Section 11.5 further provides that Entergy Arkansas and ISES Participants will "cooperate with each their in all activities relating to Independence SES...." Throughout this controversy Entergy Arkansas has violated these provisions by presenting ETEC with a decision made on the operation of ISES and by refusing to confer and cooperate with ETEC.

In view of failed attempts to enforce the contractually specified dispute resolution procedures, there appears to be no room for further alternative dispute resolution.

**VI. MOTION FOR SUMMARY DISPOSITION AND REQUEST FOR FAST TRACK PROCESSING**

There is no basis for any dispute of material fact regarding the issues raised by this Complaint. The contract is unambiguous. The damages are quantified. The remedy is clear. Under these circumstances, no evidentiary hearing is necessary and summary disposition granting relief as requested in the Complaint is appropriate. *See* Rule 217 (allowing summary disposition if there are no genuine issues of material fact); *Pennsylvania Public Utility Commission v. FERC*, 881 F.2d 1123, 1126 (D.C. Cir. 1989)(summarizing case law to the same effect); *Sacramento Municipal Utility District v. Pacific Gas and Electric Co.*, 23 FERC ¶ 61,042 (granting summary disposition in favor of complainant alleging violation of contract), *reh'g denied*, 24 FERC ¶ 61,305 (1983); *affirmed sub nom., Pacific Gas and Electric Co. v. FERC*, 746 F.2d 1383 (9th Cir. 1984).

A fast track resolution is also appropriate, since the issues can be readily resolved on summary disposition and since it would be unfair to put ETEC at major financial risk when there is no legitimate basis for Entergy Arkansas's actions. A prolonged resolution

of this simple breach of contract case forces ETEC to pay an estimated \$120,403 a month on average,<sup>10</sup> either to Entergy or to an escrow account, until the matter is resolved. The estimated damages to ETEC amount to 1% of ETEC's total revenues in 2003. Miller Affidavit at § 25. ETEC has done nothing wrong. It should not be forced to pay while waiting for a resolution of this straightforward dispute.

## VII. RELIEF REQUESTED

1. The Commission should find that Entergy Arkansas has violated the terms of its agreements with ETEC.

2. The Commission should order Entergy Arkansas to comply with the ISES Operating Agreement § 8.4 specified coal equivalency price for substitute energy whenever Entergy Arkansas elects to reduce the dispatch of ISES 2 for Entergy system requirements including reductions made due to the Entergy operating company purchases of QF power and accommodation of the ramp up of IPP generators.

3. The Commission should order Entergy Arkansas to refund ETEC with interest at the applicable Commission rate of interest for any payments made by ETEC to Entergy Arkansas for substitute energy at a rate above the ISES 2 coal equivalency price specified in the ISES Operating Agreement.<sup>11</sup>

4. The Commission should order a separate investigation on its own motion into whether Entergy Arkansas and its affiliates are violating the Entergy System Agreement § 30.07 and Order Nos. 246 and 246-A by over allocating QF power purchases to ELI and EGI and under allocating such purchases to Entergy Arkansas, thus

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<sup>10</sup> \$1,444,837 a year divided by 12 months equals \$120,403 a month.

<sup>11</sup> ETEC withheld payment of an estimated amount of Entergy Arkansas overcharges for July. ETEC may not have withheld enough given the uncertainty created by Entergy Arkansas's refusal to provide billing data concerning that bill. If so, ETEC should receive a refund with interest for its overpayment of the July bill and any subsequent bills where it must estimate the overcharges.

forcing Entergy Arkansas to subsidize ELI and EGI with purchases at Entergy system incremental cost.

Respectfully submitted



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September 14, 2004

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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

East Texas Electric Cooperative, Inc.     )  
  Complainant                                     )  
  v.   Docket No. EL04-\_\_\_\_-000  
Entergy Arkansas, Inc.                     )  
  Respondent                                     )

NOTICE OF COMPLAINT  
(                                     )

Take notice that on [date filed], East Texas Electric Cooperative, Inc. ("ETEC") filed a formal complaint against Entergy Arkansas, Inc. ("Entergy Arkansas") pursuant to Sections 201, 206 and 306 of the Federal Power Act, 16 U.S.C. §§ 824b, 824e and 825e, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 206, alleging that (1) Entergy Arkansas breached its Independence Steam Electric Station Operating Agreement and Power Coordination and Interchange Agreement with ETEC by charging for substitute energy at Entergy's system incremental cost plus 10% instead of the ISES Operating Agreement-specified coal equivalency price, (2) Entergy Arkansas is charging ETEC a rate that is not found in its agreements with ETEC and not filed at FERC in violation of filed rate doctrine, (3) Entergy Arkansas and its operating company sister affiliates are violating the Entergy System Agreement with respect to the allocation of purchases of PURPA Qualified Facility Power, and (4) Entergy Arkansas is violating its fiduciary duty to ETEC with respect to sales of substitute energy.

East Texas Electric Cooperative, Inc. certifies that copies of the complaint were served on the contacts for Entergy Arkansas, Inc. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There

is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

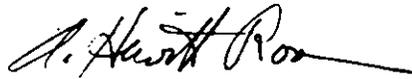
Comment Date: 5:00 pm Eastern Time on (insert date).

Magalie R. Salas  
Secretary

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties identified on the Commission's official service list compiled by the Secretary in this proceeding by depositing copies thereof in the United States mail, first class, postage prepaid. In addition, I certify that the foregoing document was served on the contacts for Entergy Arkansas, Inc. as listed on the Commission's list of Corporate Officials, and on other co-owners of the Independence Steam Electric Station.

Dated at Washington, D.C. this 14th day of September 2004.



A. Hewitt Rose  
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1025 Thomas Jefferson Street, NW  
Eighth Floor, West Tower  
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(202) 342-0800

## **Index to Attachments**

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- Attachment B** ISES Operating Agreement
- Attachment C** Power Coordination and Services Agreement Interchange Agreement
- Attachment D** Entergy System Agreement (relevant parts)
- Attachment E** June 24, 2004 Letter from ISES co-owners to Entergy requesting dispute resolution
- Attachment F** June 28, 2004 Letter from Entergy to AECC answering June 24 letter and rejecting dispute resolution
- Attachment G** July 26, 2004 Letter from ETEC to Entergy requesting dispute resolution
- Attachment H** August 19, 2004 Letter from ETEC to Entergy re partial payment of bill
- Attachment I** Affidavit of Wayne Miller
  - Attachment 1** Entergy bill to ETEC for ISES service in June
  - Attachment 2** Entergy bill to ETEC for ISES service in July
  - Attachment 3** July 26, 2004 letter from GDS Associates to Entergy requesting data

INDEPENDENCE STEAM ELECTRIC STATION  
OWNERSHIP AGREEMENT

among

ARKANSAS POWER & LIGHT COMPANY

and

ARKANSAS ELECTRIC COOPERATIVE CORPORATION

and

CITY WATER AND LIGHT PLANT  
OF THE CITY OF JONESBORO, ARKANSAS

and

CITY OF CONWAY, ARKANSAS

Dated as of

July 31, 1979

INDEPENDENCE STEAM ELECTRIC STATION  
OWNERSHIP AGREEMENT  
AMONG  
ARKANSAS POWER & LIGHT COMPANY  
AND  
ARKANSAS ELECTRIC COOPERATIVE CORPORATION  
AND  
CITY WATER AND LIGHT PLANT OF  
THE CITY OF JONESBORO, ARKANSAS  
AND  
CITY OF CONWAY, ARKANSAS

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1. OWNERSHIP AGREEMENT

1.1 THIS AGREEMENT, dated as of July 31, 1979, is among ARKANSAS POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Arkansas (AP&L), ARKANSAS ELECTRIC COOPERATIVE CORPORATION, an electric cooperative corporation organized and operating under Act 342 of the Arkansas Acts of 1937 (AECC), CITY WATER AND LIGHT PLANT OF THE CITY OF JONESBORO, Jonesboro, Arkansas (CWL), and THE CITY OF CONWAY, ARKANSAS (Conway).

1.2 AECC, CWL and Conway are hereafter referred to at times as "Participants". The terms "Participant" or "Participants" as used herein, whether in the singular or plural, shall in no instance be interpreted to create a joint obligation or duty, but shall always mean each Participant with respect to its proportionate Ownership Share. The obligations and duties of Participants are distinct and several and not joint.

1.3 AP&L is engaged in the business of generating, transmitting, and distributing electric power and energy primarily in the State of Arkansas. AECC is an electric cooperative corporation engaged in the business of generating and transmitting electric power and energy for its member

electric cooperative corporations in the State of Arkansas. CWL is engaged in the business of generating and acquiring electric power and energy and distributing such power and energy to its customers in the City of Jonesboro, Arkansas. Conway is the owner of an electric generating and distribution system, which is leased to the Conway Corporation, an Arkansas non-profit corporation, which distributes electric power and energy in the City of Conway, Arkansas.

1.4 AP&L and Participants desire and intend to establish joint ownership rights in the two 700 MW nominally rated coal-fired generating units to be known as the Independence Steam Electric Station Units Numbers One and Two to be located near Newark, in Independence County, Arkansas (individually Independence Unit No. 1 and Independence Unit No. 2, and collectively, Independence SES), as more particularly described in Exhibits A and B hereto.

1.5 NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, AP&L and Participants hereby agree as follows:

## 2. DEFINITIONS

2.1 Definition of Independence SES. Independence SES shall consist of:

2.1.1. Land. The land described in Exhibit A (such land, together with all such additional land or rights therein as may hereafter be acquired for the purpose specified in 2.1.4. below, being hereinafter called the "Land");

2.1.2. Equipment. Independence Unit No. 1 and Independence Unit No. 2, including the turbine-generators, the buildings housing the same, and the associated auxiliaries and equipment, all as more particularly described in Exhibit B.

2.1.3. Materials and Supplies. Inventories of materials, supplies, spare parts, tools and equipment (exclusive of fuel) for use in connection with Independence SES; and

2.1.4. Additions. Such additional land or rights therein as may be acquired, and such additional facilities and other similar tangible property as may be acquired, constructed, installed or replaced in connection with Independence SES, provided (1) that the cost of such additional land or rights therein or of such additional facilities or other similar tangible

property shall be properly recordable in utility plant in accordance with the Uniform System of Accounts, and (2) that such additional land or rights therein or such additional facilities or other tangible property shall have been acquired, constructed, installed or replaced for the common use of AP&L and Participants under and subject to the provisions of this Agreement.

2.2 Cost of Construction. For purposes of this Agreement, Cost of Construction of Independence SES shall mean all costs (excluding allowance for funds used during construction) in connection with the planning, design, licensing, acquisition, construction, completion, renewal, addition, replacement or disposal of Independence SES, or any portion of Independence SES, which are properly recordable to Independence SES in accordance with the Electric Plant Instructions and in appropriate accounts as set forth in the Uniform System of Accounts, it being understood, however, that regardless of the amounts recordable under FERC regulations, for the purpose of this definition, and the accounting between the parties, construction power used in construction of Independence SES shall be priced at the rate applicable for service to AP&L retail customers having similar power requirements in accordance with Arkansas Public Service Commission approved rate tariffs. Credits relating to Cost of Construction, including insurance proceeds, shall be applied to such costs as received.

2.3 Uniform System of Accounts. Uniform System of Accounts shall mean the Federal Energy Regulatory Commission Uniform System of Accounts prescribed for Public Utilities and Licensees (Class A and Class B).

2.4 Cost of Money. Cost of Money as used herein is defined as the amount computed at the end of each month by applying on a compound basis the appropriate monthly cost of money rate to the Cost of Construction incurred during each month.

2.4.1 The monthly cost of money rate will be determined each month as set forth in Exhibit D on a composite basis using AP&L's then current capitalization ratios for first mortgage bonds, preferred stock, and common equity and their respective cost rates. The cost rate for first mortgage bonds and preferred stock shall be, in each case, that of the most recent issue. The cost rate for common equity shall be an equity rate of return of 13% or such percentage as may have been fixed by the Arkansas Public Service Commission in the then most recent AP&L rate proceeding during the construction period prior to closing.

2.5 Commercial Operation. As used herein with respect to each unit of Independence SES, "Commercial Operation" shall mean midnight following successful completion of the performance test prescribed in AP&L's unit test procedures for said unit.

2.6 Force Majeure. The term "force majeure" as used herein, shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances, acts of public enemies; orders of any kind of the government of the United States or of the State of Arkansas or any of their departments, agencies or officials (other than the failure to receive therefrom a proposed rates increase), or any civil or military authority pertaining to Independence SES; insurrections, riots; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages or delays; epidemics, landslides; lightning; earthquakes; fire; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; restraints by courts or other governmental authority; blight; famine; blockade; quarantine; or any other similar cause or event not reasonably within the control of AP&L. AP&L agrees, however, to remedy with all reasonable dispatch the cause or causes preventing AP&L from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of AP&L and AP&L shall not be required

to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of AP&L, unfavorable to AP&L.

2.6.1 AP&L's financial inability to complete construction of Independence SES, the availability of an equivalent amount of more economical energy to AP&L from other sources, or AP&L's not requiring the capacity and energy from Independence SES shall not in any event constitute "force majeure" hereunder.

2.7 Project Manager. Whenever in this Agreement the term "Project Manager" is used, it shall mean AP&L.

2.8 Ownership Share. The term "Ownership Share" shall mean 58% with respect to AP&L, 35% with respect to AECC, 5% with respect to CWL, and 2% with respect to Conway, or as such Ownership Shares may be adjusted by other provisions of this Agreement.

2.9 Closing or Closing Date. Closing or Closing Date as to each Participant shall mean the time prescribed in this Agreement that AP&L transfers to such Participant land and equipment acquired by AP&L for Independence SES to that time and payment by such Participant to AP&L of the portion of the Cost of Construction to that time representing the Ownership Share of such Participant.

2.10 Estimated Date of Commercial Operation. The

Estimated Date of Commercial Operation shall mean for Independence Unit No. 1 the date of January 1, 1983, and for Independence Unit No. 2 the date of January 1, 1985.

**3. SALE AND TRANSFER OF ASSETS**

3.1 Subject to the terms and conditions hereof, at the Closing provided for herein, AP&L will sell and convey to AECC, and AECC will purchase from AP&L, a 35% undivided ownership interest in Independence SES, and AP&L will sell and convey to CWL, and CWL will purchase from AP&L, a 5% undivided ownership interest in Independence SES, and AP&L will sell and convey to Conway and Conway will purchase from AP&L, a 2% undivided ownership interest in Independence SES. Such conveyances will be by Warranty Deed and Bill of Sale substantially in the form of Exhibit C attached hereto and made a part hereof conveying the respective undivided ownership interests as tenants in common in the land described in Exhibit A and certain personal property situated thereon as described in Sections 2.1.2 and 2.1.3, as of the date of closing.

3.2 At, and from time to time after, the Closing, AP&L and Participants shall execute such other instruments of conveyance and transfer as may be necessary or appropriate to vest in Participants the respective undivided ownership interest of each in and to Independence SES.

3.3 The parties hereto acknowledge that at the Closing, the Participants shall purchase from AP&L their respective

Ownership Shares, and that except for such purchase at the Closing, all other payments by the Participants in respect of Ownership Shares shall be deemed deposits with AP&L for the purpose of paying the Costs of Construction.

3.4 Closing. The Closing of the sale and transfer provided for herein shall take place at Little Rock, Arkansas, at a place to be mutually agreed upon by the parties.

3.4.1 As between AECC and AP&L, the Closing shall be on July 2, 1979, or such other date as may be mutually agreed upon by AECC and AP&L; provided that, in the event all necessary governmental, regulatory or other required approvals of the consummation of the transactions contemplated hereby, have not been received by July 2, 1979, the Closing shall be postponed from day to day until all such approvals have been received, but in no event shall the Closing be postponed later than December 31, 1979.

3.4.2 As between CWL and AP&L, the Closing shall be on July 2, 1979, or such other date as may be mutually agreed upon by CWL and AP&L; provided that, in the event all necessary governmental, regulatory and vendor approvals of the consummation of the transactions contemplated hereby have not been received by July 2, 1979, the Closing shall be postponed from day to day

until all such approvals have been received, but in no event shall the Closing be postponed later than December 31, 1979.

3.4.3 As between Conway and AP&L, the Closing shall be on July 2, 1979, or on such other date as may be mutually agreed upon by Conway and AP&L; provided that, in the event all necessary governmental, regulatory and vendor approvals of the consummation of the transactions contemplated hereby have not been received by July 2, 1979, the Closing shall be postponed from day to day until all such approvals have been received, but in no event shall the Closing be postponed later than December 31, 1979.

3.4.4 It is further agreed that, as between AP&L and Conway and CWL, under no circumstances will the Closing be delayed beyond where the payments called for in Section 4.1 through 4.1.2 as to CWL's and Conway's combined "Ownership Share", when added to the sale of any interest to Conway in the White Bluff Plant, will exceed \$9,500,000. If at the time of such Closing, this limit would be exceeded, Conway agrees to reduce its Ownership Share in Independence SES and the White Bluff Plant, and AP&L agrees to increase its Ownership Share herein and in the White Bluff Plant pro rata

sufficiently so that the payments referred to above will not exceed the said \$9,500,000.

3.4.5 It is agreed between CWL and AP&L that if CWL does proceed with the Closing, and subsequently is unable to sell long-term bonds due to an adverse feasibility study, that within 120 days of the Closing, CWL will so advise AP&L in writing; AP&L will, within 60 days after receipt of such notice, reimburse CWL for its net payments to AP&L (without interest) and will adjust AP&L's Ownership Share in the Independence SES accordingly. CWL agrees to execute or secure any and all deeds, bills of sale, releases from liens, and other documents reasonably required by AP&L to recover any and all interests of CWL in the Independence SES at the time of reimbursement to CWL.

3.4.6 It is agreed between Conway and AP&L that if Conway does proceed with the Closing, and subsequently is unable to sell long-term bonds due to an adverse feasibility study, that within 120 days of the Closing, Conway will so advise AP&L in writing; AP&L will, within 60 days after receipt of such notice, reimburse Conway for its net payments to AP&L (without interest) and will then adjust AP&L's Ownership Share in the Independence SES accordingly. Conway agrees to

execute or secure any and all deeds, bills of sale, releases from liens, and other documents reasonably required by AP&L to recover any and all interests of Conway in the Independence SES at the time of reimbursement to Conway.

#### 4. PURCHASE PRICE PAYMENTS

4.1 Prior to Closing. The purchase price for Participants undivided interests in Independence SES acquired, constructed or completed prior to the Closing shall be an amount equal to the respective Ownership Shares of the aggregate of all Cost of Construction of Independence SES (excluding deferred payments and contract retentions) prior to the Closing, plus an amount computed as set forth below.

4.1.1 It is recognized that AP&L will have made payments of the accumulated Cost of Construction prior to the Closing. In view of such fact, an amount shall be added to such accumulated Cost of Construction of Independence SES in an aggregate amount equal to AP&L's Cost of Money.

4.1.2 That portion of the purchase price for Participant's undivided interests in Independence SES acquired, constructed or completed on the last day of the month prior to the month of the Closing shall be payable to AP&L at the Closing in immediately available funds. It is recognized that AP&L will have expended additional sums between the last day of the month prior to the Closing and the date of Closing. Participants shall pay to AP&L their respective Ownership Shares of said additional sums within ten days after AP&L furnishes to Participants a statement reflecting said sum.

4.1.3 Additional Payment by Conway. In addition to the foregoing, Conway will pay to AP&L \$100,000 at the Closing, which sum shall be over and apart from all other sums payable under this Agreement.

4.2 From Closing to Commercial Operation. After the Closing but prior to Commercial Operation of Independence Unit No. 1 and Independence Unit No. 2, respectively, Participants shall pay AP&L an amount equal to the respective Ownership Shares of the Cost of Construction of Independence Unit No. 1 and Independence Unit No. 2, as the case may be, incurred after the Closing but prior to such Commercial Operation, payable in accordance with the provisions of Section 4.2.1.

4.2.1 AP&L will, on or before the first day of each month, commencing with the month immediately preceding the Closing, notify Participants of the nature and amount of such costs anticipated to be incurred by AP&L during the succeeding calendar month, plus any adjustments for costs incurred in prior months, but not previously charged or credited to Participants. Participants will make payment to AP&L of the respective shares of such costs as so adjusted on the first day of such succeeding month; provided that the first of such payments shall be made at the Closing for the estimated amount to be expended for the balance of the month of

the Closing. Each such notification made by AP&L of anticipated costs and adjustments shall be accompanied and adjusted by an accounting of costs incurred for preceding months.

4.2.2 AP&L will provide Participants with such information as is reasonably required by Participants in order to account for such payments on the books of each. No payment made pursuant to the provisions of Section 4.2.1 shall constitute a waiver of any right of Participants to question or contest the correctness of any charge or any adjustment by AP&L.

4.3 After Commercial Operation. AP&L will, on or before the first day of each month, commencing the month immediately preceding the commencement of Commercial Operation of Independence Unit No. 1 with respect to Independence Unit No. 1 and the month immediately preceding the commencement of Commercial Operation of Independence Unit No. 2 with respect to Independence Unit No. 2, notify Participants of the nature and amount of all Cost of Construction of Independence SES anticipated to be incurred by AP&L during the succeeding calendar month in respect of completion of or additions or replacements to or retirements at Independence SES, plus any adjustments for costs incurred in prior months but not previously charged or credited to Participants under the provisions of this Section 4.

4.3.1 AP&L will give Participants as much notice as is reasonably practicable of any major anticipated cost.

4.3.2 Participants will make payment to AP&L of their respective Ownership Shares of such costs on the first day of such succeeding month. Each such notification made by AP&L of anticipated costs and adjustments shall be accompanied and adjusted by an accounting of costs incurred and credits, if any, received for preceding months.

4.3.3 AP&L will provide Participants with such information as is reasonably required by Participants in order to account for such payments and for retirements on the books of each. No payment made pursuant to the foregoing provisions of Section 4.3.2 shall constitute a waiver of any right of Participants to question or contest the correctness of any charge or credit by AP&L.

4.4 Non-Payment by Participants. Subject to the second sentence of this Section 4.4, in addition to any other rights or remedies, legal or equitable, available to AP&L, in the event Participants fail to make any payment when due pursuant to this Agreement, there shall be added to

such overdue amount interest from the date such payment was due at an annual rate equal to either the then current average yield on outstanding obligations of the United States of America having a term of 90 days or less plus 5%, or AP&L's incremental cost of short-term unsecured borrowed funds plus 5%, whichever is the greater, but in no event more than the lawful maximum interest rate. If said payment remains past due for 30 days or more, said failure to make payment shall be considered to be an inability to finance and becomes subject to the provisions of Section 7.4 through 7.4.3. Participants shall also indemnify and hold AP&L harmless from and against any and all losses, costs, damages and expenses arising out of or resulting from Participant's failure to make such payment when due.

4.5 Financial Obligations of CWL. It is agreed that all obligations of CWL hereunder involving financial commitments shall be payable and enforceable solely from revenues derived from CWL's electric system and from proceeds of electric revenue bonds or other obligations to be issued by CWL to finance its interest in the Independence SES, and CWL covenants and agrees to take all necessary action to fix and maintain (including increases, if necessary) electric rates at levels sufficient to make available to CWL sufficient monies for CWL to carry out its financial obligations here-

under, provided, however, that any failure of CWL to make any payment or carry out any financial obligation hereunder, because of inadequate electric revenues or bond proceeds, shall not excuse such non-payment or default or waive or limit any rights or remedies of AP&L or any other Participant provided herein for such non-payment or default.

4.6 Financial Obligations of Conway. It is agreed that all obligations of Conway hereunder involving financial commitments shall be payable and enforceable solely from revenues derived from Conway's electric system and from proceeds of electric revenue bonds or other obligations to be issued by Conway to finance its interest in the Independence SES, and Conway covenants and agrees to take all necessary action to fix and maintain (including increases, if necessary) electric rates at levels sufficient to make available to Conway sufficient monies for Conway to carry out its financial obligations hereunder, provided, however, that any failure of Conway to make any payment or carry out any financial obligation hereunder, because of inadequate electric revenues or bond proceeds, shall not excuse such non-payment or default or waive or limit any rights or remedies of AP&L or any other Participant provided herein for such non-payment or default.

5. CONSTRUCTION AND TESTING

5.1 Responsibility for Construction. AP&L shall have sole responsibility, to be discharged in a prudent manner in accordance with good utility practices, for the planning, licensing, design, construction, and testing of Independence SES. AP&L will use its reasonable best efforts fully to comply with all requirements of all applicable statutes and the rules and regulations of such regulatory agencies as shall have competent jurisdiction over the planning, design, licensing, construction, and testing of Independence SES. AP&L shall not be liable or responsible for any failure to perform hereunder where such failure to perform is caused by or is a result of "force majeure". AP&L agrees that prior to making any discretionary design changes, as distinguished from design changes required for reliability or by law or governmental regulation, which are expected to increase Cost of Construction by \$10,000,000 or more, AP&L will consult with and obtain concurrence of Participants to such changes.

5.2 Commercial Operation. AP&L will use its reasonable best efforts in accordance with good utility practices to have Independence Unit No. 1 in Commercial Operation by January 1, 1983, and Unit No.2 by January 1, 1985.

Notwithstanding the foregoing sentence, AP&L shall not be liable or responsible for any delay in commencing Commercial Operation at Independence SES caused by Force Majeure.

5.3 Agency. Participants hereby irrevocably appoint AP&L their agent, and AP&L accepts such agency, in connection with Independence SES to act on their behalf in the planning, design, licensing, construction, acquisition and completion of Independence SES and authorize AP&L in the name and on behalf of Participants to take all reasonable actions which, in the discretion and judgment of AP&L, are deemed necessary or advisable to effect the planning, design, licensing, construction, acquisition, completion, maintenance and operation of Independence SES, including without limitation, the following:

5.3.1 The making of such agreements and modifications of existing agreements and the taking of such other action as AP&L deems necessary or appropriate, in its reasonable judgment, or as may be required under the regulations or directives of such regulatory agencies having jurisdiction, with respect to the construction, acquisition and completion of Independence SES for commercial service, the procurement, replacement, modification or renewal or all or any part thereof, and if necessary, the retirement or salvaging of all or any part thereof, whether before or after completion:

5.3.2 The execution and filing with such regulatory agencies having jurisdiction of applications, amendments, reports and other documents and filings in or in connection with licensing and other regulatory matters with respect to Independence SES;

5.3.3 The receipt on Participants behalf of any notice or other communication from any regulatory agency having jurisdiction, as to any licensing or other regulatory matter with respect to Independence SES.

5.4 Contracts with Affiliates. ~~Independence SES shall~~

~~under the~~ obligations hereunder, AP&L shall have the right, ~~as a~~ ~~benefit~~ and on behalf of Participants, to contract with ~~itself~~ or any of its affiliates for the purchase, at cost, of any equipment or facilities or the performance of services, ~~at cost~~, in connection with Independence SES.

5.5 No Liability. ~~Independence SES shall have no liability for~~

~~expenses, damages or expense~~ suffered by Participants caused by or resulting from "force majeure" or ~~arising out of or~~ ~~resulting from~~ any action taken or failed to be taken by ~~Independence SES~~ or employee of AP&L pursuant to this Section 5, unless such ~~loss~~, damage or expense results from the willful misconduct of AP&L or the failure of AP&L to use its reasonable best efforts to conform to good utility

practices in discharging its obligations under this Agreement; and in no event shall AP&L be liable for any loss of anticipated profits, increased expenses of operation or any other consequential damages or losses of any nature. For purposes of this Section, "consequential damages" shall include, but not be limited to, damage or loss of other property or equipment, loss of profits or revenue, loss of use of power system, cost of capital, cost of purchased or replacement power, or claims of customers for service interruption.

5.6 Liability to Third Parties. In the event AP&L, in the performance of its duties pursuant to Section 5.3, incurs any liability to any third party, other than that resulting from the willful misconduct of AP&L, any amount paid by AP&L on account of such liability shall be considered a Cost of Construction and apportioned between the parties in accordance with the Ownership Share of each.

