

Introduced by Westlund Council Bill No. RI32-83

A RESOLUTION

authorizing agreement with the City of Sikeston, Missouri, for power sales; and prescribing the form and content of said agreement.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. That the City Manager and City Clerk are hereby authorized and directed to execute, on behalf of the City of Columbia, Missouri, a municipal corporation, a contract with the City of Sikeston, Missouri, for power sales.

SECTION 2. That the form and content of said agreement shall be substantially as set forth in Exhibit "A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

ADOPTED this 6<sup>th</sup> day of September, 1983.

ATTEST:

Patricia S. Scott  
City Clerk

Jack Westlund  
Mayor and Presiding Officer

APPROVED AS TO FORM:

David E. Evans  
City Counselor

Permanent Record  
Filed in Clerk's Office

COLUMBIA, MISSOURI

**Water & Light Dr**

# POWER SALES CONTRACT

This POWER SALES CONTRACT made and entered into as of the 4<sup>th</sup> day of October, 1983, by and between the CITY OF SIKESTON, MISSOURI ( the "Seller") and the CITY OF COLUMBIA, MISSOURI (the "Purchaser").

WITNESSETH:

WHEREAS, Seller and Purchaser are municipal corporations duly created, organized and existing under and by virtue of the laws of the State of Missouri; and

WHEREAS, Seller has constructed as an addition to its municipal electric system an electric generating station consisting of a coal-fired, steam-electric generating unit with a nominal rating of 222 MW net capability and related structures and facilities within the corporate limits of the Seller which it will use to provide for the immediate and future needs of the Seller and its inhabitants for electric power and energy, such generating station in these recitals being referred to as the "Project"; and

WHEREAS, the Seller has electric power and energy surplus to the immediate needs of the Seller and its inhabitants, which surplus power and energy may pursuant to the authority contained in Section 91.020, Revised Statutes of Missouri, 1978, be sold to other municipal corporations for their use and the use of their inhabitants and also to persons and private corporations for use

beyond the corporate limits of the Seller; and

WHEREAS, certain other municipal corporations, under the authority contained in Section 91.030, Revised Statutes of Missouri, 1969, and certain utilities have entered into contracts to purchase surplus power and energy from time to time available from the Project and the Seller has agreed to sell such power, subject to certain rights of withdrawal by the Seller; and

WHEREAS, the addition of the Project to Seller's existing electric system has been determined by the Seller to be the most desirable manner of providing sufficient economical and reliable electric service to itself and its inhabitants; and

WHEREAS, the Seller is authorized by Article VI, 27 of the Constitution of the State of Missouri to issue, and has sold revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving revenue producing electric light works or power plants which are owned exclusively by the Seller, provided that the cost of operation and maintenance thereof and the principal and interest of such revenue bonds shall be payable solely from the revenues derived by the Seller from the operation of the utility; and

WHEREAS, the Seller and Purchaser have entered into a Power Sales Contract on December 1, 1976, providing for the sale of surplus power and energy produced by the Project by the Seller to the Purchaser, which contract ends at midnight on May 31, 1986; and

WHEREAS, the Seller and Purchaser desire to continue the sale

and purchase of Project surplus power and energy beyond May 31, 1986;

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements and covenants herein contained, Seller and Purchaser hereby agree as follows:

## PART I

### Section 1. Definitions

As used herein, the terms hereinafter set forth shall have the meanings hereinafter given.

(a) "Bond Ordinance" shall mean the Bond Ordinance adopted by the Seller authorizing the issuance of bonds, including the Project Bonds, as amended or supplemented as in the Bond Ordinance provided.

(b) "Consulting Engineer" shall mean one or more engineers or engineering firms designated as such by the Seller under the Bond Ordinance, having demonstrated expertise in the field of electric power generation, power supply and electric utility operations, rates and feasibility studies.

(c) "Contract" shall mean this Contract by and between Seller and the Purchaser as the same may be amended from time to time pursuant hereto.