## 6. INSPECTION AND AUDIT OF RECORDS

6.1 Inspection and Audit. AP&L shall keep separate, complete and accurate records regarding Cost of Construction of Independence SES and will make available for Participants' inspection and audit all records regarding Cost of Construction of Independence SES sufficient to allow Participants to determine that such costs and expenditures imputed to Independence SES by AP&L pursuant to Section 4 are appropriate.

6.2 Participants and AP&L shall have until the one hundred eightieth day after the Closing to correct or contest the correctness of the purchase price paid by Participants pursuant to Section 4.1, after which time the correctness of such purchase price shall be conclusively presumed.

6.3 Participants and AP&L shall have until the one hundred eightieth day after the commencement of Commercial Operation of Independence Unit No.1 or Independence Unit No.2, as the case may be, to correct or contest the correctness of any charge or adjustment made to Participants pursuant to Section 4.2 in respect of Independence Unit No.1 or Independence Unit No.2, as the case may be, after which time the correctness of such charge or adjustment shall be conclusively presumed.

6.4 Participants and AP&L shall have until the one hundred eightieth day after the receipt of an accounting for

any charge or credit made to Participants pursuant to Section 4.3 to correct or contest the correctness of such charge or credit after which time the correctness of such charge or credit shall be conclusively presumed.

6.5 If any party or parties to this agreement have, within 60 days after the commencement of any 180 day period referred to in Sections 6.2, 6.3 and 6.4, engaged outside persons to audit such records, this time limit shall be extended as to such 180 day period until 60 days after completion of said audit.

6.6 It is understood that, notwithstanding the foregoing presumption, in the event a clear error in recording or computing a charge or credit is discovered by auditors of AP&L or any regulatory agency after said date, the parties intend that a proper adjustment shall be made to correct said error within 30 days.

6.7 Audit and inspection rights shall be coordinated through AP&L's Internal Audits Department in order to promote efficiency and reduce costs. All such audits and inspections shall be conducted only after reasonable notice to said Internal Audits Department and during normal business hours.

7. DELAY

7.1 Voluntary Delay. In the event AP&L elects to delay the Commercial Operation of Independence Unit No.1 or Independence Unit No.2 until after the Estimated Date of Commercial Operation of such unit, because of (1) the availability of an equivalent amount of more economical energy to AP&L from other sources, or (2) AP&L's not requiring the capacity and energy from such delayed unit, as Participant's sole and exclusive remedy, legal or equitable, AP&L shall have the option of making available to Participants, beginning on the Estimated Date of Commercial Operation of such delayed unit, for a period of two years, or until the commencement of Commercial Operation of such delayed unit, if such occurs prior to the expiration of the two year period, capacity and energy (based on a 50% monthly capacity factor) which reasonably could have been expected from such delayed unit at Participant's respective costs reasonably anticipated for such delayed unit at the time it would have been available considering the state of construction at the cessation thereof.

7.2 In the event AP&L fails to exercise such option by the Estimated Date of Commercial Operation of such delayed unit or it does exercise such option and such delayed unit

is not in Commercial Operation by two years from its Estimated Date of Commercial Operation, whichever occurs first, then AP&L will, at the option of Participants, or any of them, which option must be exercised in writing within 90 days after the Estimated Date of Commercial Operation of such delayed unit, or within 90 days after the end of the two year period, as the case may be (provided that all of the times set out above shall be moved forward by the length of any delay occasioned by any Force Majeure):

7.2.1 Make available to Participants, or such Participant electing such option, capacity and energy (based on a 60% monthly capacity factor) which reasonably could have been expected from such delayed unit at Participants', or any of their, respective costs reasonably anticipated for such delayed unit at the time it would have been available considering the state of construction at the cessation thereof. The amount of capacity and energy will be that amount represented by a percentage of ownership which Participant's investment on the day of cessation of construction represents as to the total estimated cost of the unit; or

7.2.2 Subject to applicable regulatory approval, permit Participants, or any of them, to advance additional funds sufficient to continue construction or

to allow completion of such delayed unit, and the ownership interest of Participants and AP&L shall be adjusted so that the percentage ownership of each in such delayed unit shall be the same as the investment of each is to the total cost of the unit.

7.3 In the event AP&L elects to delay the Commercial Operation of Independence Unit No. 1 or Independence Unit No. 2 until after the respective Estimated Date of Commercial Operation of such unit, because of (1) the availability of an equivalent amount of more economical energy to AP&L from other sources, or (2) AP&L's not requiring the capacity and energy from such delayed unit, AP&L shall save and hold Participants harmless (in the application of clauses 7.2.1 and 7.2.2 above) from any and all escalations in cost occasioned by all delays or cessations of construction for such reasons.

7.4 Inability to Finance. In the event any party, because of its inability to finance in accordance with sound utility financing practices, is unable to invest its proportionate share of funds to allow construction to meet the then scheduled commercial operation date of Independence Unit No. 1 or Independence Unit No. 2, the other party's or parties' sole and exclusive remedy, legal or equitable, shall be to have the right, subject to any applicable

regulatory approval, to advance additional funds sufficient to continue construction or to allow completion of such unit or units, and if such funds in the aggregate, together with cost of money calculated in the same manner as set forth in Section 2.4.1 (or any higher cost of money actually incurred by the party making such advances), are not repaid by two years from date of the initial advance, then the Ownership Share of each party shall be thereupon adjusted so that its percentage ownership in such unit or units shall be the same as its investment is to the total cost of the unit or units.

7.4.1 In the event one advance or series of advances made hereunder has been repaid (plus Cost of Money) within said two year period and a subsequent advance, or series of advances is made, said two year period for repayment shall begin with the date of such subsequent advance.

7.4.2 In the event any party or parties which have the option to make advances to continue construction, following inability to finance of another party or parties, fails or declines to make such advances, and such party's inability to finance continues for a year, then any party or parties shall have the further option to make advances to resume construction and said party or parties' Ownership Share shall be increased accordingly.

In such event, all completion dates will be adjusted accordingly.

7.4.3 Any payments made during the said one year period shall be subject to the two year repayment provision above, provided, further, that the party having the inability to finance, upon regaining such financial ability, shall have the right to resume payment of its original proportionate share of the future Cost of Construction at any time thereafter.

8. TAXES AND INSURANCE

8.1 Taxes. To the extent possible, AP&L and Participants shall each separately report, file returns with respect to, be responsible for and pay all real property, franchise, business, or other taxes or fees, if applicable to said party, except payroll and sales or use taxes arising out of the co-ownership of Independence SES, provided, however, that to the extent that such taxes or fees may be levied on or assessed against Independence SES, or its operation, or AP&L and Participants in such a manner so as to make impossible the carrying out of the foregoing provisions of this Section, or upon mutual agreement of the parties, then such taxes or fees shall be paid by AP&L, and Participants shall immediately reimburse AP&L for their proportionate share of such payment. Ad valorem taxes for the year 1979 shall be prorated between AP&L and Participants at the Closing based upon their respective interests in Independence SES. Participants shall be responsible for all sales and transfer taxes and recording fees incurred, if any, in connection with the conveyance to Participants of such undivided interests in Independence SES, pursuant to this Agreement.

8.2 Insurance. AP&L, during the construction of Independence SES, shall maintain or cause to be maintained a Builder's Risk or an Installation floater policy in an amount and including such risks as is consistent with AP&L's customary practices. Participants and the Rural Electrification Administration shall be named as additional insureds as their interests may appear. AP&L shall also reasonably satisfy itself that all contractors and subcontractors have minimum insurance coverages and limits with carriers approved by AP&L, as AP&L shall deem appropriate with respect to Independence SES; or AP&L, at its option, may maintain an Owner-Provided Insurance Program, insuring all parties, including owners, contractors, subcontractors, but not including engineers and equipment suppliers and manufacturers, involved in the construction of Independence SES as their interests may appear. The aggregate costs of all insurance procured pursuant to this Section shall be considered a Cost of Construction of Independence SES and as such, shall be apportioned between AP&L and Participants pursuant to Section 4 hereof. AP&L will advise Participants of the type and coverages of insurance procured and upon written request, advise any Participant of any changes in such insurance. Each Participant may at its sole expense, purchase and take out such additional insurance for its sole use and benefit as it may desire.

8.3 No Partnership. Notwithstanding any provisions of this Agreement, AP&L and Participants do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit. The obligations and duties of AP&L and Participants are distinct and several and not joint. AP&L and Participants are tenants in common and owners of undivided interests in Independence SES, pursuant to the terms of this Agreement. AP&L and Participants may elect to be treated as a partnership solely for United States income tax purposes.

8.4 ~~It is also agreed that AP&L may seek a ruling from the Internal Revenue Service that AP&L will be eligible for investment tax credits to the extent of its interest in the partnership, and will not be denied such credits by reason of the application of Sections 48(a)(4) or (5) of the Internal Revenue Code. If it should appear that one or more changes to this Agreement would be required in order to obtain the ruling referred to above, AP&L and Participants agree to negotiate promptly in good faith with respect to such changes.~~

9. REPRESENTATIONS AND WARRANTIES

9.1 Certain Representations and Warranties by AECC.

AECC hereby represents, warrants and covenants as follows:

9.1.1 AECC's Organization. AECC is an electric cooperative corporation duly organized, validly existing and in good standing under Act 342 of the Acts of Arkansas of 1937 and other applicable laws of the State of Arkansas and has corporate power to carry on its business as it is now being conducted.

9.1.2 Authority Relative to this Agreement.

The execution, delivery and performance of this Agreement by AECC have been duly and effectively authorized by all requisite corporate action.

9.2 Certain Representations and Warranties by AP&L.

AP&L hereby represents and warrants as follows:

9.2.1 AP&L's Organization. AP&L is a corporation duly organized, validly existing and in good standing under the laws of the State of Arkansas and has corporate power to carry on its business as it is now being conducted.

9.2.2 Authority Relative to this Agreement.

The execution, delivery and performance of this Agreement by AP&L have been duly and effectively authorized by all requisite corporate action.

9.3 Certain Representations and Warranties by CWL.

CWL hereby represents and warrants as follows:

9.3.1 CWL Organization. CWL is an improvement district duly organized and operating under the laws of the State of Arkansas and has power to carry on its business as it is now being conducted.

9.3.2 Authority Relative to this Agreement. The execution, delivery and performance of this Agreement by CWL have been duly and effectively authorized by all requisite action.

9.4 Certain Representations and Warranties by Conway.

Conway hereby represents and warrants as follows:

9.4.1 Conway Organization. Conway is a City of the first class duly organized and operating under the laws of the State of Arkansas and has power to carry on its business as it is now being conducted.

9.4.2 Authority Relative to this Agreement. The execution, delivery and performance of this Agreement by Conway have been duly and effectively authorized by all requisite action.

9.4.3 Conway Corporation. Conway has leased its electric system (including all interests Conway may acquire in the Independence SES) to the Conway Corporation. Said Conway Corporation is hereby designated and empowered

to act on behalf of and carry out and execute all rights and obligations of Conway under this Agreement as a Participant herein during the term of its lease and thereafter until specific written notice to the contrary has been received by AP&L and all other Participants herein.

10. CONDITIONS PRECEDENT

10.1 Conditions Precedent to AP&L's Obligations Hereunder.

All obligations of AP&L under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions (or the waiver in writing of such conditions by AP&L):

10.1.1 AP&L shall not have discovered any material error, misstatement or omission in the representations and warranties made by Participants or any of them in this Agreement.

10.1.2 Participants' representations and warranties contained in this Agreement shall be deemed to have been made again, at and as of the time of the Closing, and shall then be true in all material respects; Participants shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and AP&L shall have been furnished with a certificate, dated the date of the Closing, certifying in such detail as AP&L may request to the fulfillment of the foregoing conditions.

10.2 Conditions Precedent to Participants' Obligations Hereunder. All obligations of Participants or any of them under this Agreement are subject to the fulfillment,

prior to or at the Closing, of each of the following conditions (or the waiver in writing of such conditions by Participants):

10.2.1 Participants shall not have discovered any material error, misstatement or omission in the representations and warranties made by AP&L or any other Participant in this Agreement.

10.2.2 AP&L's representations and warranties contained in this Agreement shall be deemed to have been made again, at and as of the time of the Closing, and shall then be true in all material respects; AP&L shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing and Participants shall have been furnished with a certificate, dated the date of the Closing, certifying in such detail as Participants may request to the fulfillment of the foregoing conditions.

10.2.3 AP&L shall have furnished to Participants current estimates of projected completion costs of Independence SES in form satisfactory to Participants.

10.2.4 As to the Closing with CWL, AP&L shall have furnished CWL a commitment in a form satisfactory to CWL to deliver power from Independence SES to CWL.

10.2.5 As to the Closing with Conway, AP&L shall have furnished Conway a commitment in a form

satisfactory to Conway to deliver power from Independence SES to Conway.

10.3 Conditions Precedent to the Respective Obligations of AP&L and Participants. The respective obligations of AP&L and Participants hereunder are, unless waived in writing by AP&L and Participants prior to or at the Closing, subject to the further conditions that:

10.3.1 All requisite governmental, regulatory and vendor approvals of the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by AP&L and Participants and the release by Morgan Guaranty Trust Company of New York, as Trustee under AP&L's Mortgage and Deed of Trust, dated October 1, 1944, as supplemented, of the interest in Independence SES to be conveyed to Participants hereunder from the lien of such Mortgage and Deed of Trust, shall have been received.

10.3.2 ~~The parties shall have executed the Operating Agreement.~~ "Operating Agreement" as used herein means that certain agreement executed on or about the date of Closing, wherein the parties agree to the terms and conditions pursuant to which the Independence SES will be managed and operated after Commercial Operation.

11. CERTAIN AGREEMENTS

11.1 Certain Agreements Between AP&L and Participants.

AP&L and Participants hereby covenant and agree as follows:

11.2 No Adverse Distinction. Notwithstanding any other provisions of this Agreement, in discharging its responsibilities pursuant to this Agreement, AP&L shall make no adverse distinction between Independence SES and any other generating unit in which AP&L has an ownership interest, because of AP&L's co-ownership of Independence SES with Participants.

11.3 Approvals. AP&L and Participants shall use their best efforts to obtain as quickly as possible all requisite governmental, regulatory and vendor approvals of the consummation of the transactions contemplated hereby.

11.4 Information. ~~AP&L shall provide to Participants~~  
~~information on all matters relating to the project in accordance with~~  
reasonable judgment and in accordance with good utility practice ~~with respect~~ to planning, design, construction, acquisition, completion, additions and replacements, ~~and~~  
~~the development of the project~~ (including, without limitation, plans, specifications, engineering studies, environmental reports, budgets, estimates and schedules), ~~and shall~~ ~~fractally~~ ~~in~~ ~~give~~ ~~to~~ ~~Participants~~ ~~to~~ ~~comment~~ ~~thereon~~ ~~before~~ ~~decisions~~ ~~are~~ ~~made,~~ ~~and~~ ~~shall~~ ~~confer~~ ~~with~~

Participants during the development of any of AP&L's proposals regarding such matters when practicable to do so. Upon request of any Participant, AP&L shall furnish or make available with reasonable promptness and at reasonable times any and all other information relating to such matters.

11.5 Cooperation. AP&L and Participants will cooperate with each other in all activities relating to Independence SES, including, without limitation, the filing of applications for authorizations, permits or licenses and the execution of such other documents as may be reasonably necessary to carry out the provisions of this Agreement. Without AP&L's written consent, ~~Participants shall not incur any obligation which would or could obligate them to any third party.~~

11.6 Damage to Independence SES. In the event that prior to the respective Commercial Operation dates of Independence Unit No. 1 or Unit No. 2, the respective Unit suffers damage, and if the Parties do not unanimously agree that such Unit shall be ended, AP&L shall promptly submit a revised construction budget and shall proceed to repair such Unit, and each Party shall pay its Ownership Share of the cost thereof in excess of insurance proceeds.

11.7 End of Independence SES. When the Independence SES is retired from commercial service, ~~AP&L shall offer for~~ ~~award all salable parts of such units to the highest bidder.~~

After deducting all costs of ending such Plant, including without limiting the generality of the foregoing the cost of razing all structures and disposing of the debris, AP&L shall distribute to each party its Ownership Share of any net proceeds. In the event such costs of ending such Plant exceed available funds, each party shall pay its Ownership Share of such excess as incurred.

11.8 Pollution Control Facilities. Certain facilities in the Independence SES may be more advantageously financed through the issuance by Independence County, Arkansas, or its successors or assigns or any other political subdivision, of its revenue notes or bonds. If such conditions do arise, AP&L and Participants agree to cooperate with each other and to take all action required to consummate any such financing. If such financing is not advantageous to Participants or either of them, said Participants will, if requested by AP&L and to the extent permitted by law, and in the case of AECC, with the written consent of REA, convey to AP&L its (or their) interest in such facilities in exchange for the simultaneous conveyance to them by AP&L of its interest in other facilities having an equal cost.

11.9 Leverage Leasing of Certain Facilities. It is understood and agreed by AP&L and all Participants that

certain coal handling facilities and equipment necessary for the operation of the Independence Plant will be owned, leased and financed by other persons, firms or corporations and that in order to operate and maintain such facilities and equipment, easements, leases or other legal rights of occupancy and access must be granted to the owner and/or lessee thereof. It is, therefore, agreed by all parties that subsequent to the date of closing of this Agreement, each party will execute any and all necessary easements, leases or other rights of occupancy and access to the owner and lessee of such coal handling facilities and equipment as may be reasonably requested, on, over and upon all of the real estate described in Exhibit A and the plant facilities described in Exhibit B. It is understood by Participants that said certain coal handling facilities and equipment specifically include those facilities and equipment necessary to receive coal by whatever method it is transported to the Independence SES, whether by rail, barge, slurry pipeline, truck or other means of transportation.

12. ALIENATION AND ASSIGNMENT

12.1 Alienation and Assignment. The parties agree that it is in their mutual best interest, as well as in the public interest, that all ownership interest in Independence SES and all rights under this Agreement be owned and held by entities experienced in the ownership and operation of electric generating plants. ~~The parties therefore agree that neither AP&L nor Participants, or any of them shall~~ have the right, without the consent of all other parties, to ~~sell, lease, convey, transfer, assign, encumber or otherwise~~ in any manner whatsoever its ownership interest, or any portion or portions thereof, in Independence SES or any rights under this Agreement unless the proposed transferee is an electric "public utility" as that term is defined in Act 324 of the Acts of Arkansas of 1935 or a local governmental entity authorized by Arkansas law to engage in the retail sale and distribution of electric power and energy to the public in Arkansas; provided, however, AP&L and Participants shall each have the right to convey a security interest in its proportionate interest in Independence SES to secure bonds or other debt obligations issued or to be issued. In the event of any sale, conveyance, transfer, assignment, or alienation ~~(other than solely as security for an indebtedness)~~

~~by AP&L or Participants of its ownership interest, or any portion or portions thereof, in Independence SES and the Participants, as the case may be, shall cause such transfer to become a party to this Agreement and to assume the obligations of the transferor hereunder.~~ AP&L and Participants hereby expressly waive and renounce until the Independence SES is retired from commercial service, for themselves, their successors, transferees and assigns, all rights as tenants in common in Independence SES to partition and accounting. Notwithstanding the foregoing provisions of this Section, any party shall have the right to sell, convey, transfer or assign its ownership interest, or any portion or portions thereof, in Independence SES to any governmental or political subdivision in connection with the financing of pollution control facilities without the consent of the other parties and without complying with the foregoing provisions of this Section. The parties expressly agree that the provisions of this Section are severable and that in the event the provisions contained in this Section, or any of them, are held invalid, such invalidity shall not affect other provisions of said Section or this Agreement.

12.2 Permitted Sales or Assignments. Notwithstanding any provisions to the contrary in this contract (including, but not limited to Section 12.1 hereof), ~~the~~

~~agreed that AP&L may, without compliance with said contrary provisions, sell, assign or otherwise dispose of all or part of its ownership interest in the Independence SES to any subsidiary or affiliated company in the Middle South Utilities System, which will assume all of AP&L's obligations under this agreement.~~

12.3 AP&L has expressed, as a matter of policy, its intent to retain at least a 51% ownership interest in Independence SES. AP&L expects to continue that policy and hereby agrees, for itself and any assignee under Section 12.2 above, ~~that it will not voluntarily sell or transfer any of its ownership interest which would have the effect of reducing its said ownership share to or below the percentage of the largest ownership share of any Participant then outstanding, without the written consent of a majority of the then Participants, which consent shall not be unreasonably withheld.~~

13. COMPLIANCE WITH SPECIFIC FEDERAL LAWS

13.1 Environmental Impact. The parties agree that the Independence SES will be constructed and operated consistent with the design and operational commitments relating to environmental impact contained in the Final Environmental Impact Statement prepared by the Environmental Protection Agency as lead agency on behalf of itself and the United States Department of Agriculture, Rural Electrification Administration, bearing date of November, 1978, and with applicable water and air pollution control standards and other environmental requirements imposed by federal or state statutes or regulations.

It is understood and agreed that where a commitment in the Final Environmental Impact Statement is contemplated for the purpose of insuring compliance with certain specific rules and regulations of a state or federal agency, compliance with such commitments shall be governed by the rules, regulations or directives of such state or federal agency as may be in effect from time to time.

13.2 Buy American. The Project Manager covenants that in the performance of this contract (1) at least 35% of the total cost of the unmanufactured articles, materials and supplies used or to be used in the construction of or otherwise made a part of Independence SES shall have been mined

or produced in the United States and (2) at least 35% of the total cost of the manufactured articles, materials, and supplies used or to be used in the construction of or otherwise made a part of Independence SES shall have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States. If any articles, materials, or supplies are partially mined, produced or manufactured in the United States (said part being hereinafter called the "American Made Portion") and partially mined, produced, or manufactured somewhere other than in the United States, then only the cost of the American Made Portion shall be used in determining whether the requirements of the preceding sentence have been satisfied.

At the Closing, and from time to time thereafter when requested by AECC, or the Administrator of the Rural Electrification Administration, the Project Manager shall supply information and documentation demonstrating that Independence SES is being constructed in accordance with the requirements of this subsection. Upon completion of construction of Independence SES, the Project Manager shall certify to the Administrator that Independence SES was constructed in accordance with the requirements of this subsection.

13.3 "Kick-Backs". In the acquisition, construction and completion of these facilities pursuant to this Agreement,

the parties shall comply with all applicable statutes, ordinances, rules and regulations pertaining to the work. The parties acknowledge that they are familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat.948), and regulations issued pursuant thereto, and 18 U.S.C. 287, 1001, as amended. The parties understand that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

13.4 Equal Opportunity Clause. During the performance of those parts of this Agreement relating to the construction by the Project Manager of the Independence SES or any additions, betterments or improvements thereto, the Project Manager agrees as follows:

13.4.1 The Project Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination;

rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

13.4.2 The Project Manager will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to color, religion, sex, age or national origin.

13.4.3 The Project Manager will send to each labor union or representative of workers with which either has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13.4.4 The Project Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

13.4.5 The Project Manager will furnish all

information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

13.4.6 In the event of the Project Manager's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No.11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

13.4.7 Project Manager will include the words "During the performance of this contract, the contractor agrees as follows:" followed by the provisions of paragraphs 13.4.1 through 13.4.7 of this Section 13 in

every subcontract or purchase order (with the words "Project Manager" changed to the word "Contractor") unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon such subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

13.4.8 For purposes of this Agreement, the term "this Agreement" as used in subsection 13.4.6 hereof shall mean those parts of this Agreement relating to the construction by Project Manager of the Independence SES, or any additions, betterments or improvements thereto, including without limitation the provisions hereof insofar as they deal with the performance by the Project Manager of any construction activities and obligations.

13.5        No Segregation.    The parties certify that they will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not permit their employees to perform their services at any location, under its control, where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, color, religion, or national origin, because of habit, local custom or otherwise. They agree that (except where they have obtained identical certifications from proposed subcontractors for specific time periods) they will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that they will retain such certification in their files.

14. GENERAL PROVISIONS

14.1 No Delay. No disagreement or dispute of any kind between AP&L and Participants concerning any matter, including without limitation, the amount of any payment due or the correctness of any charge, shall permit any party to delay or withhold any payment or the performance of any other obligation pursuant to this Agreement.

14.2 Further Assurances. From time to time after the Closing, AP&L and Participants will execute such instruments of conveyance and other documents, upon the request of the other, as may be necessary or appropriate, to carry out the intent of this Agreement.

14.3 Governing Law. The validity, interpretation, and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Arkansas.

14.4 Section Headings not to Affect Meaning. The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof.

14.5 Time of Essence. Time is of the essence of this Agreement.

14.6 Amendments. This Agreement may be amended by and only by a written instrument duly executed by each of the

parties hereto and as to AECC, subject to the written approval of the Administrator of the Rural Electrification Administration.

14.7 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon AP&L and Participants and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies hereunder.

14.8 Counterparts. This Agreement may be executed simultaneously in three or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14.9 "As Is" Sale. Independence SES is to be sold "as is" and "where is". AP&L makes no representation or warranty whatsoever in this agreement, express, implied or statutory, including, without limitation, any representation or warranty as to the value, quantity, condition, saleability, obsolescence, merchantability, fitness or suitability for use or working order of any of Independence SES, nor does AP&L represent or warrant that the use or operation of Independence SES will not violate patent, trademark or service mark rights of any third parties. Participants are willing to purchase Independence SES "as is" and "where is" and in accordance with the terms and conditions of this Agreement. Notwithstanding the foregoing, Participants

shall have the benefit, in proportion to their interest in Independence SES, to all manufacturers' and vendors' warranties and all patent, trademark, and servicemark rights running to AP&L in connection with Independence SES.

14.10 Good Utility Practices. AP&L and Participants shall discharge any and all obligations under this Agreement in a prudent manner and in accordance with good utility practices.

14.11 Survivals. The agreements, covenants, representations and warranties contained in this Agreement shall survive the Closing.

14.12 Transfer of Ownership Shares. Under any circumstances under this Agreement which will result in an increase of Ownership Share of a party or parties, the party or parties obligated to convey an increase in Ownership Share to another party or parties shall execute or furnish all documents necessary to provide a fee simple title to such increased Ownership Share free of mortgage or other liens.

14.13 Termination as to AECC. If the Administrator of the Rural Electrification Administration has not approved this Ownership Agreement in writing by December 31, 1979, this Agreement shall terminate as between AECC and AP&L, and upon such termination all rights, liabilities and obligations of AECC and AP&L to each other relating to Independence SES

shall cease with the exception that AP&L shall repay to AECC on or before December 31, 1981, all amounts which were received by AP&L from AECC with respect to the cost of construction of Independence SES, as well as interest on such funds paid to AP&L at the rate of interest established by National Rural Utilities Cooperative Finance Corporation for line of credit loans at the time of each such payment to AP&L. Upon payment of such funds, AECC shall convey, or cause to be conveyed, to AP&L all of its right, title and interest, free of any encumbrance, in Independence SES, and the Ownership Agreement and Operating Agreement shall thereafter have no further force or effect.

14.14 Notice. Any notice, request, consent or other communication permitted or required by this Agreement (including, without limitation, any offer or acceptance pursuant to Section 12.1 hereof) shall be in writing and shall be deemed given when deposited in the United States Mail, first class postage prepaid, and if given to AP&L, shall be addressed to:

Arkansas Power & Light Company  
P. O. Box 551  
Little Rock, Arkansas 72203  
Attention: The President

and, if given to AECC, shall be addressed to:

Arkansas Electric Cooperative Corporation  
P. O. Box 9469  
Little Rock, Arkansas 72219  
Attention: General Manager

and, if given to CWL, shall be addressed to:

City Water and Light Plant  
400 East Monroe  
Jonesboro, Arkansas 72401  
Attention: Manager

and, if given to Conway, shall be addressed to:

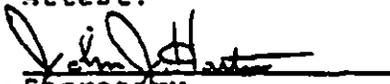
Conway Corporation  
1319 Prairie Street  
Conway, Arkansas 72032  
Attention: Manager

unless a different officer or address shall have been  
designated by the respective party by notice in writing.

15. EXECUTION

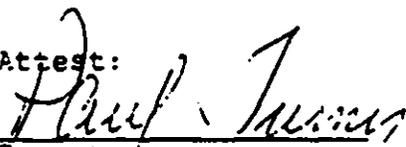
15.1 IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this Agreement in Little Rock, Arkansas, on the date first above written.

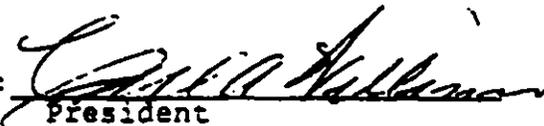
ARKANSAS POWER & LIGHT COMPANY

Attest:  
  
John J. Hester  
Asst. Secretary  
(CORPORATE SEAL)

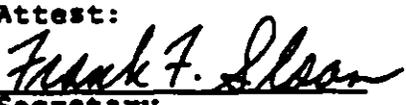
By:   
Jerry Thomas  
President

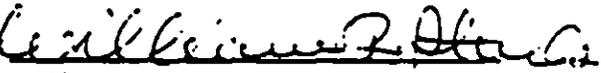
ARKANSAS ELECTRIC COOPERATIVE CORPORATION

Attest:  
  
Paul Turner  
Secretary  
(CORPORATE SEAL)

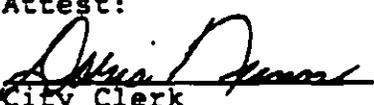
By:   
Carol Williams  
President

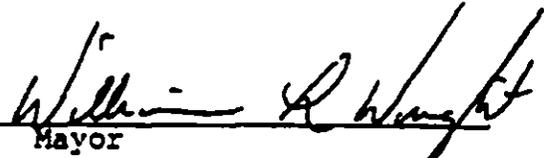
CITY WATER AND LIGHT PLANT OF THE CITY OF JONESBORO

Attest:  
  
Frank F. Olson  
Secretary  
(CORPORATE SEAL)

By:   
Cecil Williams  
Chairman

CITY OF CONWAY, ARKANSAS

Attest:  
  
Dennis Dumas  
City Clerk  
(CORPORATE SEAL)

By:   
William R. Wright  
Mayor

## INDEPENDENCE PLANT OWNERSHIP AGREEMENT

The following lands to be conveyed by AP&L Co. subject to mineral rights that were retained by owners and all easements of record, all lying in Independence County, Arkansas.

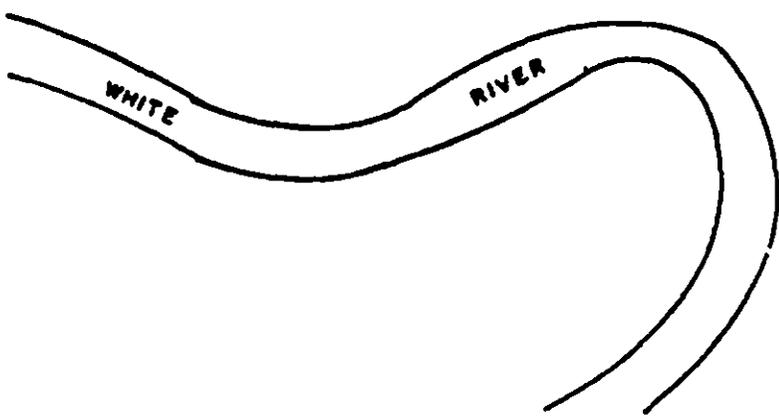
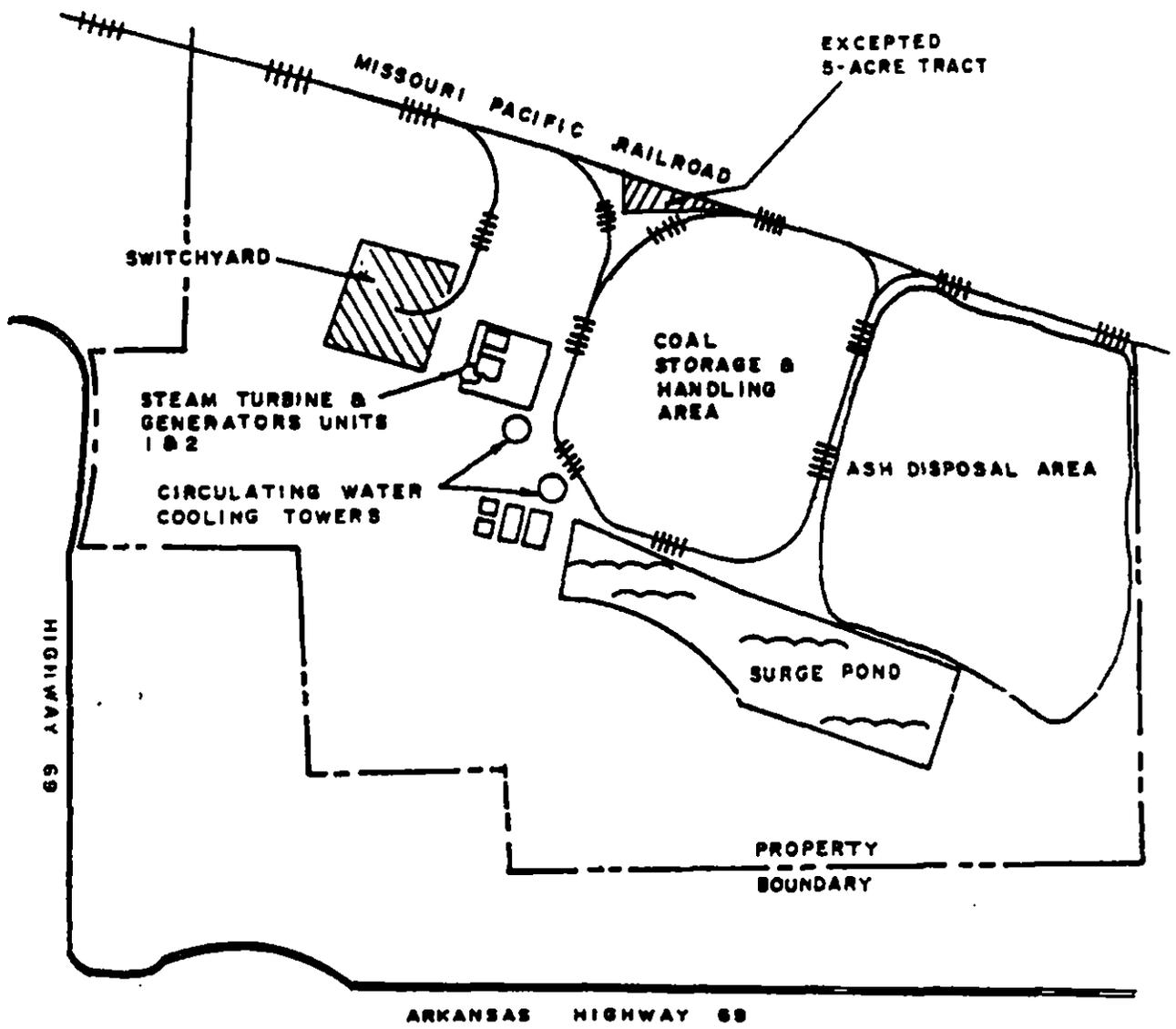
All that part of the SW 1/4, SW 1/4, Section 3, lying south of the south right-of-way of the Missouri Pacific Railroad; All that part of the SE 1/4, SE 1/4, Section 4, lying south of the said railroad right-of-way; The E 1/2, NE 1/4, Section 9; All that part of the SE 1/4, Section 9, lying east of the right-of-way of Arkansas State Highway 69 along the west side thereof and lying east of the right-of-way of a gravel road, running north and south, located in the NW 1/4 of said SE 1/4, Section 9; All that part of Section 10, lying south of the said railroad right-of-way; the SW 1/4, Section 11; the W 1/2, SE 1/4, Section 11; All that part of the NW 1/4, Section 11, lying south of said railroad right-of-way; All that part of the SW 1/4, NE 1/4, Section 11, lying south of said railroad right-of-way; The NW 1/4, Section 14; The W 1/2, NE 1/4, Section 14; The NW 1/4, SE 1/4, Section 14; The N 1/2, SW 1/4, Section 14; The N 1/2, SE 1/4, Section 15; The NE 1/4, Section 15 and the NW 1/4, Section 15, all located in T-12-N, R-4-W, Independence County, Arkansas, being more particularly described as follows:

From a found stone at the SW corner of Section 15, T-12-N, R-4-W, run N 05 degrees 05' 42" W 2781.49 feet to the point of beginning, being the SW corner of the NW 1/4, said Section 15; thence continue N 05 degrees 05' 42" W 2663.62 feet; thence S 85 degrees 35' 38" W 2530.30 feet to a point on the east right-of-way of Arkansas State Highway 69; thence N 06 degrees 01' 01" E 771.54 feet along said highway right-of-way; thence N 04 degrees 50' 27" E 158.40 feet along said highway right-of-way; thence N 04 degrees 31' 42" W 347.39 feet along said highway right-of-way; thence N 10 degrees 51' 53" W 503.85 feet along said highway right-of-way; thence N 12 degrees 33' 19" W 502.59 feet to a point on the east right-of-way of a gravel road; thence N 09 degrees 52' 31" W 358.17 feet along said road right-of-way; thence N 85 degrees 39' 45" E 1225.04 feet; thence N 04 degrees 28' 26" W 2645.44 feet; thence N 03 degrees 53' 03" W 625.44 feet (along the west line of the SE 1/4, SE 1/4, Section 4) to a point on the south right-of-way of the Missouri Pacific Railroad; thence S 76 degrees 48' 31" E 11,268.35 feet along said railroad right-of-way (to a point on the east line of the SW 1/4, NE 1/4, Section 11); Thence S 04 degrees 47' 16" E 2700.68 feet; thence S 04 degrees 59' 47" E 4021.24 feet to the SE corner of the NW 1/4, SE 1/4, Section 14; Thence S 85 degrees 59' 33" W 4081.85 feet; Thence S 87 degrees 17' 20" W 2687.87 feet; thence N 05 degrees 10' 09" W 1358.94 feet; Thence S 87 degrees 58' 38" W 2683.76 feet to the point of beginning, containing 1921.76 acres more or less. Subject to easements of record.

Less and except a switchyard substation tract approximately 1200 feet northerly and southerly and approximately 1000 feet easterly and westerly and containing approximately 27.5 acres lying near the center of the west half of Section 10, T 12 N, R 4 W, as shown on page three (3) of this Exhibit A, and more precisely described as follows:

From the southwest corner of said Section 10, run N 13° 9' 25.5" E 2107.05 feet to a point which is the southwest corner of the switchyard. The boundaries of said switchyard, proceeding from said southwest switchyard corner, are as follows: Run N 13° 11' 29" E 1200 feet to the northwest corner of said switchyard; thence S 76° 48' 31" E 1,000 feet to the northeast corner; then S 13° 11' 29" W 1,200 feet to the southeast corner; then N 76° 48' 31" west 1,000 feet, returning to the southwest corner. Subject to easements of record.

Also less and except a tract of land consisting of approximately five (5) acres, which is that portion of the Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of Section 10, T 12 N, R 4 W, lying south of the Missouri Pacific Railroad right-of-way as shown on Page Three (3) of this Exhibit A.



INDEPENDENCE PLANT OWNERSHIP AGREEMENT - EXHIBIT "B"  
PAGE 1

EXHIBIT "B"

AP&L and participants desire and intend to establish their ownership in the two 700 MW nominally rated generating units to be known as Independence Numbers One and Two to be located near Newark, in Independence County, Arkansas (individually Independence Unit No. 1 and Independence Unit No. 2, and, collectively, "Independence Plant") as more particularly described in the application, amendments thereto, and resulting order thereof, by AP&L, AECC and City Water and Light Plant of the City of Jonesboro, before the Arkansas Public Service Commission (APSC) in Docket No. U2903, Order dated August 31, 1978. The Independence Plant, including the turbine-generators, the buildings housing the same, and the associated auxiliaries and equipment are more particularly described below.

The plant site is located in Independence County, Arkansas, approximately 3 miles Southeast of Newark, Arkansas, North of the White River. The finished plant area grade will be at elevation 239 feet USGS. The maximum river elevation is approximately 236 feet USGS. The site comprises approximately 2000 acres.

The plant will consist of two duplicate units, each having a capability of 700 MW (net). ~~Additional space provisions will be made for possible future generating units.~~

The units are designed to burn sub-bituminous coal. Initially, coal will be delivered by unit train rail cars provided with swivel couplings.

Plant equipment layout and design will provide for conversion to burning pipeline coal at any future time with a minimum amount of conversion expense and outage time.

~~Space provision will also be made for a future fuel oil storage tank farm.~~

Space will be provided for future SO<sub>2</sub> removal equipment and waste burning equipment.

Plant layouts will reserve space for construction offices and construction warehouses.

The steam generator for each unit will be a Combustion Engineering balanced draft, sub-critical pressure drum type unit with 6,023,000 lbs. per hour maximum continuous capacity designed to deliver steam at 2615 psig, 1005 F at the superheater outlet and capable of reheating 5,466,000 lbs. per hour, 565 psig, 635 F to 1005 F when supplied with 484 F feedwater.

The turbine-driven boiler feed pumps (2 one-half capacity units for each unit) will be mounted on the operating deck parallel to the main turbine generator units. Pump drive turbines will exhaust downward into the condenser neck.

The deaerating feedwater heater will be mounted on top of the boiler steel with suitable access platforms and freeze protection. The operating floor-mounted boiler feed pumps will receive water directly from the deaerator without an intermediate booster pump. Each boiler feed pump will be equipped with a double suction first stage in order to minimize the suction head requirements.

The pulverizers and coal silos will be arranged with half of them on each side of each boiler. Coal will be brought from live storage to

the plant by means of conveyors and distributed to the silos by means of tripper conveyors on top of the silos along both sides of each boiler.

The turbine generator for each unit will be a General Electric Company tandem-compound, four-flow, condensing, single reheat machine with 33 1/2" last stage blades. The nominal turbine rating is 800,000 KW (Gross) at 4 1/2" mercury absolute back-pressure and 0% make-up. The maximum expected capability at 5% over-pressure and 5% design margin is approximately 876,000 KW (gross) at 4 1/2" mercury absolute back-pressure and 0% make-up. The generator rating is 1,000,000 KVA, 0.90 power factor and 0.50 short circuit rating, 75 psig hydrogen pressure.

The main, unit auxiliary and start-up/stand-by power transformers will be located adjacent to and on the west side of the turbine building at grade level.

Condenser cooling will be by means of natural draft cooling towers, one for each generating unit.

The plant arrangement will be with turbine generator units in tandem, same hand, with axes perpendicular to the boiler axes. The turbine generator axes will be generally north-south with transformers and switchyard to the west. Coal-handling and storage will be to the east and ash disposal facilities, including the ash disposal area, will be to the east.

The installations will be of the semi-outdoor type. Enclosures will consist of a turbine generator building and coal tripper galleries.

It is planned that one control room will be installed between Units 1 and 2. Other equipment common to two units, such as air compressors, will be located between Units 1 and 2.

There will be designed for this plant all general service facilities including offices, shops, warehouses, laboratories, first-aid room, and similar facilities as are required for a new site development. The shop will be laid out for power plant maintenance only.

The bridge cranes will be installed to service the turbine generator units with sufficient capacity to handle the heaviest piece after erection. The cranes will be equipped with auxiliary hooks. Sufficient lay-down space on the operating deck will be provided for turbine generator maintenance and overhaul.

The latest addenda of all applicable codes will be followed including State and Federal Air and Water Pollution Control Regulations, OSHA Standards and local ordinances regarding the design and construction of the facility.

Excluded from Participant's ownership in this agreement are transmission facilities on the Independence property site. Participants agree that they will execute R/W agreements for all present and future transmission lines on the jointly owned Independence properties.

Also excluded from ownership of AP&L and Participants are coal handling and storage equipment and facilities, including but not limited to the unloading and reclaim pits and equipment, transfer and crushing towers, conveyors, trippers, tunnels, stacker-reclaimer, and associated auxiliary equipment and support structures.

The detailed design, specifications and purchase orders for all equipment in the Independence Plant will be available for inspection in the Generation and Construction Department Offices, Arkansas Power & Light Company, First National Building, Little Rock, Arkansas.

The schedule for operation of the unit is:

<u>Unit No.</u>	<u>Commercial Operation</u>
1	January 1, 1983
2	January 1, 1985

INDEPENDENCE PLANT OWNERSHIP AGREEMENT - EXHIBIT "C-1"  
PAGE 1

SPECIAL WARRANTY DEED AND BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That Arkansas Power & Light Company, a corporation organized under the laws of the State of Arkansas, Grantor, duly authorized by proper resolution of its Board of Directors, for and in consideration of the execution by Grantor and Grantee of Independence Plant Ownership and Operating Agreements dated \_\_\_\_\_, 19\_\_\_, the sum of Ten and no/100 Dollars (\$10.00) in hand paid, and for other good and valuable consideration, the receipt of which is hereby acknowledged, does grant, bargain, sell and convey unto the said Arkansas Electric Cooperative Corporation, Grantee, its successors and assigns, the following described property:

A thirty-five percent (35%) undivided interest in and to that certain real property more particularly described in Exhibit "A" attached hereto and for all purposes by this reference incorporated herein and made a part hereof (said real property being hereinafter referred to as the "Plant Site and Access Thereto") together with a 35% undivided interest, to the extent monies have been expended or rights and/or interests acquired by Grantor as of \_\_\_\_\_, 19\_\_\_, in all easements, rights of way, permits, privileges, machinery, equipment, appliances, appurtenances, materials, supplies and all other property, tangible or intangible, real, personal or mixed, forming a part of or appertaining to or used, occupied or enjoyed in connection with the Independence Plant Site and Access Thereto, or any buildings, other structures or improvements situated on the premises described in Exhibit "A" hereto.

TO HAVE AND TO HOLD the above-described real and personal property unto Grantee, its successors and assigns forever, in Fee Simple.

Grantor, for the consideration aforesaid, for itself, its sucesors and assigns will warrant and forever defend the right and title to the above described lands against all claims done or suffered by Grantor, except mineral rights retained, all easements of record, and actions of the Courts in any eminent domain proceeding.

Notwithstanding anything contained herein to the contrary, the buildings, other structures and improvements, fixtures and personal property herein conveyed and hereby conveyed by Grantor to Grantee upon an "as is" and "where is" basis: Neither Grantor nor any person or entity of any kind or nature whatsoever acting for or on behalf of Grantor either has made or hereby makes any representation or warranty whatsoever with respect thereto, whether express, implied or statutory, including, without limitation, any representation or warranty as to the value, quantity, condition, salability, obsolescence, merchantability, fitness or suitability for use or working order thereof or that the use or operation thereof will not violate patent, trademark or servicemark rights of any third parties. Notwithstanding the foregoing, Grantee shall have the benefit in proportion to its interest in the Independence Plant, of all manufacturers' and vendors' warranties and all patent, trademark and servicemark rights running to Grantor in connection with the property herein contained.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed and its corporate seal to be affixed hereunto by its duly authorized officers on the day and year first above written.

"GRANTOR"  
ARKANSAS POWER & LIGHT COMPANY  
By \_\_\_\_\_

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

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



INDEPENDENCE PLANT OWNERSHIP AGREEMENT - EXHIBIT "C-2"  
PAGE 1

SPECIAL WARRANTY DEED AND BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That Arkansas Power & Light Company, a corporation organized under the laws of the State of Arkansas, Grantor, duly authorized by proper resolution of its Board of Directors, for and in consideration of the execution by Grantor and Grantee of Independence Plant Ownership and Operating Agreements dated \_\_\_\_\_, 19\_\_\_, the sum of Ten and no/100 Dollars (\$10.00) in hand paid, and for other good and valuable consideration, the receipt of which is hereby acknowledged, does grant, bargain, sell and convey unto the said City Water & Light Plant of the City of Jonesboro, Grantee, its successors and assigns, the following described property:

A five percent (5%) undivided interest in and to that certain real property more particularly described in Exhibit "A" attached hereto and for all purposes by this reference incorporated herein and made a part hereof (said real property being hereinafter referred to as the "Plant Site and Access Thereto") together with 5% undivided interest, to the extent monies have been expended or rights and/or interests acquired by Grantor as of \_\_\_\_\_, 19\_\_\_, in all easements, rights of way, permits, privileges, machinery, and all other property, tangible or intangible, real, personal or mixed, forming a part of or appertaining to or used, occupied or enjoyed in connection with the Independence Plant Site and Access Thereto, or any buildings, other structures or improvements situated on the premises described in Exhibit "A" hereto.

TO HAVE AND TO HOLD the above-described real and personal property unto Grantee, its successors and assigns forever, in Fee Simple.

Grantor, for the consideration aforesaid, for itself, its successors and assigns will warrant and forever defend the right and title to the above described lands against all claims done or suffered by Grantor, except mineral rights retained, all easements of record, and actions of the Courts in any eminent domain proceeding.

Notwithstanding anything contained herein to the contrary, the buildings, other structures and improvements, fixtures and personal property herein conveyed and hereby conveyed by Grantor to Grantee upon an "as is" and "where is" basis: Neither Grantor nor any person or entity of any kind or nature whatsoever acting for or on behalf of Grantor either has made or hereby makes any representation or warranty whatsoever with respect thereto, whether express, implied or statutory, including, without limitation, any representation or warranty as to the value, quantity, condition, salability, obsolescence, merchantability, fitness or suitability for use or working order thereof or that the use or operation thereof will not violate patent, trademark or servicemark rights of any third parties. Notwithstanding the foregoing, Grantee shall have the benefit in proportion to its interest in the Independence Plant, of all manufacturers' and vendors' warranties and all patent, trademark and servicemark rights running to Grantor in connection with the property herein contained.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed and its corporate seal to be affixed hereunto by its duly authorized officers on the day and year first above written.

"GRANTOR"  
ARKANSAS POWER & LIGHT COMPANY  
By \_\_\_\_\_

ATTEST: \_\_\_\_\_  
title \_\_\_\_\_

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

ACKNOWLEDGEMENT

STATE OF ARKANSAS    )  
                          )    SS  
COUNTY OF PULASKI   )

On this day, before me, a Notary Public duly commissioned, qualified and acting, within and for the said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally well known, who acknowledged that they were the \_\_\_\_\_ and Assistant Secretary of Arkansas Power & Light Company, a corporation, and that they, as such officers, being authorized so to do, had executed the foregoing instrument for the consideration, uses and purposes therein contained and in the capacities there stated, by signing the name of the corporation by themselves as such officers.

WITNESS my hand and official seal of this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

INDEPENDENCE PLANT OWNERSHIP AGREEMENT - EXHIBIT "C-3"  
PAGE 1

SPECIAL WARRANTY DEED AND BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That Arkansas Power & Light Company, a corporation organized under the laws of the State of Arkansas, Grantor, duly authorized by proper resolution of its Board of Directors, for and in consideration of the execution by Grantor and Grantee of Independence Plant Ownership and Operating Agreements dated \_\_\_\_\_, 19\_\_\_, the sum of Ten and no/100 Dollars (\$10.00) in hand paid, and for other good and valuable consideration, the receipt of which is hereby acknowledged, does grant, bargain, sell and convey unto the said City of Conway, Arkansas, Grantee, its successors and assigns, the following described property:

A two percent (2%) undivided interest in and to that certain real property more particularly described in Exhibit "A" attached hereto and for all purposes by this reference incorporated herein and made a part hereof (said real property being hereinafter referred to as the "Plant Site and Access Thereto") together with 2% undivided interest, to the extent monies have been expended or rights and/or interests acquired by Grantor as of \_\_\_\_\_, 19\_\_\_, in all easements, rights of way, permits, privileges, machinery, and all other property, tangible or intangible, real, personal or mixed, forming a part of or appertaining to or used, occupied or enjoyed in connection with the Independence Plant Site and Access Thereto, or any buildings, other structures or improvements situated on the premises described in Exhibit "A" hereto.

TO HAVE AND TO HOLD the above-described real and personal property unto Grantee, its successors and assigns forever, in Fee Simple.

Grantor, for the consideration aforesaid, for itself, its successors and assigns will warrant and forever defend the right and title to the above described lands against all claims done or suffered by Grantor, except mineral rights retained, all easements of record, and actions of the Courts in any eminent domain proceeding.

Notwithstanding anything contained herein to the contrary, the buildings, other structures and improvements, fixtures and personal property herein conveyed and hereby conveyed by Grantor to Grantee upon an "as is" and "where is" basis: Neither Grantor nor any person or entity of any kind or nature whatsoever acting for or on behalf of Grantor either has made or hereby makes any representation or warranty whatsoever with respect thereto, whether express, implied or statutory, including, without limitation, any representation or warranty as to the value, quantity, condition, salability, obsolescence, merchantability, fitness or suitability for use or working order thereof or that the use or operation thereof will not violate patent, trademark or servicemark rights of any third parties. Notwithstanding the foregoing, Grantee shall have the benefit in proportion to its interest in the Independence Plant, of all manufacturers' and vendors' warranties and all patent, trademark and servicemark rights running to Grantor in connection with the property herein contained.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed and its corporate seal to be affixed hereunto by its duly authorized officers on the day and year first above written.

"GRANTOR"  
ARKANSAS POWER & LIGHT COMPANY  
By \_\_\_\_\_

ATTEST:

Title \_\_\_\_\_

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

ACKNOWLEDGEMENT

STATE OF ARKANSAS    )  
                          ) SS  
COUNTY OF PULASKI   )

On this day, before me, a Notary Public duly commissioned, qualified and acting, within and for the said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_ to me personally well known, who acknowledged that they were the \_\_\_\_\_ and Assistant Secretary of Arkansas Power & Light Company, a corporation, and that they, as such officers, being authorized so to do, had executed the foregoing instrument for the consideration, uses and purposes therein contained and in the capacities there stated, by signing the name of the corporation by themselves as such officers.

WITNESS my hand and official seal of this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

INDEPENDENCE PLANT OWNERSHIP AGREEMENT - EXHIBIT "D"

MONTHLY COST OF MONEY RATE

MCMR = The monthly cost of money rate determined as follows:

$$= \frac{1}{12} \left[ (DR \times i) + \left( \frac{PR \times p}{1-t} \right) + \left( \frac{ER \times c}{1-t} \right) \right]$$

Where:

- DR = Ratio of the Principal Amount of (excluding any premium) First Mortgage Bonds to total capital.
- PR = Ratio of Par Value of Preferred Stock (excluding any premium) to total capital.
- ER = Ratio of Common Equity to total capital.
- i = The coupon interest rate of the most recent issue of First Mortgage Bonds.
- p = The coupon dividend rate of the most recent issue of Preferred Stock.
- c = The rate of return of Common Equity shall be 13% or such percentage as may hereafter be fixed by the Arkansas Public Service Commission in the then most recent AP&L rate proceeding.
- t = Composite incremental State and Federal corporate income tax rate.

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

Original Sheet No. 1

INDEPENDENCE STEAM ELECTRIC STATION  
OPERATING AGREEMENT

*Handwritten notes:*  
ERO 2-277-02  
Company Entergy Ark. Tax  
FERC EL Rate Schedule 145  
Filing Date 11-1-01  
Effective Date 11-4-01

among

ENTERGY ARKANSAS, INC.

and

ARKANSAS ELECTRIC COOPERATIVE CORPORATION

and

CITY WATER AND LIGHT PLANT  
OF THE CITY OF JONESBORO, ARKANSAS

and

CITY OF CONWAY, ARKANSAS

and

CITY OF WEST MEMPHIS, ARKANSAS

and

CITY OF OSCEOLA, ARKANSAS

and

ENTERGY MISSISSIPPI, INC.

and

ENTERGY POWER, INC.

and

EAST TEXAS ELECTRIC COOPERATIVE, INC.