(d) "Contract Demand" shall mean the total amount of purchased unit participation capacity in any given year as shown in schedule A.

(e) "Contract Year" shall mean the twelve (12) month period

commencing at 12:01 a.m. on June 1 of each year and ending at 12:01 a.m. on the following June 1.

(f) "Debt Service" shall mean, with respect to any period, the aggregate of the amounts required by the Bond Ordinance to be paid during such period into any fund or funds created by the Bond Ordinance for the sole purpose of paying the principal (including any sinking fund installments) of and premium, if any, and interest on the Project Bonds from time to time outstanding as the same shall become due; provided, however, that Debt Service shall not include payment of principal on any Project Bond which becomes due by reason of the acceleration of the maturity thereof under the Bond Ordinance.

(g) "Electric System" shall mean the Existing System and the Project.

(h) "Existing System" shall mean the electric utility system by which the Seller serves the needs of the Seller and its inhabitants and others at the time of the execution of this Contract and all additions, expansions and improvements thereunder and renewals thereof hereafter made, other than the Project.

(i) "Fuel Costs" shall mean with respect to any Month the amount chargeable to the Seller's accounts during such Month as the cost of fuel used in the production of energy from the Project in accordance with the Uniform System of Accounts.

(j) "Month" shall mean a calendar month.

(k) "Monthly Power Costs" shall mean all of the Seller's costs to the extent not included in the Cost of Acquisition and Construction

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Ordinance to be deposited during such Month into any fund or account established by the Bond Ordinance;

(2) The amount required under the Bond Ordinance to be paid or deposited during such Month into any fund or account established by the Bond Ordinance in connection with the Project (other than funds and accounts referred to in clause (1) above), other than amounts required to be paid or deposited by reason of the transfer of amounts from such funds or accounts to the funds or accounts referred to in clause (1) above; provided, however, that no such amount paid or deposited during any Month into any such fund or account shall exceed an amount equal to three percentum (3%) of the amount of Debt Service required to be deposited during such Month into any fund or account established by the Bond Ordinance;

(3) Any amount which the Seller may be required during such Month to pay for the prevention or correction of any unusual loss or damage or for major renewals, replacements, repairs, additions, improvements, betterments and modification necessary, in the opinion of the Consulting Engineer, to keep

the Project in good operating condition or to prevent a loss of revenues therefrom to the extent that (A) the Seller is not reimbursed by the proceeds of insurance covering the same; (B) funds for such payment are not available to the Seller from any funds or accounts established under the Bond Ordinance for such Purpose; and (C) funds for such payment are not provided by the issuance of additional bonds pursuant to Section 16 of this Contract; and

(4) One-twelfth (1/12) of the costs of operation, maintenance, administration and general expenses of the Project for such Contract Year as defined in the Uniform System of Accounts which are not included in the costs and expenses specified in other clauses of this paragraph (k).

Seller shall apply, as a credit against Monthly Power Costs, all receipts, revenues and other moneys received by it from the sale of surplus equipment, materials and supplies relating to the Project and from the sale of energy pursuant to Section 20 of this Contract.

Any amount by which the cost of coal purchased by the Seller exceeds the receipts, revenues and other moneys received by Seller upon the sale or other disposition of such coal shall be added to Monthly Power Costs and any amount by which said cost to the Seller is less than said receipts, revenues and other moneys shall be credited against Monthly Power Costs.

In the event such Contract Year shall embrace eleven (11) or fewer Months the fraction expressed in clause (4) above shall be



1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971).

(1) "Net Output Rating" shall mean the net continuous capacity of the Project determined as prescribed by the Power Pool for the uniform rating of generating equipment.

(m) "Party" or "Parties" shall mean the Seller, the Purchaser or both as the case may be.

(n) "Point of Delivery" shall mean the point of interconnection between the facilities of, or available to, the Purchaser and the terminal facilities of the Project within the corporate limits of the Seller.

(o) "Power Pool" shall mean the Southwest Power Pool and its successors or such other pool or interconnected system as Seller shall select.

(p) "Power Sales Contract" shall mean this Contract providing for the purchase and sale of power and energy from the Project.

(q) The "Project" shall mean the electric generating station consisting of a 235 megawatt design capability coal-fired, steam-electric generating unit and related structures and facilities, including environmental control and cooling facilities, the metering equipment referred to in Section 8, all facilities necessary to deliver power and energy to the Point of Delivery for the Purchaser and the 161 kV transmission line extending approximately 25 miles from the generating station to Associated Electric Cooperative's New Madrid Plant together with any major renewals, replacements,

repairs, additions, improvements, betterments and modifications necessary, in the opinion of the Consulting Engineer, to keep the Project in good operating condition or to prevent a loss of revenues therefrom, and any additions, improvements, repairs and modifications of the Project required by any governmental agency having jurisdiction over the Project (other than the Seller in its capacity as owner of the Project).

(r) "Project Bonds" shall mean bonds issued by the Seller pursuant to the Bond Ordinance to pay the Cost of Acquisition and Construction, additional bonds permitted by Section 16 hereof and refunding bonds permitted by Section 17 hereof but shall not include any other bonds issued under the Bond Ordinance.

(s) "Prudent Utility Practice" shall mean at a particular time any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry at such time, or which, in the exercise of reasonable judgment in light of facts known at such time, could have been expected to accomplish the desired results at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition and the fact that the Seller is a municipal corporation of the State of Missouri. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods and acts, having due regard for manufacturers' warranties and the requirements of governmental agencies of competent jurisdiction and shall apply not only to functional parts of the Project but also to appropriate structures, landscaping, painting, signs,

lighting or other facilities and to public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project.

(t) "Purchaser's Share" shall mean, with respect to any Contract Year, the percentage amount based on the ratio of the Purchaser's Contract Demand amount in such Contract Year to the total of 222 MW of net capability unless restricted by operating conditions and equipment beyond Seller's control. Verification by Consulting Engineer will be provided if requested by the Purchaser.

(u) "Uncontrollable Forces" shall mean any cause beyond the control of the Seller and which by the exercise of due diligence the Seller is unable to prevent or overcome, including but not limited to an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy, civil or military authority, including court orders, injunctions and orders of governmental agencies with proper jurisdictions, insurrection or riot, an act of the elements, failure of equipment, inability of the Seller or any contractor engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers, or inability of the Seller to sell or issue Project Bonds.

(v) "Uniform System of Accounts" shall mean the Federal Energy Regulatory Commission Uniform System of Accounts for Class A and B Public Utilities and Licensees as prescribed and, from time to time, as amended or modified or as substitution may be made by the Federal Energy Regulatory Commission or its successors.

Section 2. Term

This Contract shall become effective on the above date of its execution and shall continue in force thereafter with the initial term beginning on June 1, 1986, and extending for 20 years with an automatic extension thereof for an additional period of 15 years, or to the end of the useful life of the Sikeston Power Station No. 1, whichever period is longer, unless the Purchaser or Seller elects after the initial term by giving written notice of not less than sixty (60) months to cancel the Contract or to reduce the Contract Demand; and provided further that this Contract may be terminated earlier as provided in Sections 6, 22 and 27 hereof.

PART II

Section 3. Availability of Power and Energy.

(a) As provided in this Contract, the Purchaser shall be entitled to receive and the Seller shall furnish during each Contract Year from the Project the Purchaser's Contract Demand shown in Schedule A attached hereto.

(b) Subject to the provisions of Section 6 of this Contract, the Purchaser shall at all times, be entitled to schedule and have the right to receive energy from the Project at a rate not to exceed the Purchaser's Share of the then available capacity of the Project.