Dated as of  
November 1, 2000

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

Energy Arkansas, Inc.  
First Revised Rate Schedule No. 145

Original Sheet No. 2

**Section            Title and/or subsection**

- 1. Operating Agreement**
  - 1.1 Description of Parties
  - 1.2 Participants
  - 1.3 Businesses
  - 1.4 Description of Independence SES
  - 1.5 Undivided Interest and Sharing of Costs
  - 1.6 Agreement
  
- 2. Definitions**
  - 2.1 Definition of Independence SES
  - 2.2 Cost of Operation
  - 2.3 Uniform System of Accounts
  - 2.4 Commercial Operation
  - 2.5 Force Majeure
  - 2.6 Ownership Share
  - 2.7 Ownership Agreement
  - 2.8 Antelope Coal Supply Agreement
  - 2.9 Actual Fuel Costs
  - 2.10 Operator
  
- 3. Operation**
  - 3.1 Responsibility and Authority for Operation
  - 3.2 Agency
  - 3.3 Change of Operator
  - 3.4 Contracts with Affiliates
  - 3.5 No Liability
  - 3.6 Liability to Third Parties
  
- 4. Payment of Cost of Operation**
  - 4.1 Sharing of Costs
  - 4.2 Payment of Costs
  - 4.3 Estimate of Anticipated Costs
  - 4.4 Payment by Participants
  - 4.5 Non-Payment
  - 4.6 CWL Obligation
  - 4.7 Conway Obligation
  - 4.8 West Memphis Obligation

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

Original Sheet No. 4

- 11.4 Information
- 11.5 Cooperation
- 11.6 Regulatory Agencies
- 11.7 Environmental Impact

12. General Provisions

- 12.1 No Delay
- 12.2 Further Assurances
- 12.3 Governing Law
- 12.4 Section Headings not to Affect Meaning
- 12.5 Time of Essence
- 12.6 Amendments
- 12.7 Successors and Assigns
- 12.8 Counterparts
- 12.9 Good Utility Practices
- 12.10 Rural Electrification Administration Approval
- 12.11 Notice
- 12.12 Conway Corporation
- 12.13 West Memphis
- 12.14 Adjustment of Ownership Shares
- 12.15 No Adverse Distinction
- 12.16 Voting
- 12.17 Miscellaneous

13. Assignment and Term

- 13.1 Limitation on Assignability
- 13.2 Term

14. Execution

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

1. OPERATING AGREEMENT

1.1 Description of Parties. THIS AGREEMENT, dated as of July 31, 1979, as amended, was restated as a conforming document as of November 1, 2000, among ENTERGY ARKANSAS, INC., formerly ARKANSAS POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Arkansas, (EAI), ARKANSAS ELECTRIC COOPERATIVE CORPORATION, an electric cooperative corporation organized and operating under Act 342 of the Arkansas Acts of 1937 (AECC), CITY WATER AND LIGHT PLANT OF THE CITY OF JONESBORO, Jonesboro, Arkansas (CWL), the CITY OF CONWAY, ARKANSAS (Conway), the CITY OF WEST MEMPHIS, ARKANSAS (West Memphis) the CITY OF OSCEOLA, ARKANSAS (Osceola), ENTERGY MISSISSIPPI, INC., formerly MISSISSIPPI POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Mississippi (EMI), ENTERGY POWER, INC., a corporation organized and existing under the laws of the State of Delaware (EPI) and EAST TEXAS ELECTRIC COOPERATIVE, INC., a generation and transmission cooperative organized and existing under the laws of the State of Texas (ETEC).

1.2 Participants. EAI, AECC, CWL, Conway, West Memphis, Osceola, EPI, EMI, and ETEC are hereafter referred to at times collectively as "Participants"; provided, however, that, so long as EAI continues as Operator, the term "Participant" as used in subsections 3.1, 3.2, 3.5, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9

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Effective: November 1, 2000

Issued on: September 1, 2001

and Sections 5, 6, 9 (except subsection 9.3), 11 and 12 (except subsection 12.7) shall not include EAI. The terms "Participant" or "Participants" as used herein, whether in singular or plural, shall in no instance be interpreted to create a joint obligation or duty, but shall always mean each Participant with respect to its proportionate Ownership Share of any property constituting a part of Independence SES. The obligations and duties of Participants are distinct and several and not joint.

1.3 Businesses. EAI is engaged in the business of generating, transmitting, and distributing electric power and energy primarily in the State of Arkansas. AECC is an electric cooperative corporation engaged in the business of generating and transmitting electric power and energy for its member electric cooperative corporations in the State of Arkansas. CWL is engaged in the business of generating and acquiring electric power and energy and distributing such power and energy to its customers in the City of Jonesboro, Arkansas. Conway is the owner of an electric generating and distribution system, which is leased to the Conway Corporation, an Arkansas non-profit corporation, which distributes electric power and energy in the City of Conway, Arkansas. West Memphis is the owner of an electric generating and distribution system, which is operated by the West Memphis Utility Commission. Osceola is engaged in the business of generating and transmitting electric power and energy for its customers in the City of Osceola. EMI is engaged in the business of generating, transmitting, and

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Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

distributing electric power and energy primarily in the State of Mississippi. EPI is a wholesale generating subsidiary of Entergy Corporation. ETEC is an electric cooperative engaged in the business of generating and transmitting electric power and energy for its member electric cooperatives in the State of Texas.

1.4 Description of Independence SES. Participants have entered into an agreement for the joint ownership of Independence Steam Electric Station (Ownership Agreement) dated as of July 31, 1979, providing for the purchase and ownership by Participants of undivided interests in two 700 MW nominally rated coal fired generating units to be known as the Independence Units Number One and Two, to be located near Newark in Independence County, Arkansas, therein more particularly identified (individually Independence Unit No. 1 and Independence Unit No. 2, and collectively, Independence SES).

1.5 Undivided Interest and Sharing of Costs. As set forth in the Ownership Agreement, Participants are to have undivided interests in Independence SES, and Participants are to share in the costs of operation proportionately to the Ownership Shares. By this Operating Agreement, Participants intend to provide for:

- 1.5.1 the authority for management and operation of Independence SES by EAI in all respects not covered by the Ownership Agreement;
- 1.5.2 the allocation of capacity and energy from Independence SES; and
- 1.5.3 the sharing of the costs thereof by Participants in accordance with their Ownership Shares.

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Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

1.6 Agreement. NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, Participants hereby agree as follows:

2. DEFINITIONS

2.1 Definition of Independence SES. Independence SES shall consist of:

2.1.1. Land. The land described in Exhibit A to the Ownership Agreement (such land, together with all such additional land or rights therein as may hereafter be acquired for the purpose specified in 2.1.4 below, being hereinafter called the "Land");

2.1.2. Equipment. Independence Unit No. 1 and Independence Unit No. 2, including the turbine-generators, the buildings housing the same, and the associated auxiliaries and equipment, all as more particularly described in Exhibit B to the Ownership Agreement.

2.1.3. Materials and Supplies. Inventories of materials, supplies, spare parts, tools and equipment (exclusive of fuel) for use in connection with Independence SES; and

2.1.4. Additions. Such additional land or rights therein as may be acquired, and such additional facilities and other similar tangible property as may be acquired, constructed, installed or replaced in connection with Independence SES, provided (1) that the cost of such additional land or rights therein or of such additional facilities or other similar tangible

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Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

property shall be properly recordable in utility plant in accordance with the Uniform System of Accounts, and (2) that such additional land or rights therein or such additional facilities or other tangible property shall have been acquired, constructed, installed or replaced for the common use of Participants under and subject to the provisions of the Ownership Agreement.

2.2 Cost of Operation. For purposes of this Agreement, Cost of Operation shall mean all costs incurred by EAI, except fuel costs and financing costs, in connection with the operation and maintenance of Independence SES, as defined in Section 2.1, which are properly recordable to Independence SES in accordance with the Operating Expense Instructions and in appropriate accounts as set forth in the Uniform System of Accounts, and all such costs associated with pollution control facilities necessary for the operation of Independence SES. Credits relating to Cost of Operation, including insurance proceeds, shall be applied to such costs as received.

2.3 Uniform System of Accounts. Uniform System of Accounts shall mean the Federal Energy Regulatory Commission Uniform System of Accounts prescribed for Public Utilities and Licensees (Class A and Class B).

2.4 Commercial Operation. As used herein with respect to each unit of Independence SES, "Commercial Operation" shall mean midnight following successful

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Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

completion of the performance test prescribed in EAI's unit test procedures for said unit.

2.5 Force Majeure. The term "force majeure" as used herein, shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances, acts of public enemies; orders of any kind of the government of the United States or of the State of Arkansas or any of their departments, agencies or officials (other than the failure to receive therefrom a proposed rates increase), or any civil or military authority pertaining to Independence SES; insurrections, riots; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages or delays; epidemics; landslides; lightning; earthquakes; fire; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war, civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; restraints by courts or other governmental authority; blight; famine; blockade; quarantine; or any other similar cause or event not reasonably within the control of EAI. EAI agrees, however, to remedy with all reasonable dispatch the cause or causes preventing EAI from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of EAI and EAI shall not be required to make settlement of strikes, lockouts and other industrial disturbances

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Senior Wholesale Executive

Effective: November 1, 2000

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by acceding to the demands of the opposing party or parties when such course is, in the judgment of EAI, unfavorable to EAI.

2.6 Ownership Share. The term "Ownership Share" shall mean the ownership percent of the individual units and of the common facilities for the various co-owners as follows:

Co Owner	ISES #1 %	ISES #2 %	ISES Common %
AECC	35.00	35.00 *	35.00
Conway	2.00	2.00	2.00
EAI	31.50	0.00	15.75
EMI	25.00	25.00	25.00
EPI	0.00	14.37	7.19
ETEC	0.00	7.13	3.56
CWL	5.00	15.00	10.00
Osceola	0.50	0.50	0.50
West Memphis	1.00	1.00	1.00
Totals	100.00	100.00	100.00

\* AECC is lessee of that part of ISES #2 owned by an owner trustee

Such Ownership Shares may be adjusted pursuant to the Ownership Agreement.

2.7 Ownership Agreement. The Agreement entered into among the parties providing for the joint ownership of Independence SES and dated July 31, 1979.

2.8 Antelope Coal Supply Agreement. That certain Agreement entered into between System Fuels, Inc. (SFI) and Antelope Coal Company (Antelope) dated December

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Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

22, 1976, as amended to change the name of Antelope Coal Company to North Antelope Coal Company.

2.9 Actual Fuel Costs. The total of the following components:

- (a) the amount billed EAI by SFI or other suppliers for coal or other fuel; and
- (b) the amount billed EAI for the transportation of coal or other fuel, which shall include, but is not limited to tariff payments, all costs of operation, maintenance, amortization, financing, as incurred either through direct ownership or lease of rail cars and reasonable consulting, legal, and other administrative and general expenses related to providing transportation service; and
- (c) all charges incurred by EAI in connection with the lease, maintenance and operation of all coal handling and storage equipment and facilities associated with Independence SES; and
- (d) all sales, use, personal property or other taxes imposed on EAI because of the transportation, delivery, purchase, transfer, storage, handling, sale or ownership of coal or other fuel by EAI; and
- (e) all charges incurred in connection with the Antelope Coal Supply Agreement not otherwise included in subsection (a) above, and billed to EAI, including, but not limited to, recovery or amortization of any payments made by SFI under Sections 21 and 22 of the said agreement.

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Senior Wholesale Executive

Effective: November 1, 2000

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and of all investments, if any, in facilities or leases under the Antelope Coal Supply Agreement, or leasing costs in lieu of such investments; and

(f) all other costs, whether similar or dissimilar to the costs enumerated above, incurred by EAI in the performance of Section 7 of this Agreement and not provided for in other parts of this Agreement, including, but not limited to payment or amortization of all SFI expenses incurred on behalf of EAI for the coal supply for Independence SES, including pre-operating expenses and related general and administrative costs.

2.9.1 It is understood that certain payments referred to above (e.g., pre-operating expenses and charges for coal during start up or periods of low or no delivery) may be normalized by amortization over a period, not to exceed the remaining life of Independence SES, which may be longer than those provided for under the terms of the Antelope Coal Supply Agreement or other service agreements. In the event of such normalization, Actual Fuel Costs shall be adjusted accordingly for the month or months comprising the period of normalization. All determinations as to whether optional investments are to be made or not made, expenses or costs to be normalized or not, and as to the periods of amortization shall be at the sole discretion of EAI and the resulting charges and/or amortization of capital investment shall be includable on

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their respective prorata bases in the actual cost of fuel billed by EAI to the other Participants.

2.9.2 For purposes of this Section 2.9, the term amortization shall include recovery of original investment or payment plus a reasonable return on such funds until recovered.

2.9.3 It is further understood and agreed by Participants that Actual Fuel Costs, as defined above, shall be computed and billed to the other Participants by EAI, excluding any and all effect of investment tax credits, accelerated depreciation, energy tax credits, or other tax benefits not otherwise available to tax-exempt entities.

2.10 Operator.

2.10.1 Whenever in the Operating Agreement, as amended, the term "operator" or "Operator" is used, it shall mean EAI, as agent for the Participants pursuant to subsection 3.2 of the Operating Agreement and subsection 5.3 of that certain Independence Steam Electric Station Ownership Agreement dated July 31, 1979 (the "Ownership Agreement"), as amended, to which the parties are parties or by which they are bound, responsible for management, control, operation and maintenance of Independence SES pursuant to subsection 3.1 of the Operating Agreement, or any successor agent appointed as provided in subsection 3.3 of the Operating Agreement.

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2.10.2 Upon appointment of a new Operator as provided in subsection 3.3 of the Operating Agreement, the agency of any discharged Operator under subsection 3.2 of the Operating Agreement shall be terminated without further action, and the new Operator automatically shall be deemed agent for the Participants pursuant to subsection 3.2 of the Operating Agreement. Upon appointment of a new Operator as aforesaid, the terminated Operator shall assign to the new Operator, as agent for the Participants, all such terminated Operator's interest as Operator in all contracts entered into by such terminated Operator in connection with its obligations as operator or agent under this Agreement; provided, however, that the foregoing provision shall not apply to any contracts entered into in connection with satisfaction of its obligations under Section 7 of the Operating Agreement.

2.10.3 At such time as EAI no longer is Operator, references to EAI in subsections 2.2, 2.5, 3.1, 3.2, 3.4, 3.5 and 3.6, the first paragraph of subsections 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, and 4.9 and Sections 5, 6, 8, 9, 10, 11 and 12 shall be deemed to be references to the Operator.

2.10.4 Commencing on the last to occur of (i) January 1, 2019, and (ii) the date EAI is replaced as Operator as provided in subsection 3.3 and (iii) the date EAI ceases to own any Ownership Share in Independence Steam Electric Station, references to EAI in Section 7 shall be deemed to be references to

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the Operator; provided, however, that if EAI gives notice not less than one year prior to the last to occur of such dates to each owner of an Ownership Share in Independence Steam Electric Station that EAI wishes to continue to perform its obligations under Section 7, then obligations of EAI under Section 7 shall continue to be binding upon it for the period of time specified by EAI in such notice, and references therein to EAI shall not be deemed to be references to Operator.

3. OPERATION

3.1 Responsibility and Authority for Operation. EAI shall have sole responsibility and authority, to be discharged in a prudent manner in accordance with good utility practices, for the management, control, operation and maintenance of Independence SES. EAI will use its reasonable best efforts fully to comply with all requirements of all applicable statutes and the rules and regulations of such regulatory agencies as shall have competent jurisdiction over such operation and maintenance of Independence SES. EAI shall not be liable or responsible for any failure to perform hereunder where such failure to perform is caused by or is the result of Force Majeure.

3.1.1 Operating Committee. There shall be an Operating Committee composed of one representative of each Participant and EAI, with EAI serving as the Chairman. It shall be the duty of the Operating Committee to review the

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operational results and future operational plans of the ISES units such as unit reliability, heat rate, O&M costs, outages, and fuel inventory, and to act on behalf of the parties on matters as provided under this Agreement to provide for economical and reliable unit operation. Each party will evidence its appointment of its representative to the Operating Committee by written notice to the other parties and by similar notice any Participant may at any time change its representative on the Operating Committee. The Operating Committee shall meet on or before October 15 of each year at a time and place mutually agreeable to the representatives, and at such other times as the representatives may consider necessary. The Operating Committee shall have no authority to alter, amend, or revise the express provisions of the Operating Agreement.

3.2 Agency. Participants hereby irrevocably appoint EAI their agent, and EAI accepts such agency, in connection with Independence SES to act on their behalf in the operation and maintenance of Independence SES and authorize EAI in the name and on behalf of Participants to take all reasonable actions which, in the discretion and judgment of EAI, are deemed necessary or advisable to effect the operation and maintenance of Independence SES, including without limitation, the following:

3.2.1 The making of such agreements and modifications of existing agreements and the taking of such other action as EAI deems necessary or appropriate.

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in its reasonable judgment, or as may be required under the regulations or directives of such regulatory agencies having jurisdiction, with respect to the operation and maintenance of Independence SES.

3.2.2 The execution and filing with such regulatory agencies having jurisdiction of applications, amendments, reports and other documents and filings in or in connection with the operation and maintenance and other regulatory matters with respect to Independence SES;

3.2.3 The receipt on Participants' behalf of any notice or other communication from any regulatory agency having jurisdiction, as to any licensing or other regulatory matter with respect to Independence SES.

3.3 Change of Operator. Notwithstanding any other provision of this agreement, in the event the Operator fails to perform properly its duties, responsibilities, obligations, or functions hereunder as agent in the judgement of Participants owning not less than 43.5% of Ownership Shares, then such Participants shall have the right to give the Operator written notice of such failure, which notice shall specify the nature of such failure to perform. In the event the Operator fails or refuses to correct such failure within 60 days after receipt of such notice, such Participants shall have the right to remove the Operator as agent hereunder and substitute a successor agent subject to the following condition:

Following receipt of such notice, the removed Operator shall continue as agent under subsection 3.2 until its successor has been appointed with the consent of

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Participants owning not less than 75% of Ownership Shares, which consent shall not be unreasonably withheld, delayed or conditioned. All actions undertaken by an Operator as agent following receipt of such notice and prior to the effective appointment of a successor Operator shall be deemed ratified and affirmed by the Participants.

3.4 Contracts with Affiliates. In discharging its obligations hereunder, EAI shall have the right, on its own behalf and on behalf of Participants, to contract with itself or any of its affiliates for the purchase, at cost, of any equipment or facilities or the performance of services, at cost, in connection with Independence SES.

3.5 No Liability. EAI shall have no liability for any loss, damage or expense suffered by Participants caused by or resulting from Force Majeure or arising out of or resulting from any action taken or failed to be taken by EAI or any agent or employee of EAI pursuant to this Section 3, unless such loss, damage or expense results from the willful misconduct of EAI or the failure of EAI to use its reasonable best efforts to conform to good utility practices in discharging its obligations under this Agreement; and in no event shall EAI be liable for any loss of anticipated profits, increased expenses of operation or any other consequential damages or losses of any nature. For purposes of this Section, "consequential damages" shall include, but not be limited to, damage or loss of other property or equipment, loss of profits or revenue, loss of use of power system, cost of capital,

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cost of purchased or replacement power, or claims of customers for service interruption.

3.6 Liability to Third Parties. In the event EAI, in the performance of its duties pursuant to this Section 3, incurs any liability to any third party, other than that resulting from the willful misconduct of EAI, any amount paid by EAI on account of such liability shall be considered a Cost of Operation and apportioned between the parties in accordance with the Ownership Share of each.

4. PAYMENT OF COST OF OPERATION

4.1 Sharing of Costs. Except as otherwise provided in this Section, each Participant shall be responsible for that proportionate share equal to its respective Ownership Share of the Cost of Operation as defined in Section 2.2 incurred by EAI in carrying out the provisions of this section.

It is the intent of Participants that each party will pay its proportionate share of all items of cost, other than those related to financing, and share in all obligations and liability, except as otherwise provided herein, incurred in connection with Independence SES, and not otherwise expressly provided for, in proportion to the Ownership Share of each, and in the event of any doubt whether responsibility for a particular cost, obligation or liability is provided for in this agreement, such cost, obligation or liability shall be so shared.

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4.1.1 To the extent practicable, Cost of Operation which relates to either Independence SES Unit No. 1 or Independence SES Unit No. 2 shall be allocated to that Unit in accordance with the Uniform System of Accounts.

4.1.2 All other Cost of Operation not specifically allocated under paragraph 4.1.1 shall be allocated one-half to Independence SES Unit No. 1 and one-half to Independence Unit No. 2.

4.1.3 Actual Fuel Costs shall be determined and billed separately for Independence SES Unit No. 1 and Independence SES Unit No. 2 in accordance with the provisions of subsection 5.1.

4.2 Payment of Costs. EAI shall be responsible for making payment to third parties of all costs, obligations and liabilities, direct and indirect, in respect of the Cost of Operation in connection with Independence SES.

4.3 Estimate of Anticipated Costs. At least fifteen days prior to the end of each calendar quarter, EAI will furnish Participants the best estimate reasonably available as to anticipated Cost of Operation, other than fuel costs, showing such anticipated costs by calendar quarter for the next succeeding four calendar quarters.

4.4 Payment by Participants. Operator will on or before the eighth working day of each calendar month notify Participants of the Cost of Operation of Independence SES incurred by Operator during the preceding calendar month, plus any adjustments of the Cost of Operation incurred in prior months but not previously

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charged or credited to Participants under the provisions of this Section. Operator will give Participants as much notice as is reasonably practicable of any major anticipated Cost of Operation. Participants will make payment to Operator on the fifteenth day, or the next following business day, of the month in which such notice is given of their respective proportionate ownership share of such Cost of Operation.

4.4.1 Each such notification made by EAI of anticipated Cost of Operation and adjustments shall be accompanied by an accounting of the Operating Costs incurred and credits accrued for preceding months.

4.4.2 EAI will, from time to time, provide Participants with such information as is reasonably required for Participants to account on their books for all payments made by Participants. No payment made pursuant to Section 4.4 or Section 5 constitute a waiver of any right of Participants to question or contest the correctness of the Cost of Operation by EAI.

4.5 Non-Payment. In addition to any other rights or remedies, legal or equitable, available to EAI, in the event any Participant at any time fails to make any payment when due to EAI under this Agreement, EAI shall have the right, at its option to give written notice of such failure to such Participant and in the event such failure continues for a period of 30 days after the giving of such notice, to withhold and use, without charge as if it were its own, such Participant's proportionate share of the capacity and energy from Independence SES until such

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payment has been made but with appropriate credit being given to such Participant in respect of its Ownership Share of Independence SES for use of such capacity and energy. If such credit exceeds the payment due EAI, EAI will pay such Participant monthly for the difference thereof. If such overdue payments due EAI exceed such credits, EAI shall have a right to receive interest on the difference thereof during the period such payment was due, at an annual rate equal to either the then current average yield on outstanding obligations of the United States of America having a term of 90 days or less plus 5%, or EAI's incremental cost of unsecured short-term borrowed funds plus 5%, whichever is greater, but in no event more than the lawful maximum interest rate. Such Participant shall also indemnify and hold EAI and the other Participants harmless from and against any and all losses, costs, damages and expenses arising out of or resulting from such Participant's failure to make such overdue payments when due.

4.6 CWL Obligation. It is agreed that all obligations of CWL hereunder involving financial commitments shall be payable and enforceable solely from revenues derived from CWL's electric system, and CWL covenants and agrees to take all necessary action to fix and maintain (including increases, if necessary) electric rates at levels sufficient to make available to CWL sufficient monies for CWL to carry out its financial obligations hereunder; provided, however, that any failure of CWL to make any payment or carry out any financial obligations hereunder,

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because of inadequate electric revenues, shall not excuse such non-payment or default or waive or limit any rights or remedies of EAI or any other Participant provided herein for such non-payment or default, including, but not limited to, the provisions of Section 4.5.

4.7 Conway Obligation. It is agreed that all obligations of Conway hereunder involving financial commitments shall be payable and enforceable solely from revenues derived from Conway's electric system, and Conway covenants and agrees to take all necessary action to fix and maintain (including increases, if necessary) electric rates at levels sufficient to make available to Conway sufficient monies for Conway to carry out its financial obligations hereunder; provided, however, that any failure of Conway to make any payment or carry out any financial obligations hereunder, because of inadequate electric revenues, shall not excuse such non-payment or default or waive or limit any rights or remedies of EAI or any other Participant provided herein for such non-payment or default, including, but not limited to, the provisions of Section 4.5.

4.8 West Memphis Obligation. It is agreed that all obligations of West Memphis hereunder involving financial commitments shall be payable and enforceable solely from revenues derived from West Memphis' electric system and from proceeds of electric revenues bonds or other obligations to be issued by West Memphis to finance its interest in the Independence SES, and West Memphis covenants and agrees to take all necessary action to fix and maintain (including

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increases, if necessary) electric rates at levels sufficient to make available to West Memphis sufficient monies for West Memphis to carry out its financial obligation hereunder, provided, however, that any failure of West Memphis to make any payment or carry out any financial obligations hereunder, because of inadequate electric revenues or bond proceeds, shall not excuse such non-payment or default or waive or limit any rights or remedies of EAI or any other Participant provided herein for such non-payment or default.

4.9 Osceola Obligation. It is agreed that all obligations of Osceola hereunder involving financial commitments shall be payable and enforceable solely from revenues derived from Osceola's electric system and from proceeds of electric revenues bonds or other obligations to be issued by Osceola to finance its interest in the Independence SES, and Osceola covenants and agrees to take all necessary action to fix and maintain (including increases, if necessary) electric rates at levels sufficient to make available to Osceola sufficient monies for Osceola to carry out its financial obligation hereunder, provided, however, that any failure of Osceola to make any payment or carry out any financial obligations hereunder, because of inadequate electric revenues or bond proceeds, shall not excuse such non-payment or default or waive or limit any rights or remedies of EAI or any other Participant provided herein for such non-payment or default.

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5. PAYMENT OF FUEL AND ADMINISTRATIVE EXPENSES

5.1 Fuel Expenses. Participants will pay to EAI each month for all KWH generated at Independence SES during the preceding month for Participants' respective accounts (or assumed to be generated at the Independence SES for billing purposes) on the basis of Actual Fuel Costs of Unit 1 and Unit 2 taking into account the heat rate of each of the Units, assuming operation at 60% loading during summer test conditions.

5.1.1. Participants further agree that the monthly payment provided for in Section 5.1 above for each Participant shall not be less than such Participant's Ownership Share of the total Actual Fuel Costs incurred by EAI for such month.

5.1.2. It is further agreed that where estimates have been used in computing fuel costs, future monthly billings will contain adjustments to apply actual costs for the earlier estimates.

5.2 Administrative Expenses. Participants will pay their proportionate share to Operator on the fifteenth day of the month, or the next following business day, of an amount for otherwise unrecovered Administrative and General expenses (A&G) calculated as follows:

A&G shall equal one-twelfth of the A&G Cost Base. The A&G Cost Base shall be calculated annually by multiplying \$3.4 million, which will be reviewed and may be adjusted every five (5) years to reflect the actual

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Operator costs, by a ratio the numerator of which shall be the total Independence SES bare payroll for the previous calendar year and the denominator of which shall be the Independence SES bare payroll for the calendar year 1996.

For purposes of the A&G calculation, bare payroll shall be wages and salaries only, and shall not contain loadings for certain costs, such as payroll taxes, pension, and workman's compensation insurance premiums, among others.

5.3 Payroll Loadings. In all of the items in Sections 4 and 5, it is recognized that payroll items as reported to the Federal Energy Regulatory Commission do not contain loadings for certain costs, such as payroll taxes, pension, and workman's compensation costs and insurance premiums, among others. Participants and EAI will from time to time jointly develop methodology for determining these Administrative and General Expenses, which shall be consistent with EAI's standard accounting procedures for charging such costs to construction accounts, and each Participant agrees that it will pay EAI its Ownership Share of such costs.

5.4 Other Expenses. Certain other expenses, such as fire, excess public liability, boiler and machinery insurances are not prorated to individual plants. Participants and EAI will from time to time jointly develop methods of calculating these costs for the Independence SES, and each Participant agrees it will pay EAI its Ownership Share of such costs.

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6. INSPECTION AND AUDIT OF RECORDS

6.1 Inspection and Audit. Operator shall maintain, or cause to be maintained, books and records in accordance with accepted accounting practices and the Federal Energy Regulatory Commission Uniform System of Accounts regarding plant operations, Operating Costs and billings under this Agreement sufficient to determine that all costs imputed to Independence SES by Operator hereunder are appropriate, and to verify that all provisions of this Agreement relating to billings have been properly followed.

6.2 Conducting Audits. Operator shall submit to Participants information in sufficient detail to document billings hereunder and shall submit any additional information which any Participant may reasonably request in regard thereto. Any Participant shall have the option, by giving written notice within thirty-six (36) months from the date of any billing, to designate qualified employees of such Participant, or at such Participant's expense, to retain an independent certified public accountant reasonably acceptable to Operator, to perform an audit to ascertain that the amounts paid by such Participant pursuant to such billing were computed in accordance with the terms of this Agreement, and/or to determine that the data used to calculate the payment amounts in such billing were computed and derived in accordance with this Agreement.

If such an audit reveals errors in such billing, such Participant and Operator shall agree upon a correction of such errors pursuant to which appropriate credit, if any,

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shall be promptly given to any party to which it is due. No credit shall be given or billing adjustment made unless the affected Participant or Operator requests such credit or adjustment within thirty-six (36) months of the close of the calendar year in which such billing was made.

6.3 Clear Error. Notwithstanding any other provision of this Operating Agreement, it is understood that in the event a clear error in recording or computing a charge or credit is discovered, regardless of who discovers such clear error or when such clear error is discovered, the parties intend that a proper adjustment shall be promptly made to correct said error.

6.4 Rights. Audit and inspection rights shall be coordinated through Operator with the appropriate department or division of Operator or appropriate Operator affiliate. Such audits and inspections shall be conducted only after reasonable advance notice.

7. COAL SUPPLY

7.1 EAI to Furnish. EAI shall furnish, or cause to be furnished, the fuel supply for the Independence SES. In this section, wherever EAI is used, it shall be deemed to mean EAI or EAI acting through its subsidiary, affiliate, or other supplier of fuel to EAI.

7.2 Antelope Coal Supply Agreement. EAI has procured a supply of fuel for the Independence SES through arrangements with its subsidiary, System Fuels, Inc.

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(SFI). These arrangements contemplate that the primary source of fuel for Independence SES will be coal supplied under the Antelope Coal Supply Agreement between North Antelope Coal Company (Antelope) and System Fuels, Inc., which Antelope Coal Supply Agreement with respect to certain provisions has also been executed by Peabody Coal Company. Antelope is a joint venture between Powder River Coal Company, a subsidiary of Peabody Coal Company, and Pan Eastern Coal Company, a subsidiary of Panhandle Eastern Pipeline Company. The Antelope Coal Supply Agreement is a "cost-of-service" agreement whereunder SFI has, in an attempt to minimize the life of contract average price of coal, assumed certain obligations and received certain benefits including but not limited to the right and obligation to make certain investments in leases, mine facilities and equipment, thereby limiting the investment of Antelope and minimizing the cost of coal production. The Participants recognize that EAI contemplates the execution of an agreement with SFI whereunder all costs or charges incurred and amounts invested by SFI in the interest of procuring and transporting fuel for Independence SES, including but not limited to those demand charges or other fixed costs arising out of the Antelope Coal Supply Agreement shall be recovered or amortized through charges to EAI, and, further, that the Participants will bear their Ownership Shares of any such charges.

7.2.1. Under the arrangements between EAI and SFI, provision has been made for the possible establishment of a price for all coal supplied to EAI by

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SFI, including coal supplied under Antelope Coal Supply Agreement, at an average cost for all coal supplied by SFI rather than at the price schedules provided in Antelope Coal Supply Agreement.

Participants agree that EAI shall have the right at its discretion to accept coal for Independence SES from sources other than under Antelope Coal Supply Agreement and to agree to a price for coal, from whatever sources, at an average cost as set out above.

7.3 Option to Provide "Substitute Coal". Notwithstanding the below provision,

Participants waive any right that they may have as provided in Section 7.3 from November 1, 2000 until July 1, 2011.

If at any time, EAI should agree to accept coal for Independence SES priced at an average cost by including coal under other contracts or from sources other than Antelope with coal supplied under the Antelope Coal Supply Agreement, any Participant shall have the option to seek its own contract for its pro rata share of the fuel supply covered by this contract (Substitute Coal) subject to the following conditions:

7.3.1. No switch to Substitute Coal shall be made without a thirty-six month written notice to EAI before first delivery of Substitute Coal.

7.3.2. EAI shall have the right to match any alternate offer and continue to supply coal under this contract. Matching shall be on a delivered basis including all transportation and handling charges.

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7.3.3. In the event any Participant elects to furnish Substitute Coal, it may not, without specific written consent of EAI, return to EAI's coal supply.

7.3.4. Substitute coal must be completely compatible with coal normally furnished to and suitable for the design of the Independence SES, e.g., sulfur content, BTU content, ash fusion temperature, etc. EAI shall not be obligated to accept any Substitute Coal which fails to meet specifications set forth in Antelope Coal Supply Agreement and the cost of such non-complying coal including added handling, and disposal cost, shall be the responsibility of the Participant furnishing such coal.

7.3.5. EAI may, at its option, accept delivery of Substitute Coal either at Independence SES or direct its delivery to another location (or locations). In the latter case, EAI shall be responsible for the transportation to the alternate destination and shall charge the Participant furnishing the coal transportation cost from point of origin to Independence SES.

7.3.6. In the event Substitute Coal is at EAI's direction to be delivered to an alternate location(s), EAI shall provide the necessary transportation and pay all costs thereof, including not only the railroad tariff, but also the care, operating, and maintenance cost of equipment, if any, and shall bill the Participant furnishing such coal transportation costs on the basis of the actual costs per ton mile, as if delivery had been made to Independence

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SES, utilizing as a basis for the mileage the actual rail miles from the point of origin of the Substitute Coal to the Independence SES.

7.3.7. In the event that delivery of the Participant's Substitute Coal is to the Independence SES (i.e., EAI elects neither to match the price nor provide for delivery to other locations) then the Participant furnishing such coal shall assume complete responsibility for the transportation of said coal to the Independence SES, provided, however, that the Participant's method and timing of said deliveries must be compatible with installed facilities and scheduled deliveries for EAI's coal, and further, must be made ratably during any given year so as to provide such Participant's pro rata share of the total annual requirements set each year by EAI for the plant.

7.3.8. At any time the Substitute Coal source fails to deliver, EAI shall not be required to share its available supplies. Conversely, the Participant furnishing coal is not required to share its Substitute Coal during periods when EAI's source (or sources) fails to deliver.

7.3.9. The option of Participants to supply Substitute Coal under this Section 7.3 shall not become available to them where EAI accepts coal from other sources or under other contracts for the purpose of assuring adequacy of supply to Independence SES because of a then current inadequacy of deliveries under the Antelope Coal Supply Agreement rather than for the purpose of averaging its coal supply costs from various sources.

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7.4 Renegotiation. EAI may, without approval of the other Participants, take such action as it, in its sole judgment sees fit, to renegotiate or modify its coal contract or to settle any suits or disputes arising under the contract.

7.5 Coal Stockpile. Unless a Participant elects to provide Substitute Coal, all coal on site will remain the property of EAI. Participants shall advance to EAI their respective Ownership Shares percentage of cost of the coal in inventory for the initial coal stockpile. The balance of this coal inventory account will be increased monthly by those cost components listed in Section 2.9, sub-sections (a) through (f). The balance of this coal inventory account will be decreased monthly by the cost of the coal burned calculated by multiplying the tons of coal burned times the average cost per ton in inventory, or as billed in accordance with Section 2.9.1 in the event of normalization. Each month Participants will pay (or be credited with) their respective Ownership Shares percentage of the increase (or decrease) in the balance of this coal inventory account from the balance of the previous month.

8. AVAILABILITY OF ENERGY

8.1 Sharing Energy. Each Participant in each Unit shall be entitled to its Ownership Share of the net capacity and energy of such Unit at any given time.

8.2 Scheduling and Dispatching. EAI shall have sole authority for the hourly scheduling and dispatching of Independence SES generation, in accordance with EAI's standard scheduling and dispatching procedures.

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8.3 Transactions with Other Systems. Each Participant in each Unit shall be entitled to dispose of capacity and energy equal to its Ownership Share of the capacity and energy of such Unit through scheduled transactions with other systems.

8.4 Scheduling for Participants. The output of each of Independence Unit No. 1 and Independence Unit No. 2 shall be dispatched by EAI, after consultation with the other Participants in each such Unit, using best efforts to meet the different requirements of Participants in each Unit for the optimum utilization by each Participant in each Unit of its Ownership Share in such Unit. To the extent that, as a result of varying plant factor requirements of the Participants, one Participant in a Unit may, in effect, be utilizing capacity and energy of another Participant in such Unit to meet its system load requirements, the Participant using energy associated with another Participant's capacity shall compensate for the cost of the fuel associated with the actual energy generated for the account of such other Participant. The foregoing constitutes a method of adjusting for conditions arising in the ordinary course of operation and not an agreement for sale of power and energy.

In certain circumstances where EAI may, for its overall system requirements, elect not to schedule generation from either or both of the Independence Unit No. 1 or Independence Unit No.2 of Independence SES when either such Unit is capable of generation, EAI shall schedule and make available to the Participants who have Ownership Shares in any Unit not so scheduled an amount of energy

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from other of its resources in accordance with the requirements of such Participants equal to each Participant's Ownership Share of the net capability of the Unit not so scheduled at the time of the election of EAI not to schedule generation from such Unit. In such event, energy shall be paid for on the basis of the average cost per ton of the coal stockpile for the Independence SES and the heat rate of the relevant Unit assuming operation at 60% loading during summer test conditions.

9. TAXES AND INSURANCE

9.1 Taxes. To the extent possible, EAI and Participants shall each separately report, file returns with respect to, be responsible for and pay all property, franchise, business, or other taxes or fees, if applicable to said party, except payroll and sales or use taxes arising out of the co-ownership of each of Independence SES, provided, however, that to the extent that such taxes or fees may be levied on or assessed against Independence SES, or its operation, or EAI and Participants in such a manner so as to make impossible the carrying out of the foregoing provisions of this Section, or upon mutual agreement of the parties, then such taxes or fees shall be paid by EAI, and Participants shall immediately reimburse EAI for their proportionate share of such payment.

9.2 Insurance. EAI, during the period of operation of Independence SES, shall maintain in the name of EAI and Participants and Rural Electrification

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Issued on: September 1, 2001

Administration as their interests may appear, insurance in such amounts and with such deductibles or self-insurance features as is consistent with EAI's customary practices. EAI may self-insure such risks as is consistent with its customary practices. Each Participant shall be responsible for its portion of self-insured losses.

9.2.1. The aggregate costs of all insurance procured pursuant to this Section shall be considered a Cost of Operation of Independence SES and as such, shall be apportioned between EAI and Participants pursuant to Section 4 hereof. EAI will advise Participants of the type and coverages of insurance procured and its then current self-insurance policies and practices and upon written request, advise any Participant of any changes in such insurance or self-insurance provisions. Each Participant may at its sole expense, purchase and take out such additional insurance for its sole use and benefit as it may desire.

9.3 No Partnership.

9.3.1 Neither this Agreement nor any grant, lease or license related thereto shall create any new entity or be construed to create a new entity, such as a partnership, association or joint venture. The Participants shall not be liable, ~~inter se~~ or with respect to third parties, as partners. Except as provided in subsection 3.2, no Participant shall have the right or power to

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bind any other Participant, except as may be specifically provided by an agreement in writing among the Participants.

9.3.2 The Participants have elected under the provisions of Internal Revenue Code Section 761(a) and the regulations promulgated thereunder to be excluded from the application of all provisions of Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code of 1954. Through December 31, 1989, (a) the Participants shall take such further action as may be necessary from time to time to maintain such election in effect and to make any similar election under any similar applicable income tax laws; (b) no Participant shall take any action which would result in a termination or revocation of such election; and (c) if the tax laws of the State of Arkansas hereafter contain provisions similar to those contained in Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code of 1954, as amended, under which a similar election is permitted, upon request by any Participant, the Participants shall file such evidence as may be necessary to give effect to the election provided in this subsection

9.3.2.

9.4 EAI Tax Credits. It is also agreed that EAI may seek a ruling from the Internal Revenue Service that EAI will be eligible for investment tax credits to the extent of its interest in the co-tenancy, and will not be denied such credits by reason of the application of Sections 48(a)(4) or (5) of the Internal Revenue Code. If it

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should appear that one or more changes to this Agreement would be required in order to obtain the ruling referred to above, EAI and Participants agree to negotiate promptly in good faith with respect to such changes.

10. ACCESS TO INDEPENDENCE SES

10.1 Observation. Authorized representatives of Participants and the Rural Electrification Administration will be permitted at reasonable times and in accordance with limitations of licenses and other regulatory authority to visit Independence SES to observe operation and maintenance, and to examine and copy all records and papers maintained by EAI with respect to the ownership, operation and maintenance of Independence SES. None of the rights provided in this Section shall be exercised in such a way as, in the judgment of EAI, would unreasonably interfere with the safe and efficient operation of Independence SES.

10.2 Indemnity. Regardless of fault, each Participant shall indemnify and hold EAI harmless against any claim for personal injury or death made by any of its employees, officers, agents or other representatives, and by AECC only, of the Rural Electrification Administration, their heirs, representatives, successors, and assigns which may be based upon or arise out of the presence of such employee, officer, agent or other representative at the site of Independence SES while acting within the course and scope of his employment.

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11. CERTAIN AGREEMENTS

11.1 Certain Agreements Between EAI and Participants. EAI and Participants hereby covenant and agree as follows:

11.2 No Adverse Distinction. Except where otherwise specifically agreed upon in this Agreement, in discharging its responsibilities pursuant to this Agreement, EAI shall make no adverse distinction between Independence SES and any other generating unit in which EAI has an ownership interest, because of EAI's co-ownership of Independence SES with Participants.

11.3 Approvals. EAI and Participants shall use their best efforts to obtain as quickly as possible all requisite governmental, regulatory and vendor approvals of the consummation of the transactions contemplated hereby.

11.4 Information. EAI shall keep Participants informed of all matters EAI deems significant, in its reasonable judgment and in accordance with good utility practices, with respect to operation or maintenance of Independence SES and when practicable in time for Participants to comment thereon before decisions are made, and shall confer with Participants during the development of any of EAI's proposals regarding such matters when practicable to do so. Upon request of any Participant, EAI shall furnish or make available with reasonable promptness and at reasonable times any and all other information relating to such matters.

11.5 Cooperation. EAI and Participants will cooperate with each other in all activities relating to Independence SES, including, without limitation, the filing of

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Effective: November 1, 2000

Issued on: September 1, 2001

applications for authorizations, permits or licenses and the execution of such other documents as may be reasonably necessary to carry out the provisions of this Agreement. Without EAI's written consent, Participants shall not incur any obligation which would or could obligate EAI to any third party.

11.6 Regulatory Agencies. It is hereby agreed that it is the understanding of all parties that nothing in this Agreement constitutes the transmission or sale of electric power and energy. In the event any State or Federal regulatory body should assert jurisdiction over any portion of this Agreement as the sale or transmission of electric power or energy, nothing contained herein shall be construed as affecting in any way the right of the party furnishing service under this agreement to unilaterally make application to the Federal Energy Regulatory Commission (or any other regulatory body having jurisdiction) for a change in rates, charges, classification, or service, or any rule, regulation, or contract relating thereto, under Section 205 of the Federal Power Act (or any amendatory legislation) and pursuant to the Rules and Regulations promulgated thereunder.

11.7 Environmental Impact. The parties agree that the Independence SES will be operated consistent with the design and operational commitments relating to environmental impact contained in the Final Environmental Impact Statement prepared by the Environmental Protection Agency as lead agency on behalf of itself and the United States Department of Agriculture, Rural Electrification Administration, bearing date of November, 1978, and with applicable water and

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Effective: November 1, 2000

Issued on: September 1, 2001

air pollution control standards and other environmental requirements imposed by federal or state statutes or regulations.

It is understood and agreed that where a commitment in the Final Environmental Impact Statement is contemplated for the purpose of insuring compliance with certain specific rules and regulations of a state or federal agency, compliance with such commitments shall be governed by the rules, regulations or directives of such state or federal agency as may be in effect from time to time.

12. GENERAL PROVISIONS

12.1 No Delay. No disagreement or dispute of any kind between EAI and Participants concerning any matter, including without limitation, the amount of any payment due or the correctness of any charge, shall permit any party to delay or withhold any payment or the performance of any other obligation pursuant to this Agreement.

12.2 Further Assurances. From time to time EAI and Participants will execute such instruments of conveyance and other documents, upon the request of the other, as may be necessary or appropriate, to carry out the intent of this Agreement.

12.3 Governing Law. The validity, interpretation, and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Arkansas.

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Effective: November 1, 2000

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12.4 Section Headings not to Affect Meaning. The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof.

12.5 Time of Essence. Time is of the essence of this Agreement.

12.6 Amendments. This Agreement may be amended by and only by a written instrument duly executed by each of the parties hereto and as to AECC, subject to the written approval of the Administrator of the Rural Electrification Administration.

12.7 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon EAI and Participants and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies hereunder.

12.8 Counterparts. This Agreement may be executed simultaneously in three or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12.9 Good Utility Practices. EAI and Participants shall discharge any and all obligations under this Agreement in a prudent manner and in accordance with good utility practices.

12.10 Rural Electrification Administration Approval. This Agreement and any amendments hereto shall not be in force and effect as to AECC until approved in writing by the Administrator of the Rural Electrification Administration.

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Effective: November 1, 2000

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Entergy Arkansas, Inc.  
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12.11 Notice. Any notice request, consent or other communication permitted or required by this Agreement shall be in writing and shall be deemed given when deposited in the United States Mail, first class postage prepaid, and if given to EAI, shall be addressed to:

Entergy Arkansas, Inc.  
P.O. Box 551  
Little Rock, Arkansas 72203  
Attention: The President

and, if given to AECC, shall be addressed to:

Arkansas Electric Cooperative Corporation  
P.O. Box 194208  
Little Rock, Arkansas 72219-4208  
Attention: The President

and, if given to CWL, shall be addressed to:

City Water and Light Plant of Jonesboro  
P. O. Box 1289  
Jonesboro, Arkansas 72403-1289  
Attention: Manager

and, if given to Conway, shall be addressed to:

Conway Corporation  
P. O. Box 99  
Conway, Arkansas 72032  
Attention: Chief Executive Officer

and, if given to West Memphis shall be addressed to:

West Memphis Utility Commission  
P. O. Box 1868  
West Memphis, Arkansas 72301  
Attention: General Manager

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Senior Wholesale Executive

Effective: November 1, 2000

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Entergy Arkansas, Inc.  
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and, if given to Osceola shall be addressed to:

Mayor, City of Osceola  
P. O. Box 443  
Osceola, Arkansas 72370

and, if given to EPI shall be addressed to:

Entergy Power, Inc.  
10055 Grogans Mill Road, Suite 500  
The Woodlands, TX 77380  
Attention: The President

and, if given to EMI shall be addressed to:

Entergy Mississippi, Inc.  
308 East Pearl Street  
Jackson, Mississippi 39201  
Attention: The President

and if given to ETEC shall be addressed to:

East Texas Electric Cooperative, Inc.  
P.O. 631623  
Nacogdoches, TX 75963-1623  
Attention: The President

unless a different officer or address shall have been designated by the respective party by notice in writing.

12.12 Conway Corporation. Conway has leased its electric system (including all interests of the City of Conway in the Independence SES) to the Conway Corporation. Said Conway Corporation is hereby designated and empowered to act on behalf of and carry out and execute all rights and obligations of the City of Conway under this Agreement as a Participant herein during the term of its lease

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and thereafter until specific written notice to the contrary has been received by EAI and all other Participants herein.

12.13 West Memphis. The electric system of West Memphis (including all interests of the City of West Memphis in Independence SES) is operated by the West Memphis Utility Commission. Said Commission is hereby designated and empowered to act on behalf of and carry out and execute all rights and obligations of the City of West Memphis under the Operating Agreement as a Participant herein during its existence and thereafter until specific written notice to the contrary has been received by EAI and all other Participants herein.

12.14 Adjustment of Ownership Shares. Any adjustment of Ownership Shares pursuant to Section 7.4 or Article 12 of the Ownership Agreement dated as of July 31, 1979, among the Participants, as amended, shall effect an adjustment of Ownership Shares for purposes of the Operating Agreement.

12.15 No Adverse Distinction. Notwithstanding any provision of the Operating Agreement to the contrary, neither the Operator nor any Participant shall make any adverse distinction between Independence Unit No. 1 and Independence Unit No. 2 by reason of differing ownership of Ownership Shares in said Units, and in no event shall Operator make any adverse distinction between said Units except in the exercise of sound business judgment in accordance with good utility practices in the operation of the Operator's system.

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Senior Wholesale Executive

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Issued on: September 1, 2001

12.16 Voting. If any consent or agreement of Participants shall be required with respect to a matter which does not relate solely to either Unit 1 or Unit 2, then each Participant in each Unit shall be entitled to vote in a percentage equal to one-half of such Participant's Ownership Share in such Unit. Voting rights of a Participant in both Units shall be combined to determine such Participant's aggregate voting interest.

12.17 Miscellaneous. Any and all notices, requests, certificates and other instruments executed and delivered after execution and delivery of this Agreement may refer to the Operating Agreement, dated as of July 31, 1979, without making specific reference to Amendments, but nevertheless all such references shall be deemed to include such Amendments unless the context shall otherwise require.

13. ASSIGNMENT AND TERM

13.1 Limitation on Assignability. If, pursuant to the Ownership Agreement, any Participant makes a sale, transfer or assignment of all or substantially all of its interest in Independence SES (other than solely for purposes of securing indebtedness or to facilitate the financing of pollution control equipment), such party shall also assign, and shall cause the transferee to assume the rights and obligations of such party hereunder. No assignment of this Agreement shall be made except in connection with a sale, transfer or assignment (other than solely

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Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

for the purposes of securing indebtedness) of the assignor's interest in Independence SES pursuant to the Ownership Agreement.

13.2 Term. This Agreement shall become effective upon the Closing provided for in the Ownership Agreement and shall remain in effect until the date on which the last Unit of Independence SES to be retired from commercial service is so retired from commercial service or such other date as may be agreed upon by all the parties. Upon termination of this Agreement, Operator shall retain such powers hereunder as shall be necessary in connection with the disposition of the property included in Independence SES at the time of such termination, and the rights and obligations of the Operator and Participants hereunder shall continue with respect to any action taken hereunder in connection with such disposition, and for all credits received and necessary expenses incurred in connection with such disposition, pursuant to the provisions of subsection 11.7 of the Ownership Agreement.

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Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

Original Sheet No. 49

14. EXECUTION

14.1 This Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together one and the same instrument.

14.2 IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this Agreement, on the 1<sup>st</sup> day of September 2001.

ENTERGY ARKANSAS, INC.

ATTEST:

By:

(CORPORATE SEAL)

ARKANSAS ELECTRIC COOPERATIVE CORPORATION

ATTEST:

By:

\_\_\_\_\_

\_\_\_\_\_

(CORPORATE SEAL)

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

Original Sheet No. 49

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14.2 IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this Agreement, on the 1<sup>st</sup> day of September 2001.

ENTERGY ARKANSAS, INC.

ATTEST:

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

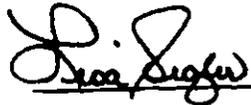
\_\_\_\_\_

(CORPORATE SEAL)

ARKANSAS ELECTRIC COOPERATIVE CORPORATION

ATTEST:

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

  
\_\_\_\_\_

(CORPORATE SEAL)

  
\_\_\_\_\_  
President/CEO

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

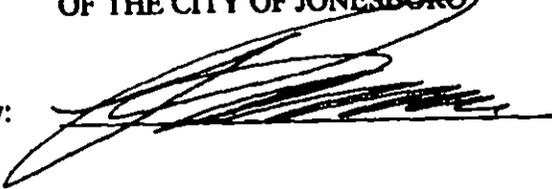
Original Sheet No. 50

CITY WATER AND LIGHT PLANT  
OF THE CITY OF JONESBORO

ATTEST:

By:

*Frank F. Sloan*



CITY OF CONWAY, ARKANSAS

By:

\_\_\_\_\_

\_\_\_\_\_  
(CORPORATE SEAL)

CITY OF WEST MEMPHIS, ARKANSAS

ATTEST:

By:

\_\_\_\_\_

\_\_\_\_\_  
(CORPORATE SEAL)

CITY OF OSCEOLA, ARKANSAS

ATTEST:

By:

\_\_\_\_\_

\_\_\_\_\_  
(CORPORATE SEAL)

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

Original Sheet No. 50

CITY WATER AND LIGHT PLANT  
OF THE CITY OF JONESBORO

ATTEST:

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

\_\_\_\_\_

(CORPORATE SEAL)

CITY OF CONWAY, ARKANSAS

ATTEST:

By: *John James P. Meyer*

*Michael O. Braswell*

(CORPORATE SEAL)

CITY OF WEST MEMPHIS, ARKANSAS

ATTEST:

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

\_\_\_\_\_

(CORPORATE SEAL)

CITY OF OSCEOLA, ARKANSAS

ATTEST:

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

\_\_\_\_\_

(CORPORATE SEAL)

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

Original Sheet No. 50

CITY WATER AND LIGHT PLANT  
OF THE CITY OF JONESBORO

ATTEST:  
  
\_\_\_\_\_  
  
(CORPORATE SEAL)

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

CITY OF CONWAY, ARKANSAS

ATTEST:  
  
\_\_\_\_\_  
  
(CORPORATE SEAL)

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

CITY OF WEST MEMPHIS, ARKANSAS

ATTEST:  
  
  
  
(CORPORATE SEAL)

By: *William H. Johnson Meyer*

CITY OF OSCEOLA, ARKANSAS

ATTEST:  
  
\_\_\_\_\_  
  
(CORPORATE SEAL)

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

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

CITY WATER AND LIGHT PLANT  
OF THE CITY OF JONESBORO

ATTEST:

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

\_\_\_\_\_  
(CORPORATE SEAL)

CITY OF CONWAY, ARKANSAS

ATTEST:

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

\_\_\_\_\_  
(CORPORATE SEAL)

CITY OF WEST MEMPHIS, ARKANSAS

ATTEST:

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

\_\_\_\_\_  
(CORPORATE SEAL)

CITY OF OSCEOLA, ARKANSAS

ATTEST:

By: *Dickie Krumm*

*Jordan J. Wells*  
(CORPORATE SEAL)

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

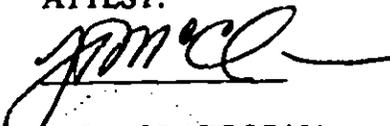
Issued on: September 1, 2001

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

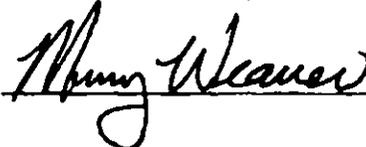
Original Sheet No. 51

ENERGY POWER, INC.

ATTEST:

  
(CORPORATE SEAL)

By

 Henry Weaver dsw

ENERGY MISSISSIPPI, INC.

ATTEST:

\_\_\_\_\_

(CORPORATE SEAL)

By

\_\_\_\_\_

EAST TEXAS ELECTRIC COOPERATIVE, INC.

ATTEST:

\_\_\_\_\_

(CORPORATE SEAL)

By

\_\_\_\_\_

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

ENTERGY POWER, INC.

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_  
(CORPORATE SEAL)

ENTERGY MISSISSIPPI, INC.

ATTEST:

By *ML* \_\_\_\_\_

*[Handwritten Signature]*

*[Handwritten Signature]*  
Assistant Secretary  
(CORPORATE SEAL)

EAST TEXAS ELECTRIC COOPERATIVE, INC.

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_  
(CORPORATE SEAL)

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

Entergy Arkansas, Inc.  
First Revised Rate Schedule No. 145

Original Sheet No. 51

ENTERGY POWER, INC.

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

\_\_\_\_\_

(CORPORATE SEAL)

ENTERGY MISSISSIPPI, INC.

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

\_\_\_\_\_

(CORPORATE SEAL)

EAST TEXAS ELECTRIC COOPERATIVE, INC.

ATTEST: By *[Signature]*

*[Signature]*

(CORPORATE SEAL)

Issued by: Henry H. Thompson, Jr.  
Senior Wholesale Executive

Effective: November 1, 2000

Issued on: September 1, 2001

**AMENDMENT "B" TO INDEPENDENCE STEAM  
ELECTRIC STATION OPERATING AGREEMENT**

THIS AMENDMENT "B", dated as of November 1, 2000, is made by and between ENTERGY ARKANSAS, INC., a corporation organized and existing under the laws of the State of Arkansas ("EAI"), ARKANSAS ELECTRIC COOPERATIVE CORPORATION, an electric cooperative corporation organized and operating under the laws of the State of Arkansas ("AECC"), CITY WATER AND LIGHT PLANT OF THE CITY OF JONESBORO, ARKANSAS ("CWL"), CITY OF WEST MEMPHIS, ARKANSAS ("West Memphis"), CITY OF OSCEOLA, ARKANSAS ("Osceola"), CITY OF CONWAY, ARKANSAS ("Conway"), ENTERGY MISSISSIPPI, INC., a corporation organized and existing under the laws of the State of Mississippi ("EMI"), ENTERGY POWER, INC., a corporation organized and existing under the laws of the State of Delaware ("EPI") and EAST TEXAS ELECTRIC COOPERATIVE, INC., a generation and transmission cooperative organized and existing under the laws of the State of Texas ("ETEC").

**WITNESSETH**

WHEREAS, EAI, AECC, CWL, and Conway are parties to that certain Operating Agreement dated July 31, 1979, to which West Memphis became a party by Addendum dated January 25, 1980, Osceola became a party by Addendum dated March 3, 1980, EMI became a party by Addendum dated January 30, 1981, EPI became a party by Special Warranty Deed and Bill of Sale of a partial interest from EAI on August 28, 1990, and which was clarified by Letter of Agreement dated July 9, 1992, and ETEC became a party by Special Warranty Deed and Bill of Sale of a partial interest from EPI on December 1, 1998 and which was amended by Amendments dated December 4, 1984 and August 1, 1997 (such Operating Agreement, as amended and clarified as aforesaid being hereinafter referred to as the "Existing Operating Agreement"); and

WHEREAS, AECC has assigned to United States Trust Company of New York, a New York banking corporation, not in its individual capacity but as trustee ( the "Owner Trustee"), all its right, title and interest in the Existing Operating Agreement as then in effect, as amended from time to time, to the extent it related to an undivided 35% interest in ISES Unit No. 2 (the "Interest") concurrently with the sale of such Interest to the Owner Trustee and the Owner Trustee has assigned to AECC, subject to certain conditions, all of its right, title and interest in the Existing Operating Agreement as then in effect, as amended from time to time, and none of the conditions have occurred, and accordingly, AECC has the power to execute this Amendment with respect to the Interest owned by the Owner Trustee; and

WHEREAS, the parties hereto desire to amend certain provisions of the Existing Operating Agreement:

NOW, THEREFORE, in consideration of the mutual agreements contained in this Amendment "B", the parties hereby consent and agree as follows:

1. Modification to Section 7.3 Coal Supply - AECC, CWL, Conway, West Memphis, Osceola, EPI, EMI, and ETEC hereby waive any right that they may have as provided in Section 7.3 from the date of this amendment until July 1, 2011.

2. Miscellaneous - Any and all notices, requests, clarifications, certificates and other instruments executed and delivered after the execution and delivery of this Amendment may refer to the Ownership Agreement, dated as of July 31, 1979, without making specific reference to this Amendment, but nevertheless all such references shall be deemed to include this Amendment unless the context shall otherwise require.

This Amendment shall be construed in connection with and as a part of the Existing Operating Agreement, and all terms, conditions and covenants contained in the Existing Operating

Agreement, except as herein modified, shall be and remain in full force and effect, and the parties hereto agree that they are bound by the terms and conditions of the Existing Operating Agreement, as so modified as parties thereto.

This Amendment may be executed in any number of counterparts, each executed counterpart constituting an original but all together one and the same instrument.

IN WITNESS THEREOF, the parties hereto have duly executed this Amendment on the day and date first written above.

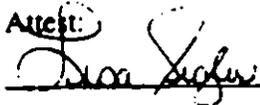
ENERGY ARKANSAS, INC. <sup>2</sup> 11/14  
BY   
President

Attest:

  
Asst. Secretary

ARKANSAS ELECTRIC COOPERATIVE CORP.

BY   
Chief Executive Officer

Attest:   
Assistant Secretary

CITY WATER AND LIGHT PLANT OF  
THE CITY OF JONESBORO

BY \_\_\_\_\_  
Manager

Attest:  
  
\_\_\_\_\_  
Secretary

CONWAY CORPORATION  
CITY OF CONWAY, ARKANSAS

BY \_\_\_\_\_  
Chief Executive Officer

Attest:  
  
\_\_\_\_\_  
Secretary

ARKANSAS ELECTRIC COOPERATIVE CORP.

BY \_\_\_\_\_

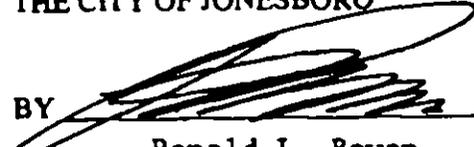
Chief Executive Officer

Attest:

\_\_\_\_\_

Assistant Secretary

CITY WATER AND LIGHT PLANT OF  
THE CITY OF JONESBORO

BY  \_\_\_\_\_

Manager Ronald L. Bowen

Attest:

Frank F. Sloan

Secretary

CONWAY CORPORATION  
CITY OF CONWAY, ARKANSAS

BY \_\_\_\_\_

Chief Executive Officer

Attest:

\_\_\_\_\_

Secretary

ARKANSAS ELECTRIC COOPERATIVE CORP.

BY \_\_\_\_\_

Chief Executive Officer

Attest:

\_\_\_\_\_

Assistant Secretary

CITY WATER AND LIGHT PLANT OF  
THE CITY OF JONESBORO

BY \_\_\_\_\_

Manager

Attest:

\_\_\_\_\_

Secretary

CONWAY CORPORATION  
CITY OF CONWAY, ARKANSAS

BY *[Handwritten Signature]* \_\_\_\_\_

Chief Executive Officer

Attest:

*[Handwritten Signature]*

Secretary *Kluyer*

CITY OF WEST MEMPHIS, ARKANSAS

BY *William D. Johnson*

Mayor

Attest:

*[Signature]*

Secretary *C. J. Clark*

CITY OF OSCEOLA, ARKANSAS

BY \_\_\_\_\_

Mayor

Attest:

\_\_\_\_\_

Secretary

ENTERGY MISSISSIPPI, INC.

BY \_\_\_\_\_

President

Attest:

\_\_\_\_\_

Secretary

CITY OF WEST MEMPHIS, ARKANSAS

BY \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Secretary

CITY OF OSCEOLA, ARKANSAS

BY Charles R. Hennings  
Mayor

Attest:

Jyntha F. Wells  
Secretary Clerk/Treasurer

ENTERGY MISSISSIPPI, INC.

BY \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

CITY OF WEST MEMPHIS, ARKANSAS

BY \_\_\_\_\_

Mayor

Attest:

\_\_\_\_\_

Secretary

CITY OF OSCEOLA, ARKANSAS

BY \_\_\_\_\_

Mayor

Attest:

\_\_\_\_\_

Secretary

ENTERGY MISSISSIPPI, INC.

BY *[Handwritten Signature]*

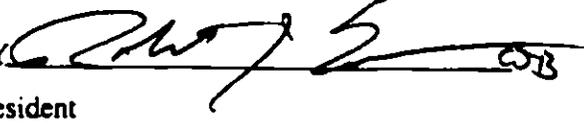
President

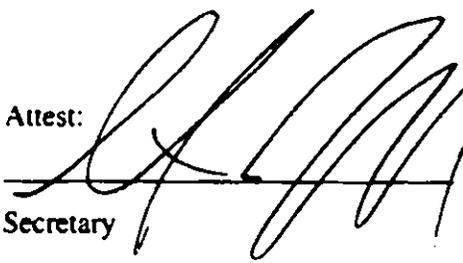
Attest:

*[Handwritten Signature]*

~~Secretary~~ Sr Wholesale Exec.

ENTERGY POWER, INC.

BY  \_\_\_\_\_  
Vice President

Attest:  \_\_\_\_\_  
Secretary

Asst

EAST TEXAS ELECTRIC COOPERATIVE, INC.

BY \_\_\_\_\_  
President

Attest:  
\_\_\_\_\_  
Secretary

ENERGY POWER, INC.

BY \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

EAST TEXAS ELECTRIC COOPERATIVE, INC.

BY   
President

Attest:

  
Secretary

RIMS Doc ID 1900265

<http://rimsweb1.ferc.fed.>



**POWER COORDINATION AND INTERCHANGE AGREEMENT**

**BETWEEN**

**EAST TEXAS ELECTRIC COOPERATIVE, INC.**

**AND**

**ENERGY ARKANSAS, INC.**

This Power Coordination and Interchange Agreement between the East Texas Electric Cooperative, Inc. ("ETEC") and Entergy Arkansas, Inc. ("EAI") is made as of this 22nd day of October, 1998.

WHEREAS, EAI is engaged in the business of generating, transmitting and distributing electric power and energy primarily in the State of Arkansas; and

WHEREAS, ETEC is a generation and transmission cooperative organized under the electric cooperative laws of Texas and is responsible for the partial supply of bulk power to its three members; and

WHEREAS, ETEC has acquired an undivided interest (hereinafter called "Independence") in the Independence Steam Electric Station, Unit #2 (hereinafter called "TSES #2") which is operated by EAI and is jointly owned by ETEC, Entergy Mississippi, Inc. and others; and

WHEREAS, ETEC and EAI find it mutually advantageous to enter into a long-term agreement providing Power Coordination and Interchange between ETEC and EAI for the power and energy generated at Independence as defined in Appendix A, Article II, Section 1

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

1. In accordance with all of the terms and conditions hereof and of Appendix A, EAI agrees to provide for the account of ETEC electric power and energy from Independence as set forth in Appendix A.
2. Neither party to this Agreement may assign its rights hereunder without the consent of the other, except that either party may, without the consent of the other party, assign, pledge or hypothecate its rights hereunder to its trustee or mortgagee under a mortgage or trust indenture.
3. The term of this agreement shall begin on the 1<sup>st</sup> day of October, 1998 or such date as it is allowed to become effective by the Federal Energy Regulatory Commission (hereinafter called FERC) and continue in full force and effect until terminated by either party on not less than sixty (60) months written notice to the other party.
4. The rates and charges contained in this Agreement are subject to amendment and change, and each party reserves the right to unilaterally seek amendments, changes, decreases and increases in the rates and charges set forth herein, in accordance with law, from any state or federal regulatory body having jurisdiction thereof. Nothing contained

herein shall be construed as affecting in any way the right of the party furnishing service under this rate schedule to make unilaterally an application to the FERC or any successor agency, for a change in rates, charges, classification, or service, or any rule, regulation or contract relating thereto, under Section 205 of the Federal Power Act, or any amendatory or superseding law, and pursuant to FERC's rules and regulations promulgated thereunder. The parties understand and agree that the foregoing provisions gives the party furnishing service under this rate schedule the right to request a unilateral rate change, and also the right to implement the proposed rates, subject to refund, on the requested effective date or at the end of any suspension which may be imposed pursuant to Section 205 of the Federal Power Act or any amendatory or superseding law, under which the regulatory commission may suspend the operation of such schedule and defer the use of such rate. The party anticipating filing for a change in rates, charges, classification, or service or any rule, regulation, or contract relating thereto will give the other party at least 60 days advance notice of its intent to file such changes.

5 Except as otherwise specifically provided, nothing contained in this Agreement shall be construed to abridge, limit or deprive either of the parties hereto of any means of enforcing any remedy which it might otherwise have, either by law or in equity, including the right of termination of this Agreement and of injunction and specific performance for the breach of any other provisions hereof.

6. Waiver at any time of rights with respect to 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.

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

Manager  
East Texas Electric Cooperative, Inc.  
P.O. Box 631623  
Nacogdoches, TX 75963-1623

and to EAI if mailed to:

Director Wholesale Transactions  
Entergy, Suite 300  
10055 Grogans Mill Road  
The Woodlands, TX 77380

The designation of the persons to be notified, or the addresses of such persons, may be changed at any time by either party by written notice to the other party.

8. ETEC and EAI agree that all of the terms and conditions set forth in Appendix A are a part of the Agreement and are hereby incorporated by reference herein.

9. The transmission of electric power and energy, the subject of this agreement, is governed by a separate transmission service agreement executed between Entergy Services, Inc.(ESI) and ETEC or ESI and third parties, if any, that purchase power and energy from ETEC at Independence.

In witness whereof the parties hereto have caused this Agreement to be signed and executed in duplicate by their duly authorized officials on the date and year written above.

EAST TEXAS ELECTRIC  
COOPERATIVE, INC.

ENTERGY ARKANSAS, INC.



R. Drake Keith, President

Attest



Attest



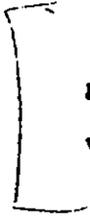
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ARTICLE I - SCOPE OF AGREEMENT

During the term of this Agreement, EAI shall provide electric power and energy from Independence as defined in Article II, Section 5.

It is recognized that all transfers of power and energy from Independence under this Agreement will require the purchase of transmission service from Entergy Services, Inc. under its OATT and will require the establishment of a schedule by ETEC or its agent with the EAI Dispatcher to the appropriate point of delivery.

ISES #2 shall be dispatched by the EAI Dispatcher to integrate the operation of said unit with the generating facilities of EAI. EAI shall, at all times during the term hereof, have full control over the scheduling of power and energy available at Independence in accordance with Article III, Section 1.



ETEC or its agent shall have the right to schedule power and energy either generated at Independence or which could be generated at Independence in accordance with Article III.

ARTICLE II - DEFINITIONS

Section 1. EAI Dispatcher. The term "EAI Dispatcher" as used herein shall mean the personnel or agents of EAI who perform the function of scheduling

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generation from resources within the EAJ Load Control Area and the receipt and delivery of power and energy from and to other load control areas.

Section 2. EAJ Load Control Area. The term "EAJ Load Control Area" shall mean the resources owned by EAJ and others, which are controlled by the EAJ Dispatcher to satisfy the load obligation of the control area.

Section 3. Force Majeure. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, of the State of Arkansas, or any of their departments, agencies, or officials (other than the failure to receive therefrom a proposed rate increase), or any civil or military authority; insurrections; riots; extraordinary delay in transportation; unforeseen soil condition; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fire; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery; transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; restraints by courts or other governmental authority; blight, famine, blockage; quarantine, or any other similar cause or event not reasonably within the

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control of the affected party. Each party agrees, however, to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its performance under this Agreement; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the affected party and such party shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to it.

**Section 4. Heat Rate.** The term "Heat Rate" as used herein shall mean the heat rate per net kWh generated (Btu/kWh) based on the efficiency of ISES #2 loaded at 60% of the capability established under Article III, Section 7, at mutually agreed times, provided that either party may have the right to require a new test at any time not sooner than twelve (12) months after the last previous test.

**Section 5. INDEPENDENCE.** The term "Independence" shall mean ETEC's undivided interest in ISES #2 which is operated by EAI and is jointly owned by ETEC, Entergy Mississippi, Inc. and others.

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Section 6. Month. The term "Month" shall mean the calendar month in which energy was produced or consumed at Independence and energy accounting is necessary to render billing.

Section 7. Plant Energy. The term "Plant Energy" shall mean the net kilowatt hour energy delivered to Independence when ISES #2 is shut down.

**ARTICLE III--SCHEDULING AND PLANT OPERATION**

Section 1. Control of ISES #2. ISES #2 shall be connected with the dispatching facilities of EAI to integrate the operation of ISES #2 with the generating facilities of EAI. EAI shall, at all times during the term hereof, have full control over the scheduling of the power and energy available at Independence. Scheduling by EAI shall be in accordance with the procedures then used by EAI to schedule its other generating facilities.

Section 2. Scheduling of Power and Energy by ETEC. By 10:00 AM of the day prior to the date power and energy is to be delivered to or for ETEC, ETEC or its agent shall furnish, in writing a hour-by-hour schedule of the amounts of power and energy from Independence to be provided by BAI to ETEC or to others for the account of ETEC. From time to time or at any time, such schedule may be modified verbally or in writing

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when such modification will not place an undue burden on EAI or interfere with service to EAI's other customers. Any verbal modification of a schedule shall be confirmed in writing as soon as practicable. EAI may modify schedules pursuant to Section 5.

Section 3. Planned Maintenance. The scheduling of an outage of ISES #2 for planned maintenance shall be under the control of the EAI Dispatcher. EAI will inform ETEC of the planned maintenance schedule as soon as practicable and will promptly notify ETEC of any subsequent modifications in the planned maintenance schedule. During the period when Independence is out of service because of planned maintenance, it will not be available for the scheduling of power and energy by ETEC.

Section 4. Annual Energy. The energy available to ETEC from Independence shall be modified as specified in Sections 3, 5 and 6 of this Article III.

Section 5. Reduction of Schedule Due to Forced Outage or Operating Constraints to ISES #2. It is recognized that ETEC's capability in ISES #2 is reserved by ETEC. Therefore, at any time that ETEC schedules generation from Independence, and Independence is constrained so that the unit is not capable of producing its rated capability or the unit experiences a forced outage, the schedule from Independence will be immediately modified accordingly. EAI will notify ETEC of any such modification of a schedule as soon as practicable.

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Section 6. Other Operating Conditions. The parties recognize that there are operating conditions under which ISES #2 must be operated without regard to economic dispatch in order to accommodate or satisfy conditions imposed by fuel contracts, fixed expenses or other maintenance or operating conditions. The following are illustrations of must run conditions where energy generated by ISES #2 shall be received by each of the parties in proportion to each party's ownership.

- a. In the event the inventory of fuel is excessive and it is necessary to utilize ISES #2 at a level that is greater than the level which ISES #2 would have been operated under normal economic dispatch.
- b. In the event there is a constraint on the fuel supply so that the unit has to be operated in a manner which will conserve the fuel.
- c. When ISES #2 has been down because of a forced outage or maintenance and it is necessary to operate the unit for test purposes without regard to economic dispatch.
- d. Where, for any reason or reasons, charges for acquisition, transportation, storage and/or handling of fuel are disproportionate to the quantity of fuel delivered.

Other must run conditions will be determined by the Operating Committee, as referred to in Article 5, as the circumstances require.

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~~Section 7. Capability of Independence.~~ The Capability of Independence shall be not generating capability based on tests conducted via LSES #2 in accordance with approved EAI Capability Rating Plant testing procedures. The determination of such capability shall be based on tests conducted jointly by ETEC and EAI at mutually agreed times; provided, that either party shall have the right to require a new test at any time not sooner than twelve (12) months after the last test.

ARTICLE IV-BILLING

~~Section 1. Payments.~~ EAI will bill ETEC as soon as possible after the close of the Month in which the operations occurred. ETEC will pay to EAI within 15 days of the date of the invoice.

If any invoice is not paid by the due date, as specified above, interest on the unpaid amount will accrue in accordance with the methodology specified for interest on refunds in the FERC regulations at 18 C.F.R. 35.19a (a)(2)(ii). If ETEC in good faith disagrees with the statement rendered by EAI, the undisputed amount shall be payable when due and ETEC will provide its grounds for disputing the bill. If the parties are unable to resolve any such matter by agreement, the dispute may be determined by a regulatory body or court having jurisdiction. Interest at the rate for interest on refunds as specified above

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shall apply on any amount found owing by one party to the other from the due date until paid, or in case of a refund due, from the date of the original payment until refunded.

Section 2. Energy from Independence. EAI shall pay ETEC's fuel cost at Independence. The billing from EAI to ETEC for energy from Independence shall be based on the following formula:

$$(H \times F) / 1000 = \text{Monthly charge per kWh expressed in mills per kWh}$$

Where:

H = Heat Rate of Btu per kWh

F = Fuel cost for the Month at ISES #2 in dollars per million Btu.

Section 3. Sale and Purchase of Surplus Energy: In the event energy is dispatched from Independence above ETEC's requirements, EAI will purchase said energy at ETEC's incremental production cost. Incremental production cost, as used in this section, shall consist of Independence's incremental fuel cost and a variable operations and maintenance adder equivalent to the amount calculated under Service Schedule MSS-3, Section 30.08(f) of the Middle South System Agreement (EAI Rate Schedule FERC No. 94).

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Section 4. Plant Energy ETEC's portion of Plant Energy shall be added to scheduled energy requirements of ETEC. The Plant Energy may be satisfied by either of the following alternatives, at the option of ETEC:

- a. Plant Energy may be furnished by ETEC.
- b. Plant Energy may be supplied from power and energy purchased from EAL. The purchase price of such energy shall be based on the cost of Entergy's System Incremental energy plus an adder of ten percent (10%).

**ARTICLE V—OPERATING COMMITTEE**

Section 1. Composition. There shall be an Operating Committee composed of one representative of each party, and they shall be of equal authority. All decisions made or directions given by the Operating Committee must be unanimous. If the Operating Committee is unable to agree on any matter coming under its jurisdiction, that matter shall be referred to the chief executives of the parties or their designated representatives.

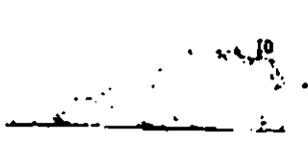
Section 2. Appointment. Each party will evidence its appointment to the Operating Committee by written notice to the other party and by similar notice either party may at any time change its representative on the Operating Committee.

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2/14/98

**Section 3. Meetings.** The Operating Committee shall meet on or before November 15 of each year at a time and place mutually agreeable to the representatives, and at such other times as the representatives may consider necessary.

**Section 4. Duties.** It shall be the duty of the Operating Committee to act for the parties in matters pertaining to the operation of INDEPENDENCE, and to establish and maintain procedures for the administration of this agreement.

**Section 5. Limitations.** The Operating Committee shall have no authority to alter, amend, or revise the express provisions of this Agreement.



Entergy Arkansas, Inc., First Revised Rate Schedule FERC No. 94  
Entergy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Entergy Louisiana, Inc., First Revised Rate Schedule FERC No. 89  
Entergy Mississippi, Inc., First Revised Rate Schedule FERC No. 282  
Entergy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

Original Sheet No. 1

# ENTERGY

## System Agreement

Agreement Among:

- Arkansas Power & Light Company
- Gulf States Utilities Company
- Louisiana Power & Light Company
- Mississippi Power & Light Company
- New Orleans Public Service Inc.
- Entergy Services, Inc.



FEDERAL ENERGY REGULATORY COMMISSION  
Docket No. .... EL04-33-001  
Hearing Ex. No. .... CTR-2  
Date Issued ..... 8/6/03  
Date Admitted ..... 8/6/03

Issued by: Kimberly H. Deepaux  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

Effective: Aug. 25, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER00-2854-000, issued August 22, 2000, 82 FERC ¶ 61,171 (2000).

**BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

***LOUISIANA PUBLIC SERVICE COMMISSION AND  
COUNCIL OF THE CITY OF NEW ORLEANS v.  
ENTERGY SERVICES, INC., ET AL.***

**DOCKET NO. EL01-88-000**

**FRANK F. GALLHER**

**EXHIBIT ETR-2**

**JANUARY 31, 2003**

Entergy Arkansas, Inc., First Revised Rate Schedule FERC No. 94  
Entergy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Entergy Louisiana, Inc., First Revised Rate Schedule FERC No. 80  
Entergy Mississippi, Inc., First Revised Rate Schedule FERC No. 262  
Entergy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

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AGREEMENT

Among

- ARKANSAS POWER & LIGHT COMPANY
- GULF STATES UTILITIES COMPANY
- LOUISIANA POWER & LIGHT COMPANY
- MISSISSIPPI POWER & LIGHT COMPANY
- NEW ORLEANS PUBLIC SERVICE INC.
- ENTERGY SERVICES, INC.

Issued by: Kimberly H. Despeaux  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

Effective: Aug. 25, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER00-2854-000, issued August 22, 2000, 92 FERC ¶ 61,171 (2000).

Entergy Arkansas, Inc., First Revised Rate Schedule FERC No. 94  
Entergy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Entergy Louisiana, Inc., First Revised Rate Schedule FERC No. 69  
Entergy Mississippi, Inc., First Revised Rate Schedule FERC No. 262  
Entergy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

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Issued On: September 21, 2000

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Entergy Arkansas, Inc., First Revised Rate Schedule FERC No. 94  
Entergy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Entergy Louisiana, Inc., First Revised Rate Schedule FERC No. 99  
Entergy Mississippi, Inc., First Revised Rate Schedule FERC No. 262  
Entergy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

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The Operating Committee shall make studies of bulk power transmission facilities and agree upon the facilities that will be required to transmit the power supply from generating or other sources to the load centers. The facilities agreed upon shall be built to comply with a time schedule determined by the Operating Committee and shall be adequate to provide the bulk power transmission system requirements with due allowances for contingencies that may reasonably be expected. The Operating Committee shall agree on the general routes of bulk power transmission lines, the voltages and conductor sizes, and the location of substations which are covered by this Agreement.

#### 4.07 Communication and Other Facilities

The Companies shall provide communication and other facilities, determined by the Operating Committee to be necessary for metering, control, protection and dispatch of the production and transmission facilities, and for such other purposes as may be necessary or desirable for the operation of the Companies' Systems.

#### 4.08 Dispatch

Under general direction of the Operating Committee, Services will operate a centralized operations center properly equipped and staffed to dispatch the capacity and energy capability of the Companies, in the efficient, economical, and reliable manner as provided in this Agreement. All generating units, included in System Capability under this Agreement, presently in operation or installed in the future, shall be equipped with such controls as may be determined by the Operating Committee to be necessary to accomplish such centralized economic dispatch.

Issued by: Kimberly H. Despain  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

Effective: Aug. 25, 2000

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Entergy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Entergy Louisiana, Inc., First Revised Rate Schedule FERC No. 69  
Entergy Mississippi, Inc., First Revised Rate Schedule FERC No. 262  
Entergy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

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It is recognized by the Companies that, because of such economic dispatch, a Company may not, at all times, be supplying the energy requirements of its system, but may be taking energy from the resources of the other Companies or supplying energy to the other Companies. The payments or charges for such energy exchange shall be as provided in the applicable Service Schedule.

4.09 Records and Reports

Services shall keep such records as may be necessary for the efficient administration of the Agreement, and shall make such records available to any Company on request. Each Company shall make all reports requested by the Operating Committee within the time prescribed.

4.10 Regulatory Authorization

This Agreement is subject to certain regulatory approvals and each Company shall diligently seek all necessary regulatory authorization for this Agreement and the performance of its obligations thereunder.

4.11 Effect on Other Agreements

This Agreement shall not modify the obligations of any Company under any Agreement between that Company and others not parties to this Agreement in effect at the date of this Agreement.

4.12 Service Schedules

The basis of compensation for the use of facilities and for the capacity and energy provided or supplied by a Company to another Company or Companies under this Agreement shall be in accordance with arrangements agreed upon from time to time among

Issued by: Kimberly H. Despres  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

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Entergy Arkansas, Inc., First Revised Rate Schedule FERC No. 94  
Entergy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Entergy Louisiana, Inc., First Revised Rate Schedule FERC No. 89  
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SERVICE SCHEDULE MSS-3  
EXCHANGE OF ELECTRIC ENERGY AMONG THE COMPANIES

30.01 PURPOSE

The purpose of this Service Schedule is to provide the method of pricing energy exchanged among the Companies.

30.02 Scheduling of Energy Sources

The System Capability shall be operated as scheduled and/or controlled by the System Operator to obtain the lowest reasonable cost of energy to all the Companies consistent with the requirements of daily operating generation reserve, voltage control, electrical stability, loading of facilities and continuity of service to the customers of each Company.

In no event shall the remaining margin payment obligations of Gulf States to Southwestern Electric Power Corporation under Section 9.1 of the Restated and Amended Interconnection Agreement between Gulf States and Southwestern Electric Power Company, be included, considered or otherwise taken into account by the System Operator under Section 30.02 of the System Agreement, except for the circumstance where the lowest reasonable cost energy available to the System Operator is identical in price to that offered to Gulf States under such Section 9.1.

Issued by: Kimberly H. Despeaux  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

Effective: Aug. 25, 2000

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Entergy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

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30.03 Allocation of Energy

The energy from the lowest cost source available and scheduled as in Section 30.02 above shall be allocated on an hourly basis, in the order of the following priorities:

- (a) first to the loads of the Company having such sources available, except that in the case of energy generated by a Designated Generating Unit, each Company to which a portion of the Capability of the Designated Generating Unit as defined in Section 40.02 has been sold shall be entitled to receive each hour that portion of the total energy generated by the Designated Generating Unit that the capability sold to the Company bears to the total capability of the Designated Generating Unit.

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Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

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Entergy Mississippi, Inc., First Revised Rate Schedule FERC No. 262  
Entergy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

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(b) second to supply the requirements of the other Companies' Loads (Pool Energy).

30.04 Energy for Sales to Others

Energy used to supply others will be provided in accordance with rate schedules on file with the Federal Energy Regulatory Commission. A Company will be reimbursed for the current estimated cost of fuel used by the specific unit or units supplying the energy together with the adder determined in Section 30.08(f) on an hour by hour basis.

30.05 Unscheduled Energy

Energy produced by generating units not scheduled for system energy requirements but operated at the request of a Company beyond what is deemed necessary for overall system purposes by the System Operator, shall not be considered as part of Sections 30.03 or 30.04 above, but shall be for the use, and at the expense of the Company requesting the operation of such generating units.

30.06 Fuel Contract Energy

Energy produced by generating units for system energy requirements shall be allocated as follows:

- (a) When operated to satisfy "take or pay" minimums under fuel contracts negotiated for System benefit as approved by the Operating Committee shall be shared by all companies in proportion to their current Responsibility Ratio.

Issued by: Kimberly H. Despeux  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

Effective: Aug. 25, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER 00-2854-001, issued August 22, 2000, 82 FERC ¶ 61,171 (2000).

Energy Arkansas, Inc., First Revised Rate Schedule FERC No. 94  
Energy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Energy Louisiana, Inc., First Revised Rate Schedule FERC No. 89  
Energy Mississippi, Inc., First Revised Rate Schedule FERC No. 282  
Energy New Orleans, Inc., First Revised Rate Schedule FERC No. 3

Original Sheet No 51

(b) When operated with fuel acquired for the benefit of two or more of the Companies shall be shared in proportion to their participation in such contracts.

(c) When operated pursuant to fuel purchases negotiated for System benefit as approved by the Operating Committee, the Company owning the units utilizing the fuel has a one-time option to either assume responsibility for purchase of the fuel for its own account or to allow the fuel to be purchased for the System's joint account in accordance with 30.06(a) or (b) as appropriate.

30.07 Cogeneration or Small Power Production Energy

Energy received by any Company from Cogeneration or Small Power Production Sources that is included as a part of Inter-Company billings shall be priced under this Agreement in accordance with rates established by the appropriate regulatory authority. The Operating Committee shall have the authority to allocate such energy to one or more of the Companies or to determine that the energy is for the use, and at the expense of, the Company making the purchase from such Source in accordance with FERC Opinion Nos. 246 and 246-A.

Issued by: Kimberly H. Deepasus  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

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Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER 00-2854-001, issued August 22, 2000, 82 FERC ¶ 81,171 (2000).

Energy Arkansas, Inc., First Revised Rate Schedule FERC No. 94  
Energy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Energy Louisiana, Inc., First Revised Rate Schedule FERC No. 88  
Energy Mississippi, Inc., First Revised Rate Schedule FERC No. 282  
Energy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

Original Sheet No. 52

30.08 Payments to be Received for Energy Supplied

Each Company shall receive, for energy furnished in accordance with Sections 30.03 (a), (b) and 30.04 in excess of its load requirements, on an hourly basis:

- (a) For each kWh generated as short term purchase energy from a Designated Generating Unit in accordance with Section 30.03(a), whether or not taken by the Company or Companies making the purchase, the cost of fuel consumed.
- (b) For each kWh generated by use of fossil fuel, in accordance with Sections 30.03(b) and 30.04, the cost of fuel consumed plus an adder as determined in Section 30.08 (f).
- (c) For each kWh generated as Fuel Contract Energy, in accordance with Section 30.06, the cost of fuel consumed plus an adder as determined in Section 30.08(f).
- (d) For purchased energy, the actual cost of such purchased energy. The "actual cost" of purchased energy for Gulf States shall not include the remaining margin payment obligation of Gulf States to Southwestern Electric Power Company, under Section 9.1 of the Restated and Amended Interconnection Agreement between Gulf States and Southwestern Electric Power Company.

Issued by: Kimberly H. Despeaux  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

Effective: Aug. 25, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER 00-2854-001, issued August 22, 2000, 92 FERC ¶ 61,171 (2000).

Entergy Arkansas, Inc., First Revised Rate Schedule FERC No. 84  
Entergy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Entergy Louisiana, Inc., First Revised Rate Schedule FERC No. 89  
Entergy Mississippi, Inc., First Revised Rate Schedule FERC No. 282  
Entergy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

Original Sheet No 53

(e) For each kWh received as Cogeneration or Small Power Production energy in accordance with Section 30.07, the price established in Section 30.07.

(f) The adder for Sections 30.08(b) and 30.08(c) shall be determined pursuant to the following formula.

Adder = A + B

Where:

A = .5563  $\frac{\text{O\&M (current)} + \text{NSGC}}{\text{O\&M (base)} + \text{NSGB}}$  where,

A = O&M adder in mills/kWh adjusted annually

O&M = Accounts 500, 502, 503, 504, 505, 506, 507, 510, 511, 512, 513 and 514

Current = Three years ending with preceding

year

NSGC = Net steam generation in kWh for the three years ending with preceding year

Base = Three years of 1978, 1979 and 1980

NSGB = Net steam generation in kWh for 1978, 1979 and 1980 base period

.5563 = The amount applicable at the date of this agreement

$\therefore \text{O\&M (base)} + \text{NSGB} = 1.6724$

B = AC x HR x (SR/2,000,000) where,

B = incremental replacement SO<sub>2</sub> cost (in mills/kWh) for the particular generating unit. adjusted weekly

Issued by: Kimberly H. Despeaux  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

Effective Aug. 25, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER 00-2854-001, issued August 22, 2000, 82 FERC ¶ 81,171 (2000).

Entergy Arkansas, Inc., First Revised Rate Schedule FERC No. 94  
Entergy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Entergy Louisiana, Inc., First Revised Rate Schedule FERC No. 89  
Entergy Mississippi, Inc., First Revised Rate Schedule FERC No. 262  
Entergy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

Original Sheet No 54

Original Sheet

AC = allowance cost (in \$/allowance), adjusted weekly based on the average cost of purchasing an emission allowance from an index accepted by FERC within a test block approximately equal to the amount of emission allowances needed to support wholesale transactions under this System Agreement and power sales arrangements between the Companies and others.

HR = heat rate (in Btu/kWh)

SR = SO<sub>2</sub> rate for fuel (in lb SO<sub>2</sub>/MMBtu)

30.09 Payments Made for Energy

- (a) Each Company shall pay for energy allocated to it from a Designated Generating Unit as purchased energy the cost of fuel consumed per kWh.

Issued by: Kimberly H. Despres  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

Effective: Aug. 25, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER 00-2854-001, issued August 22, 2000, 92 FERC ¶ 61,171 (2000).

Energy Arkansas, Inc., First Revised Rate Schedule FERC No. 94  
Energy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Energy Louisiana, Inc., First Revised Rate Schedule FERC No. 69  
Energy Mississippi, Inc., First Revised Rate Schedule FERC No. 262  
Energy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

Original Sheet No 55

(b) Each Company shall pay for energy received from the energy allocated in accordance with the provisions of Section 30.03(b) above, the weighted average cost per kWh of energy, as provided under Section 30.08(b) above, accumulated and distributed on a hourly basis.

(c) Each Company shall pay for energy received from the energy allocated in accordance with the provisions of Section 30.06 above, the cost per kWh of energy as provided under Section 30.08(c) above, accumulated and distributed on a hourly basis.

30.10 COST OF FUEL PER kWh

Cost of fuel per kWh shall be determined for each generating unit by multiplying the BTU consumed per kWh of net generation during the preceding calendar year by the current estimated cost per BTU of the fuel used as furnished by each Company monthly. For the first year of operation of a new unit, BTU consumed per kWh of net generation shall be based on the design \*heat rate at 60% of full load capability at anticipated average annual back pressure.

\*Typographical correction: "eat" changed to "heat"

Issued by: Kimberly H. Despeaux  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

Effective: Aug. 25, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER 00-2854-001, issued August 22, 2000, 92 FERC ¶ 61,171 (2000).

Entergy Arkansas, Inc., First Revised Rate Schedule FERC No. 94  
Entergy Gulf States, Inc., First Revised Rate Schedule FERC No. 181  
Entergy Louisiana, Inc., First Revised Rate Schedule FERC No. 89  
Entergy Mississippi, Inc., First Revised Rate Schedule FERC No. 262  
Entergy New Orleans, Inc., First Revised Rate Schedule FERC No. 8

Original Sheet No. 56

This Service Schedule MSS-3 shall be attached to and become a part of the Agreement dated the 23rd day of April, 1982 and shall be effective with said Agreement or at such later date as may be fixed by any requisite regulatory approval or acceptance for filing.

Attest ARKANSAS POWER & LIGHT COMPANY

Original signed by Original signed by  
R. J. Estrada Jerry Maulden  
Assistant Secretary President

Attest LOUISIANA POWER & LIGHT COMPANY

Original signed by Original signed by  
W. H. Talbot J. M. Wyatt  
Secretary President

Attest MISSISSIPPI POWER & LIGHT COMPANYS

Original signed by Original signed by  
R. J. Estrada D. C. Lutken  
Assistant Secretary President

Attest NEW ORLEANS PUBLIC SERVICE INC.

Original signed by Original signed by  
William C. Nelson James M. Cain  
Secretary President

Issued by: Kimberly H. Despeaux Effective: Aug. 25, 2000  
Director, Federal Regulatory Affairs  
Issued On: September 21, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER 00-2854-001, Issued August 22, 2000, 92 FERC ¶ 61,171 (2000).

ALB



# Arkansas Electric Cooperative Corporation

Your Touchstone Energy Cooperative



1 Cooperative Way  
P.O. Box 194208  
Little Rock, Arkansas 72219-4208  
(501) 570-2200

June 24, 2004

Mr. Hugh McDonald  
Entergy Arkansas, Inc.  
425 W. Capitol Ave., Suite 1600  
Little Rock, AR 72201-3471

Dear Mr. McDonald:

On behalf of Arkansas Electric Cooperative Corporation; City Water and Light of Jonesboro; City of Conway, Arkansas; City of Osceola; City of West Memphis and East Texas Electric Cooperative, "Co-Owners" of the White Bluff and/or Independence power plants, I am making a formal request that the implementation of the change in the allocation of energy from the power plants as discussed by Kurt Castleberry on June 23, 2004 be delayed.

Our understanding of what Entergy is proposing is as follows:

As of July 1, 2004, Entergy intends to change the method for determination of billing capabilities for the four jointly owned coal units. Rather than using the proportional share of Maximum Dependable Capability unless otherwise specifically limited, they will use the actual generation each hour as the billing capability. The exception will be times when Entergy claims the actual generation is reduced due to economic reasons.

The Co-Owners cannot agree that the proposed change is a correct interpretation of their individual contracts. Neither are the Co-Owners ready to agree that the stated reasons for the proposed change necessarily represent "non-economic" operation for Entergy.

This is a major change in the administration of the individual contracts with only seven (7) days notice. The Co-Owners do not believe that a seven (7) day notice period is reasonable. Such a short period of time gives neither Entergy nor the Co-Owners time to develop and analyze the relevant information and develop processes needed to implement such a major change. Further, the Co-Owners believe that a more appropriate method for implementing such a change would be for Entergy to present its issues and supporting data to the Co-Owners. This data should be provided at an Operating Committee meeting with each individual Co-Owner as provided in the individual Co-Owner contracts. At the Operating Committee meeting Entergy could seek a consensus position, develop an

implementation plan, agree to a date, and coordinate among the affected parties, as opposed to Entergy's current approach of simply announcing a change in method of administering the individual contracts without any input or agreement from the Co-Owners.

Therefore the Co-Owners request that Entergy delay implementation of the change in administration of the individual Co-Owners contracts as proposed by Entergy on June 23, 2004 until each of the individual Operating Committees have met in person. If there is not agreement on the proposed change, it would need to be referred to the chief executives as provided in the individual Co-Owner contracts.

Sincerely,  


Ricky Bittle  
For the Co-Owners

RB:lh

- xc: Gary Voigt
- John Butts, ETEC
- Ron Bowen, Jonesboro
- John Rimmer, West Memphis
- Mayor Dickie Kennemore, Osceola
- Richie Arnold, Conway
- Bob Lyford
- Sean Beeny
- Kurt Castleberry



Entergy Arkansas, Inc  
1000 North Main Street  
Little Rock, Arkansas 72202  
Telephone: (501) 782-1000  
Fax: (501) 782-1001

Hugh McDonald

June 28, 2004

Mr. Ricky Bittle  
Arkansas Electric Cooperative Corporation  
1 Cooperative Way  
P.O. Box 194208  
Little Rock, Arkansas 72219-4208

Dear Mr. Bittle:

I am writing in response to your letter of June 24, 2004 on behalf of the co-owners of the White Bluff and/or Independence power plants, in which you state that you are "making a formal request that the implementation of the change in the allocation of energy from the power plants as discussed by Kurt Castleberry on June 23, 2004 be delayed."

Entergy disagrees with your contention that Entergy is changing either the allocation of energy from the plants or the administration of the individual contracts. The contracts provide for Entergy to schedule and dispatch the co-owned units in accordance with its standard scheduling and dispatching procedures. Moreover, while there is some variation among the individual co-owner contracts with respect to accounting for energy deliveries, the PCITA with AECC, for instance, specifically recognizes for billing purposes that "consideration will be given to other operating constraints which limit the availability of the plant to the EAI dispatcher."

In addition, Entergy does not agree that the recognition of unit availability as provided in the contracts requires the approval of the individual operating committees. The PCITAs provide that "the Operating Committee shall have no authority to alter, amend, or revise the express provisions of this Agreement." The rights and obligations of the parties with respect to this matter are set out in the contract terms and are not subject to operating committee review or authority.

I understand from your discussions with Kurt Castleberry, as well as from your letter, that you wish to obtain further information concerning the impact of operating constraints on unit availability. I have asked Kurt to arrange a meeting with you as soon as possible to discuss these matters. At the same time, Entergy maintains its right to reflect operating constraints in the determination of unit capability, as provided in certain of the contracts, as well as its authority for scheduling and dispatching the units. Our willingness to meet with you should not be construed as a waiver of these rights, including the recognition of operating constraints on July 1, 2004.

Sincerely,

Hugh McDonald

HTM/jmb

RECEIVED

JUN 29 2004

A.E.C.C.  
Plan. Rates & Disp.

cc: Gary Voigt, AECC  
John Butts, ETEC  
Ron Bowen, Jonesboro  
John Rimmer, West Memphis  
Mayor Dickie Kennemore, Osceola  
Richie Arnold, Conway  
Bob Lyford  
Sean Beeny  
Kurt Castleberry

## East Texas Electric Cooperative, Inc.

P.O. Box 631623, Nacogdoches, Texas 75963-1623 • Telephone (936) 560-9532 • Fax (936) 560-9215

July 26, 2004

Hugh McDonald  
President, Entergy Arkansas, Inc.  
P. O. Box 551  
Little Rock, Arkansas 72203

Re: Independence Steam Electric Station - Notice

Dear Mr. McDonald:

On June 24, 2004, by letter, the co-owners of the White Bluff and Independence power plants, including East Texas Electric Cooperative, Inc. ("ETEC"):

- formally notified you that they disagree with Entergy Arkansas, Inc.'s ("EAI") new plan, unilaterally announced to the co-owners by Mr. Kurt Castleberry on June 23, 2004, for the scheduling, billing and accounting for the plants;
- notified you that such a plan violated the co-owners' contracts with EAI;
- requested a delay of Entergy's plans; and
- formally requested a meeting of the respective EAI/co-owner Operating Committees to resolve the dispute.

Despite further meeting between EAI and the co-owners on July 9, 2004 and numerous phone calls between the parties, EAI has not directly answered the co-owners' June 24<sup>th</sup> request for a meeting of the Operating Committees with respect to ETEC.

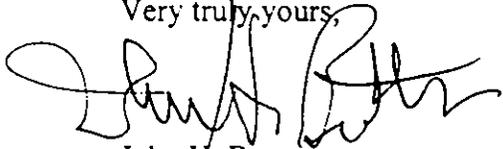
ETEC is trying to follow the dispute resolution provisions of the EAI/ETEC Power Coordination and Interchange Agreement, Article V, that says the operating committee shall act in matters pertaining to the operation of ISES 2 and to establish procedures for administration of the agreement. This dispute seems to fall squarely within the scope of the Operating Committee's duties. So, ETEC again requests EAI to convene an ETEC/EAI Operating Committee to resolve the dispute over Entergy's scheduling, billing and accounting of ISES 2.

In addition, the Independence Steam Electric Station Operating Agreement, Section 11.4 requires EAI to inform ISES Participants of significant matters with respect to the operation of ISES "when practicable in time for Participants to comment thereon before decisions are made, and shall confer with Participants during the development of

Mr. Hugh McDonald  
July 26, 2004  
Page 2

any of EAI's proposals regarding such matters when practicable to do so." Section 11.5 further provides that EAI and ISES Participants will "cooperate with each their in all activities relating to Independence SES...." Rather than present ETEC with a decision made on the operation of ISES, EAI should take the time necessary to confer and cooperate with ISES co-owners. To carry out those provisions, ETEC again requests that EAI delay its June 23<sup>rd</sup> plan.

Very truly yours,



John H. Butts  
Manager

cc: ETEC Board of Directors  
John P. Hurstell (Entergy Director of Wholesale Transactions)  
Bill Burchette  
Bob Gross  
Other co-owners in ISES

## **East Texas Electric Cooperative, Inc.**

P.O. Box 631623, Nacogdoches, Texas 75963-1623 • Telephone (936) 560-9532 • Fax (936) 560-9215

August 19, 2004

BY FACSIMILE

Mario Montagnino  
Entergy Services, Inc.  
4809 Jefferson Highway  
New Orleans, LA 70161

Re. ISES 2 Bill for July 2004

Dear Mr. Montagnino:

On August 9, 2004, East Texas Electric Cooperative, Inc. ("ETEC") received an August 4, 2004 bill from Entergy Services, Inc. ("ESI") for power and energy delivered in July in the amount of \$720,329.66. ETEC and Entergy Arkansas, Inc. ("EAI") are co-owners in the Independent Steam Electric Station ("ISES"). In late June, EAI announced to ETEC that, effective July 1, 2004, ESI would begin billing ETEC at Entergy's system incremental price instead of the ISES coal stockpile equivalent price whenever EAI elected to operate ISES below its generation capability due to Entergy system requirements. ETEC has vigorously opposed EAI's unilateral and revised interpretation of ISES Operating Agreement § 8.4 in writing, in telephone calls and, most-recently, in a meeting among ISES co-owner Chief Executive Officers.

ETEC, in good faith, disagrees with the statement rendered by ESI for all the reasons previously explained to EAI as described above. Pursuant to the Power Coordination and Interchange Agreement ("PCITA") between ETEC and EAI, specifically Article IV, Section 1, ETEC is therefore withholding \$96,910.86 of its payment of that bill yielding a net payment of \$623,418.80.

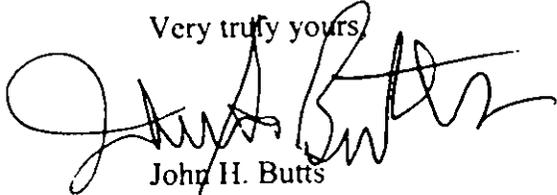
The withheld amount is ETEC's best estimate of the amount of over billing by ESI due to EAI's new interpretation of the ISES Operating Agreement § 8.4. ETEC sought the data necessary to more precisely calculate this amount by a July 26, 2004 letter from Bob Gross of GDS Associates, Inc. addressed to Mr. John Hurstell, but ETEC received no answer and no data, so this estimate is the best ETEC can do under the circumstances. If ESI will provide the requested data, then ETEC can be more precise in the amount withheld and adjust that amount, albeit after the fact.

ETEC regrets that this dispute has come to this point, but EAI's unilateral decision has left ETEC with no other options. ETEC's July 26, 2004 letter to Mr. Hugh McDonald sought resolution of this dispute under the dispute resolution provisions of the

Mario Montagnino  
August 19, 2004  
Page 2

PCITA, Article V and the ISES Operating Agreement. That has not taken place. ETEC nevertheless remains open to dispute resolution.

Very truly yours,



John H. Butts  
Manager

- c: Hugh McDonald - President, Entergy Arkansas, Inc.
- John P. Hurstell - Director Wholesale Transactions, Entergy
- Bob Gross - GDS Associates, Inc.
- Bill Burchette - Brickfield, Burchette, Ritts & Stone, PC

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

East Texas Electric Cooperative, Inc.	)	
Complainant	)	
	)	
v.	)	Docket No. EL04-___-000
	)	
	)	
Entergy Arkansas, Inc.	)	
Respondent	)	

**AFFIDAVIT OF MR. WAYNE M. MILLER**

PERSONALLY APPEARED before me, Wayne M. Miller, who, being first duly sworn, did depose and say as follows:

**I. Background**

**A. Affiant Qualifications**

1. My name is Wayne M. Miller. I am over the age of twenty-one years and otherwise competent to make this affidavit.
2. Up until January 1, 2004 I was Vice President and Principal in the consulting firm of GDS Associates, Inc. I am currently semi-retired and a part-time employee of GDS Associates.
3. I received a B. S. in electrical engineering from N. C. State University in 1966 and a MBA (Finance) from Georgia State University in 1977. I am a registered professional engineer in Georgia. I have provided consulting services to the electric utility industry for over twenty-six years. This experience has included analyzing the feasibility of joint ownership of generating plants, negotiating joint ownership arrangements, and administering the contracts for such arrangements.

4. I am making this affidavit on behalf of East Texas Electric Cooperative, Inc. (ETEC) in regard to its ownership of a 7.13% (60 MW) share of the Independence Steam Electric Station, Unit No. 2 (ISES 2) that was built and currently operated by Entergy Arkansas, Inc. (Entergy Arkansas). I have provided consulting services to ETEC since its inception in 1987, participated in the negotiations leading to ETEC becoming a joint owner of ISES in 1998, and assisted in the administration of the contractual arrangements governing ETEC's joint ownership. I have recently participated in phone calls with Entergy Arkansas representatives to discuss ISES 2 billing issues related to my affidavit and attended two meetings on July 9 and September 2 when Entergy Arkansas met with the co-owners of certain coal-fired plants operated by Entergy Arkansas, including ISES 2.

**B. Purpose of Affidavit**

5. My affidavit is intended show that ETEC may be substantially harmed by Entergy Arkansas's announced plans to change how energy, which Entergy Arkansas supplies to ETEC from ISES 2 or other Entergy Arkansas resources, is classified and priced. Entergy Arkansas delivers to ETEC ETEC's proportionate ownership share of ISES 2 actual generation that is scheduled by ETEC, or Entergy Arkansas purchases ETEC's share of ISES 2 actual generation that is not scheduled by ETEC. In addition, Entergy Arkansas supplies ETEC energy from Entergy Arkansas's other resources when ISES 2 is dispatched at a level that is less than the available capability of ISES 2 and to the extent that ETEC's schedule, up to its ownership share, exceeds its proportionate share of the actual generation of ISES 2.

6. Entergy Arkansas invoices ETEC monthly for energy from Entergy Arkansas's other resources in two categories that I identify below as "replacement energy" and "substitute energy." Entergy Arkansas, in the past, has priced "substitute energy" at the same price as if such energy were supplied from ISES 2 at coal-based prices. Also, in the past, Entergy Arkansas priced "replacement energy" at a level equal to the Entergy system incremental cost plus an adder of 10%. Entergy Arkansas has decided to invoice ETEC for more "replacement energy" at the higher Entergy system incremental price and less "substitute energy" at the lower ISES 2 coal price.

## **II. ETEC's ISES 2 Arrangements**

7. ISES 2 is an 842 MW (net rated capability) coal-fired unit that is operated by Entergy Arkansas as a base load unit because of the unit's operating characteristics and low-cost fuel. The unit has historically operated at an annual equivalent availability of over 80% and its fuel cost was \$13.71 per megawatt-hour in 2003. ETEC deploys its 60 MW of base-load capacity and associated energy to serve load in the control areas of American Electric Power Company's operating subsidiary, Southwestern Electric Power Company (AEP/SWEPCO) and Entergy Gulf States, Inc. (EGSI). ETEC supplies 31 MW to one of its members in the AEP/SWEPCO area and 29 MW to two of its members in the EGSI area. ETEC has backup arrangements in its power supply contracts with both AEP/SWEPCO and EGSI that replace the energy from ISES 2 when the unit experiences a full or partial outage.

8. ETEC's ownership arrangement for ISES 2 is set forth in three agreements with Entergy Arkansas including: (1) ISES Ownership Agreement, (2) ISES Operating Agreement, and (3) Power Coordination and Interchange Agreement (PCITA).

Among other things, the Operating Agreement and PCITA address the energy classification and pricing issues that are the subject of this affidavit. There are four classifications of energy transactions set forth in these agreements.

9. First, Section 4.1 of the ISES Operating Agreement calls for co-owners to receive their proportionate ownership share of energy generated from ISES and for co-owners to pay the associated fuel cost. The PCITA, however, alters this pricing by providing for Entergy Arkansas to pay ETEC's share of the fuel cost and invoice ETEC at a different price based on the average monthly price of the coal stock pile and an average heat rate using an assumed 60% capacity factor. There is no name explicitly stated in the agreements for such energy but I will refer to such energy as "**ISES entitlement energy.**"

10. Second, Section 8.4 of the ISES Operating Agreement provides for Entergy Arkansas to make available to the other co-owners energy from Entergy Arkansas's other resources in situations where Entergy Arkansas elects, for Entergy Arkansas's own system requirements or Entergy system requirements, not to schedule all of the energy that ISES 2 is capable of generating. The price for such energy is the same as if the energy were supplied from ISES 2 as "**ISES entitlement energy.**" I will refer to such energy as "**substitute energy.**"

11. Third, the PCITA also provides for Entergy Arkansas to supply ETEC with **Plant Energy** (a defined term in the PCITA) to run auxiliary equipment when the plant is not running. The price for Plant Energy is equal to the incremental energy cost of the Entergy system (not the Entergy Arkansas system) plus a 10% adder.

12. Fourth, Entergy Arkansas is obligated to purchase energy from ETEC to the extent that ETEC's share of "ISES entitlement energy" in an hour exceeds the amount of energy that ETEC schedules from ISES 2. Such energy is actually a subset of "ISES entitlement energy." I will refer to this subset as "**surplus energy**" to be consistent with the PCITA (Appendix A, Article III, Section 3 has the heading "Sale and Purchase of Surplus Energy").

### **III. Entergy Arkansas Billing Invoices for ISES Energy Transactions**

13. Entergy Arkansas's monthly invoice to ETEC includes four classifications of energy transactions. With one exception, the billing classifications appear to correspond to the contract classifications discussed above, although the names may be slightly different. The exception is "replacement energy," as more fully explained below.

14. The first line item on the invoice is labeled "**Sale of Energy: (1).**" (See Attachments 1 and 2). Footnote (1) on the invoice reads, "Energy substituted by Entergy when ETEC's Unit (ISES 2) is available but not loaded." This line item appears to correspond to what I referred to above as "substitute energy," which is provided for under Section 8.4 of the ISES Operating Agreement.

15. The second line item is labeled "**Sale of Replacement Energy: (2).**" Footnote (2) reads, "Replacement energy (includes auxiliary energy) furnished by Entergy when ETEC's resources are deficient." The auxiliary energy referenced in the footnote means the same as Plant Energy. Based on information provided by Entergy, the "replacement energy" billed to ETEC has included energy other than Plant Energy, but sufficient information has not been provided by Entergy Arkansas to determine the nature of such energy other than the statement in the footnote on the invoice.

ETEC has asked Entergy Arkansas by letter for more detailed information on what components make up "replacement energy" other than Plant Energy (See Attachment 3). Entergy Arkansas has not yet responded to ETEC's request. Neither the ISES Operating Agreement nor the PCITA provides for Entergy Arkansas to supply or charge for "replacement energy" but does provide for Plant Energy that Entergy Arkansas includes in the line item on its invoice labeled "Replacement Energy."

16. The third line item is labeled "Credit for Excess Energy to Entergy." This line item appears to correspond to what I have referred to as "surplus energy."

17. The heading on page 2 of the invoice reads, "**Billing for actual generation of energy for ETEC's participation share under the Operating Agreement**" and the first line item reads "**Independence Unit 2:**" This energy appears to correspond to what I have referred to above as "ISES entitlement energy."

#### **IV. Entergy Arkansas's Announced Billing Change**

18. On June 23, 2004, Entergy Arkansas representative Kurt Castleberry, advised ETEC consultant, Bruce Walter, by telephone that beginning July 1, 2004 Entergy Arkansas would no longer supply ETEC "substitute energy" whenever Entergy re-dispatches ISES 2 to reduce the output of the unit for Entergy system constraints.

19. On July 9, 2003, Entergy Arkansas met with the co-owners, and discussed in greater detail the dispatch problems that Entergy was experiencing in operating the Entergy system to accommodate increased puts from PURPA Qualifying Facilities (QFs) and generator imbalances caused by Independent Power Producers (IPPs). All of the Entergy Arkansas operated co-owned coal units, including ISES 2, have automatic generation control (AGC) equipment installed that automatically responds to

load/generation imbalances caused by Entergy system constraints, of which QF puts initially appeared to be the most significant. Entergy representative John Hurstell specifically claimed that the purchases of power by Entergy Arkansas affiliates Entergy Louisiana, Inc. (ELI) and Entergy Gulf States, Inc. (EGI) from QFs have greatly increased in the last two years. These increased purchases have caused the Entergy Arkansas operated co-owned coal units to be dispatched at reduced levels to a greater extent than in the past.

20. However, on September 2, 2004, in a telephone conference, Mr. Hurstell said that, upon further analysis of system dispatch information for 2003, he now concludes that the major cause of ISES 2 being dispatched at less than its full availability was IPP scheduling performance. He said that IPPs were not doing a good job of matching actual generation to scheduled generation and were imposing a regulation burden on Entergy, as control area operator. For instance, the IPPs often begin ramping up their generators prior to a scheduled transaction and Entergy generators, including ISES 2, must respond by backing down to offset over-generation by the IPPs prior to the scheduled start-time.

21. At the July 9 and September 2 meetings, Mr. Hurstell informed ETEC and the other co-owners that Entergy Arkansas interprets the co-owner agreements as not obligating Entergy Arkansas to provide "substitute energy" when Entergy Arkansas backs down the co-owned units due to Entergy system constraints. He argued that Entergy Arkansas is not electing to back down the co-owned units for these constraints and instead is recognizing operating constraints in backing down these units. Thus, he argued further that Entergy Arkansas is not obliged in such

circumstances to supply "substitute energy" under Section 8.4 of the Operating Agreement. The only Entergy system re-dispatch that Entergy Arkansas considers to be subject to its election is to allow Entergy to make economy energy purchases. Re-dispatching the co-owned units at a reduced level for Entergy system economy energy purchases is the only situation for which Entergy Arkansas intends to continue supplying "substitute energy."

22. Mr. Hurstell acknowledged that in the past, Entergy Arkansas had not reduced the availability of generation from the co-owned units for Entergy system constraints other than transmission constraints. According to Mr. Hurstell, circumstances have changed, however, in that Entergy Arkansas is now experiencing higher cost due to increases in QF puts and IPP generator imbalances that result in adverse cost consequences to Entergy Arkansas under the Entergy System Agreement (ESA).

23. As a result, claimed Mr. Hurstell, Entergy Arkansas is suffering economic harm. The Entergy System Agreement provides for the Entergy Services, Inc. (ESI), acting as operating agent for the Entergy operating subsidiaries, to operate as a single control area. The ESA also provides for the operating subsidiaries to pool energy on an hourly basis, provides for each operating subsidiary to keep its lowest cost energy, and provides for each operating subsidiary to sell surplus energy to the pool and purchase deficit energy from the pool at average pool cost. Entergy Arkansas generates less energy from its coal units when such units are dispatched at a lower level to accommodate QF purchases and regulation service for IPP generator imbalances. Less coal generation means that Entergy Arkansas must purchase more energy from the pool or sell less energy to the pool, depending whether its resources

are long or short of meeting its load. Thus, according to Mr. Hurstell, in such circumstances Entergy Arkansas would have less low-cost coal energy to retain for its own needs in an hour and more pool purchases or lost sales opportunities at higher prices.

24. Mr. Hurstell said that Entergy Arkansas had in the past provided "substitute energy" to the co-owners when ISES was backed down for Entergy system constraints, but in the future Entergy Arkansas intends to supply higher cost "replacement energy" instead. He said that Entergy Arkansas could no longer accept sole responsibility for the higher costs of re-dispatch and that the co-owners would have to share in Entergy Arkansas's higher cost. This would be accomplished by billing the co-owners for "replacement energy" instead of "substitute energy" when the availability of ISES 2 was declared to be reduced for Entergy system constraints, he said. This change in billing practice is in effect a re-pricing of energy. On July 1, 2004, Entergy Arkansas began charging ETEC a higher rate than it previously charged for energy supplied under similar circumstances.

## **V. Billing Change Impact Assessment**

25. The billing change announced in June 2004 and apparently implemented on July 1 by Entergy Arkansas will likely have a substantial impact on ETEC. I analyzed the monthly invoices for 2003 and re-priced the energy that Entergy Arkansas invoiced as "substitute energy" as if it had been billed as "replacement energy," which is essentially what Entergy Arkansas announced it would do, beginning July 1, 2004. In 2003 the average cost of "substitute energy" and "replacement energy" was \$13.82 per megawatt-hour and \$51.22 per megawatt-hour respectively. Assuming that the

38,632 megawatt-hours of "substitute energy" that was billed in 2003 were instead billed as "replacement energy," the annual increase in cost would amount to \$1,444,837. This amount is 1.28 % of ETEC's total revenues in 2003.

26. The estimated annual impact may increase in the future if the amount of purchases from QFs increases as planned facilities come on line in the next few years.
27. The price of "replacement energy" on the recently received July 2004 invoice is \$31.86 per megawatt-hour. This price compares to \$58.41 per megawatt-hour in June 2004, indicating that Entergy Arkansas may have instituted lower pricing for "replacement energy." ETEC, however, would need additional information to verify the price change, as requested in the letter included as Attachment 3.
28. Comparing the July invoice to the June invoice, attachments 1 and 2, the combined amount of "substitute energy" and "replacement energy" increased from 4,233 MWh to 5,793 MWh. However, "substitute energy" decreased from 4,001 MWh to 105 MWh and "replacement energy" increased from 232 MWh to 5,793 MWh.
29. To obtain a rough estimate of the impact (Entergy Arkansas has not provided sufficient data to determine a precise impact), I determined the percentage split between "substitute energy" and "replacement energy" for June (94.5% substitute and 5.5% replacement) and applied these percentages to the combined energy for July (5,793 MWh). This calculation was done to determine how much energy in each category would have occurred in July (after the billing change) had the same relationship that occurred in June (before the billing change) continued. Pricing this amount at the differential between the invoiced price of "replacement energy" (\$31.86 per megawatt-hour) and "substitute energy" (\$13.84 per megawatt-hour)

yields \$96,776, which is my estimate of the adverse impact of Entergy Arkansas's changed billing practice for July 2004.

30. Further affiant sayeth not.

Wayne M. Miller  
Wayne M. Miller

SWORN TO AND SUBSCRIBED  
before me this 8<sup>th</sup> day of September 2004

[SEAL]

Wayne A. Culpepper  
Notary Public for the State of Georgia

My Commission Expires: Notary Public, Cobb County, Georgia  
My Commission Expires Feb. 17, 2006



Entergy Services, Inc  
4809 Jefferson Hwy.  
PO Box 81000  
New Orleans, LA 70161

July 6, 2004

East Texas Electric Cooperative, Inc.  
P. O. Box 631623  
Nacogdoches, TX 75963-1623  
Attn: Mr. O'Neal Dubberly

Enclosed is the actual power and energy bill for the service month of **June 2004**, as follows:

Power and Energy Due EAI	\$ 16,912.02
Fuel Cost For Energy Generation (ISES, Unit 2) Due EAI	\$ <u>513,708.32</u>
<b>Net Amount Due EAI</b>	<b>\$ 530,620.34</b>

Also enclosed is a Pro Forma invoice specifying an Entergy invoice number and customer number.

Please make your payment by wire transfer on **July 21, 2004**, to Entergy Arkansas, Inc., bank account number 812276557, at Hibernia National Bank (ABA 065000090), New Orleans, Louisiana, referencing the invoice and customer number.

If you have any questions, please call me at 504-840-2719 or email me at [mmontag@entergy.com](mailto:mmontag@entergy.com).

Sincerely,

Mario Montagnino  
Major Accounts Billing

Enclosure

- cc: Mr. Brandon W. Allen (L-ENT-11B)
- Mr. Cory T. Burton (T-PKWD-3D)
- Ms. Alison Douglas (L-ENT-6A)
- Mr. Bruce Wilhelm (T-PKWD-3D)
- Ms. Laura Plante (L-ENT-11B)
- Mr. Kurtis Castleberry (A-TCBY-40A)

JUL 08 2004

EAST TEXAS ELEC. COOP.  
P. O. BOX 631623  
NACOGDOCHES, TEXAS 75963-1623  
ATTN: O'NEAL DUBBERLY

FOR MONTH OF: JUNE 2004  
MAILED ON: 7/06/04  
DUE DATE: 7/21/04

PAGE 1 OF 3

IN ACCOUNT WITH ENTERGY ARKANSAS, INC.  
P.O. BOX 52917  
NEW ORLEANS, LOUISIANA 70152-2917  
PS CUSTOMER NO. 25790

BILLING FOR ACTUAL POWER AND ENERGY UNDER THE POWER  
COORDINATION, INTERCHANGE AND TRANSMISSION SERVICE AGREEMENT

SALE OF ENERGY: (1)			
4,001,000	kWh @	\$0.0138844	\$55,551.48
SALE OF REPLACEMENT ENERGY: (2)			
232,000		\$0.0584100	\$13,551.13
SUB-TOTAL			<u>\$69,102.61</u>
CREDIT FOR EXCESS ENERGY TO ENTERGY: ACTUAL EXCESS ENERGY PURCHASED			
(3,453,000)	kWh @	\$0.015351900	(\$53,010.11)
(SEE CALCULATION ON PAGE 3 OF 3)			
PRIOR MONTH ADJUSTMENT (SEE ATTACHMENT 1)			\$819.52
NET AMOUNT DUE EAI ON			<u>\$16,912.02</u>
			7/21/04

NOTES:

- (1) Energy substituted by Entergy when ETEC's Unit (ISES 2) is available but not loaded.
- (2) Replacement energy (includes auxiliary energy) furnished by Entergy when ETEC's resources are deficient.

AUG. 9.2004 1:57PM

NO.944 P.10/13

EAST TEXAS ELEC. COOP.  
P. O. BOX 631623  
NACOGDOCHES, TEXAS 75963-1623  
ATTN: O'NEAL DUBBERLY

FOR MONTH OF: JUNE 2004  
MAILED ON: 7/06/04  
DUE DATE: 7/21/04

PAGE 2 OF 3

IN ACCOUNT WITH ENTERGY ARKANSAS, INC.  
P.O. BOX 52917  
NEW ORLEANS, LOUISIANA 70152-2917

BILLING FOR ACTUAL GENERATION OF ENERGY FOR ETEC'S  
PARTICIPATION SHARE UNDER THE OPERATING AGREEMENT.

INDEPENDENCE UNIT 2:			
37,000,000	kWh @	\$0.01388440	\$513,722.80
PRIOR MONTH ADJUSTMENT (SEE ATTACHMENT 1)			(\$14.48)
NET AMOUNT DUE EAI ON	7/21/04		<u>\$513,708.32</u>



Entergy Arkansas Inc  
 P.O. Box 52917  
 New Orleans LA 70152-2917

**PRO FORMA**

Invoice: 2010897  
 Invoice Date: 07/06/2004  
 Page: 1  
 N  
 A0000  
 Customer No: 25790  
 Payment Terms: Net 15  
 Due Date:  
 PO Reference  
 Work Rqst #

East Texas Electric Cooperative  
 Mr. John Butts  
 P O Box 631623  
 Nacogdoches TX 75963-1623  
 United States

For billing questions, please call: 866-576-7400

Line	Description	Quantity	UDM	Unit Amt	Net Amount
0	Base of Energy	1.00	KWH	55,551.48	55,551.48
0	Replacement Energy	1.00	KWH	13,551.13	13,551.13
0	Excess Energy	1.00	KWH	(63,010.11)	(53,010.11)
0	Energy Purchased Back by Entergy Arkansas, Inc. Prior Month Adjustments	1.00	EA	819.82	819.52
0	Prior Month Adj - Energy Sales Fuel Cost - ISES 2	1.00	KWH	513,722.80	513,722.80
0	Fuel Cost For Energy Generation - ISES, Unit 2 Prior Month Adjustments	1.00	EA	(14.48)	(14.48)
	Prior Month Adj - Fuel Cost For Energy Generation				
				<b>Subtotal:</b>	<b>530,620.34</b>
				<b>Amount Due:</b>	<b>530,620.34 USD</b>



**PRO FORMA**

Invoice: 2010897  
 Customer No: 25790  
 Due Date:

Amount Due: 530,820.34

\$  
 \_\_\_\_\_  
 Amount Remitted

East Texas Electric Cooperative  
 Mr. John Butts  
 P O Box 631623

MAKE CHECKS PAYABLE TO:

Entergy Arkansas Inc  
 P.O. Box 52917  
 New Orleans LA 70152-2917

EAST TEXAS ELEC. COOP.  
P. O. BOX 631623  
NACOGDOCHES, TEXAS 75963-1623  
ATTN: O'NEAL DUBBERLY

FOR MONTH OF: JUNE 2004  
MAILED ON: 7/06/04  
DUE DATE: 7/21/04

PAGE 3 OF 3

IN ACCOUNT WITH ENTERGY ARKANSAS, INC.  
P. O. BOX 52917  
NEW ORLEANS, LOUISIANA 70152-2917

DETERMINATION OF COST OF EXCESS ENERGY TO ENTERGY ARKANSAS, INC.:

	<u>kWh</u>	<u>\$/kWh</u>	<u>EXCESS ENERGY COST</u>
INDEPENDENCE UNIT 2	3,453,000	\$0.013884400	\$47,942.83
ADD: O&M ADDER	3,453,000	\$0.001467500	\$5,067.28
TOTAL			<u>\$53,010.11</u>

NOTE: THE ABOVE TOTAL IS CREDITED TO ETEC ON PAGE 1 OF 3 OF THE BILL.

PRIOR MONTH ADJUSTMENT  
 ATTACHMENT 1  
 TO BE INCLUDED ON SERVICE BILL FOR: JUNE 2004

**EAST TEXAS ELEC. COOP., INC.**  
 P. O. BOX 631623  
 WACO, TEXAS 76793-1623  
 ATTN: O'NEAL DUBBERLY

BILL COMPONENT	SERVICE MONTH	REVISED BILL 6/28/04 kWh	AMOUNT	ORIGINAL BILL 6/3/04 kWh	AMOUNT	INCREASE (DECREASE) kWh	ADD'L CHARGE (CREDIT)
Actual Power & Energy:							
Sale of Energy	MAY. 2004	3,378,000	\$48,910.06	3,376,000	\$48,881.10	2,000	\$28.98
Sale of Replacement Energy	MAY. 2004	2,187,000	\$92,926.08	2,188,000	\$92,135.52	(1,000)	\$790.56
Excess Energy To EAI	MAY. 2004	5,098,000	(\$80,323.58)	5,098,000	(\$80,323.58)	0	\$0.00
Prior Month Adjustment	MAY. 2004	0	\$2,088.71	0	\$2,088.71	0	\$0.00
<b>Total Actual Power &amp; Energy</b>			<b>\$63,601.27</b>		<b>\$62,781.75</b>		<b>\$819.52</b>
Actual Gen. of Energy (ISES 2)	MAY. 2004	33,460,000	\$483,831.38	33,461,000	\$483,845.86	(1,000)	(\$14.48)

**NET TOTAL ADJUSTMENT**

**\$805.04**

EXPLANATION FOR ADJUSTMENT

The bill was revised to adjust energy quantities and prices as a result of the re-allocation made by EMO June 25, 2004, upon final load data.



Entergy Services, Inc  
4809 Jefferson Hwy.  
PO Box 61000  
New Orleans, LA 70181

August 4, 2004

East Texas Electric Cooperative, Inc.  
P. O. Box 631623  
Nacogdoches, TX 75963-1623  
Attn: Mr. O'Neal Dubberly

Enclosed is the actual power and energy bill for the service month of July 2004, as follows:

Power and Energy Due EAI	\$ 182,757.42
Fuel Cost For Energy Generation (ISES, Unit 2) Due EAI	\$ <u>537,572.24</u>
<b>Net Amount Due EAI</b>	<b>\$ 720,329.66</b>

Also enclosed is a Pro Forma invoice specifying an Entergy invoice number and customer number.

Please make your payment by wire transfer on August 19, 2004, to Entergy Arkansas, Inc., bank account number 812276557, at Hibernia National Bank (ABA 065000090), New Orleans, Louisiana, referencing the invoice and customer number.

If you have any questions, please call me at 504-840-2719 or email me at mmontag@entergy.com.

Sincerely,

Mario Montagnino  
Major Accounts Billing

Enclosure

- cc: Mr. Brandon W. Allen (L-ENT-11B)
- Mr. Cory T. Burton (T-PKWD-3D)
- Ms. Alison Douglas (L-ENT-6A)
- Mr. Bruce Wilhelm (T-PKWD-3D)
- Ms. Laura Plante (L-ENT-11B)
- Mr. Kurtis Castleberry (A-TCBY-40A)

AUG 09 2004

**EAST TEXAS ELEC. COOP.**  
P. O. BOX 631623  
NACOGDOCHES, TEXAS 75963-1623  
ATTN: O'NEAL DUBBERLY

**FOR MONTH OF: JULY 2004**  
**MAILED ON: 8/04/04**  
**DUE DATE: 8/19/04**

PAGE 1 OF 3

**IN ACCOUNT WITH ENTERGY ARKANSAS, INC.**  
P.O. BOX 52917  
NEW ORLEANS, LOUISIANA 70152-2917  
PS CUSTOMER NO. 25790

**BILLING FOR ACTUAL POWER AND ENERGY UNDER THE POWER  
COORDINATION, INTERCHANGE AND TRANSMISSION SERVICE AGREEMENT**

SALE OF ENERGY: (1)			
105,000	kWh @	\$0.0138357	\$1,452.75
SALE OF REPLACEMENT ENERGY: (2)			
5,688,000		\$0.0318623	\$181,232.69
			<hr/>
SUB-TOTAL			\$182,685.44
			<hr/>
CREDIT FOR EXCESS ENERGY TO ENTERGY:			
ACTUAL EXCESS ENERGY PURCHASED			(\$61.21)
(4,000)	kWh @	\$0.015303200	
(SEE CALCULATION ON PAGE 3 OF 3)			
PRIOR MONTH ADJUSTMENT (SEE ATTACHMENT 1)			\$133.19
			<hr/>
NET AMOUNT DUE EAI ON	8/19/04		<u>\$182,757.42</u>

**NOTES:**  
(1) Energy substituted by Entergy when ETEC's Unit (ISES 2) is available but not loaded.  
(2) Replacement energy (includes auxiliary energy) furnished by Entergy when ETEC's resources are deficient.

AUG. 9.2004 1:56PM

NO.944 P.4/13

EAST TEXAS ELEC. COOP.  
P. O. BOX 631623  
NACOGDOCHES, TEXAS 75963-1623  
ATTN: O'NEAL DUBBERLY

FOR MONTH OF: JULY 2004  
MAILED ON: 8/06/04  
DUE DATE: 8/21/04

PAGE 2 OF 3

IN ACCOUNT WITH ENTERGY ARKANSAS, INC.  
P.O. BOX 52917  
NEW ORLEANS, LOUISIANA 70152-2917

BILLING FOR ACTUAL GENERATION OF ENERGY FOR ETEC'S  
PARTICIPATION SHARE UNDER THE OPERATING AGREEMENT.

INDEPENDENCE UNIT 2:			
38,855,000 kWh @	\$0.01383570		\$537,586.12
PRIOR MONTH ADJUSTMENT (SEE ATTACHMENT 1)			(\$13.88)
NET AMOUNT DUE EAI ON	8/21/04		<u>\$537,572.24</u>

EAST TEXAS ELEC. COOP.  
P. O. BOX 631623  
NACOGDOCHES, TEXAS 75963-1623  
ATTN: O'NEAL DUBBERLY

FOR MONTH OF: JULY 2004  
MAILED ON: 8/06/04  
DUE DATE: 8/21/04

PAGE 3 OF 3

IN ACCOUNT WITH ENTERGY ARKANSAS, INC.  
P. O. BOX 52917  
NEW ORLEANS, LOUISIANA 70152-2917

DETERMINATION OF COST OF EXCESS ENERGY TO ENTERGY ARKANSAS, INC.:

	<u>kWh</u>	<u>\$/kWh</u>	<u>EXCESS ENERGY COST</u>
INDEPENDENCE UNIT 2	4,000	\$0.013835700	\$55.34
ADD: O&M ADDER	4,000	\$0.001467500	\$5.87
TOTAL			<u>\$61.21</u>

NOTE: THE ABOVE TOTAL IS CREDITED TO ETEC ON PAGE 1 OF 3 OF THE BILL.



Entergy Arkansas Inc  
 P.O. Box 52917  
 New Orleans LA 70152-2917

**PRO FORMA**

Invoice: 2012336  
 Invoice Date: 08/04/2004  
 Page: 1  
 N  
 A0000  
 Customer No: 25790  
 Payment Terms: Net 15  
 Due Date:  
 PO Reference  
 Work Rqst #

East Texas Electric Cooperative  
 Mr. John Butts  
 P O Box 631623  
 Nacogdoches TX 75963-1623  
 United States

For billing questions, please call: 866-576-7400

Line	Description	Quantity	UOM	Unit Amt	Net Amount
0	Sale of Energy	1.00	KWH	1,452.75	1,452.75
0	Prior Month Adjustments	1.00	EA	(13.88)	(13.88)
0	Prior Month Adj - Fuel Cost For Energy Generation Excess Energy	1.00	KWH	(81.21)	(81.21)
0	Energy Purchased Back by Entergy Arkansas, Inc. Prior Month Adjustments	1.00	EA	133.19	133.19
0	Prior Month Adj - Energy Sales Replacement Energy	1.00	KWH	181,232.69	181,232.69
0	Fuel Cost - ISES 2	1.00	KWH	537,586.12	537,586.12
	Fuel Cost For Energy Generation - ISES, Unit 2				
				Subtotal:	720,329.66
				Amount Due:	<u>720,329.66 USD</u>

**PRO FORMA**



Invoice: 2012336  
 Customer No: 25790  
 Due Date:

Amount Due: 720,329.66  
 \$  
 Amount Remitted

East Texas Electric Cooperative  
 Mr. John Butts  
 P O Box 631623

MAKE CHECKS PAYABLE TO:  
 Entergy Arkansas Inc  
 P.O. Box 52917  
 New Orleans LA 70152-2917

ATTACHMENT 1

PRIOR MONTH ADJUSTMENT  
TO BE INCLUDED ON SERVICE BILL FOR: JULY 2004

**EAST TEXAS ELEC. COOP., INC.**  
P. O. BOX 631823  
NACOGDOCHES, TEXAS 75963-1823  
ATTN: O'NEAL DUBBERLY

BILL COMPONENT	SERVICE MONTH	REVISED BILL 7/29/04 kWh	AMOUNT	ORIGINAL BILL 7/6/04 kWh	AMOUNT	INCREASE (DECREASE) kWh	ADD'L CHARGE (CREDIT)
Actual Power & Energy:							
Sale of Energy	JUNE. 2004	4,000,000	\$55,537.60	4,001,000	\$55,551.48	(1,000)	(\$13.88)
Sale of Replacement Energy	JUNE. 2004	233,000	\$13,682.85	232,000	\$13,551.13	1,000	\$131.72
Excess Energy To EAI	JUNE. 2004	3,452,000	(\$52,994.76)	3,453,000	(\$53,010.11)	(1,000)	\$15.35
Prior Month Adjustment	JUNE. 2004	0	\$819.52	0	\$819.52	0	\$0.00
Total Actual Power & Energy			\$17,045.21		\$16,912.02		\$133.19
Actual Gen. of Energy (ISES 2)	JUNE. 2004	36,999,000	\$513,694.44	37,000,000	\$513,708.32	(1,000)	(\$13.88)

NET TOTAL ADJUSTMENT

\$119.31

EXPLANATION FOR ADJUSTMENT

The bill was revised to adjust energy quantities as a result of the re-allocation made by EMO July 26, 2004, upon final load data.

Robert M. Gross, Jr., P.E.  
President

Ph: 770 425 8100  
Fax: 770 426 0303  
bobg@gdsassociates.com

July 26, 2004

John P. Hurstell  
Director Wholesale Transactions  
Entergy  
10055 Grogans Mill Road, Suite 300  
The Woodlands, TX 77380

Re. Independence Steam Electric Station – Requested Information

Dear Mr. Hurstell: 

As you know, on June 23, 2004, Entergy announced a plan, effective July 1, to change the designation of the type and pricing of energy supplied to the co-owners of the ISES and White Bluff plants by EAI when the plants are scheduled by EAI to operate below the plants' generation capability due to system constraints, as determined by Entergy. The co-owners have protested EAI's plan to price certain energy, supplied from Entergy's other resources to meet an ISES 2 schedule, at Entergy system incremental price instead of the plant coal stockpile equivalent price.

If the parties cannot resolve their dispute prior to EAI's August bill for July service, then ETEC will need additional information from EAI. Along with the August bill, ETEC requests EAI to supply the following information on an hourly basis for the July 2004 service period and subsequent periods until the dispute is resolved:

- The average cost per ton of the coal stockpile for the Independence SES and the heat rate of the relevant Unit [Unit#2] assuming operation at 60% loading during summer test conditions, as specified in the Operating Agreement § 8.4.
- The amount of energy that ISES#2 was determined by Entergy to be capable of generating (under its new procedures that take into account system constraints as well as unit outages) and the amount of energy that ISES#2 was determined by Entergy to be incapable of generating, broken down by categories including partial and full outages, QF puts, AGC, TLRs, and other system constraints.
- The MW of ISES#2 generation actually scheduled and made available by EAI for the account of ETEC
- The rate EAI charged ETEC for energy scheduled and made available to ETEC by EAI when ISES#2 was capable of generation, EAI elected not to schedule the full

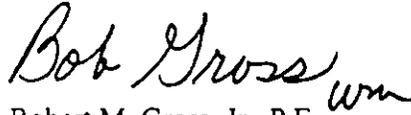
John P. Hurstall  
July 26, 2004  
Page 2

capability of ISES#2, and EAI supplied some or all of the scheduled power from other EAI resources. See Operating Agreement § 8.4.

- The basis for the rate EAI charged ETEC, as specified directly above, in sufficient detail to verify the charge.

ETEC requests this information both to carry out the dispute resolution terms of the Power Coordination and Interchange Agreement Between Entergy Arkansas, Inc. and East Texas Electric Cooperative, Inc., Article IV, and pursuant to the ISES Operating Agreement, Section 11.4. The Operating Agreement requires EAI to “furnish or make available with reasonable promptness and at reasonable times any and all other information relating to such matter.” The term “such matter” includes EAI’s July 1 change to the rate for under scheduling power.

Sincerely yours,



Robert M. Gross, Jr., P.E.  
President

cc: Hugh McDonald (President, Entergy Arkansas, Inc.)  
William H. Burchette (via e-mail)  
John H. Butts (via e-mail)  
Other Co-Owners in ISES

Q:\55016\118\Letters\Notice Letter to Entergy.doc