(c) Purchaser shall take delivery during each Contract Year, if available from the Project, of an amount of energy equal to or greater than that amount which is the product of (i) the load

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A schematic diagram of a 2D hexagonal lattice. The lattice is composed of solid circles representing atoms. A central atom is labeled '1'. It is surrounded by six atoms in a hexagonal arrangement, labeled '2' through '7'. The distance between the central atom and each of these six atoms is labeled  $r_0$ . The lattice extends further outwards, with additional atoms labeled '8' and '9' shown at the periphery.

capital, which revised budget shall supersede the previous budget of Monthly Power Costs.

(c) On or before the tenth (10th) day of each Month beginning with the initial Month of the first Contract Year the Seller shall render to the Purchaser a monthly statement presenting one hundred ten percentum (110%) of each of the following:

(i) The Purchaser's Share of the Monthly Power Costs for such Month as shown in the budget of Monthly Power Costs for such Contract Year furnished by the Seller pursuant to paragraph (a) or (b) above:

(ii) The actual cost of any additional capacity agreed to in advance by the Contracting Parties above that to which the Purchaser is entitled under this Contract delivered to the Purchaser during the preceding Month;

(iii) The amounts determined by multiplying (x) the Fuel Costs for the preceding Month by (y) the ratio of (A) the total kilowatt hours delivered to the Purchaser from the Project at the Point of Delivery (adjusted for losses to the Point of Delivery and Project use) during such preceding Month to (B) the total kilowatt hours delivered from the Project at the Point of Delivery (adjusted for losses to the Point of Delivery and Project use) during such preceding Month.

The Purchaser shall pay to the Seller the amounts shown on such statement on or before the last day of such Month.

(d) Except as otherwise specifically provided in this Contract, the payments to be made pursuant to paragraph (c) above shall be due and payable at the office of the Seller specified in Section

32 of this Contract whether or not the Project is operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon the performance or nonperformance by the Seller or any other party under this Contract or any other agreement for any cause whatsoever.

(e) Amounts due and not paid by the Purchaser on or before the date on which they are due shall bear an additional charge equal to the lesser of three-quarters of one percentum ( $3/4$  of 1%) per month, compounded monthly, or the maximum amount permitted under applicable law, until such amount and such additional charge is paid in full.

(f) In the event of any dispute as to any portion of any monthly statement, the Purchaser shall nevertheless pay the full amount shown on such statement when due and shall, within sixty (60) days from the date of such statement give written notice of the dispute to the Seller. Such notice shall identify the disputed statement, state the amount in dispute and set forth a full statement of the grounds on which such dispute is based. No adjustment shall be considered or made for disputed charges unless notice is given as aforesaid. The Seller shall give consideration to such dispute and shall advise the Purchaser with regard to the Seller's position relative thereto within thirty (30) days following receipt of such written notice. Upon determination of the correct

amount, any difference between such correct amount and such full amount shall be subtracted from the statement next submitted to the Purchaser after such determination pursuant to paragraph (c) above.

(g) On or before the one hundred twentieth (120th) day after the end of each Contract Year, the Seller shall determine, based on the annual audit of accounts provided for in Section 10 whether the aggregate of any amount found to have been paid by the Purchaser in excess of the amount which should have been paid by the Purchaser shall be credited, and the aggregate of any amount by which the amount which should have been paid exceeds the amount paid shall be added, to the statement submitted to the Purchaser pursuant to paragraph (c) above for the Month next following the Month in which such determination was made.

## PART IV

## Section 6. Characteristics of Service.

(a) Electric service to be provided by the Seller under this Contract shall be three phase, sixty cycle, at the required interconnection voltage level.

(b) Power and energy shall be delivered pursuant to an hourly schedule, such schedule to be submitted to the Seller by the Purchaser at least nine (9) hours prior to 12:01 a.m. of the day for which such schedule has been submitted or on such other advance notice on which the Seller and the Purchaser shall agree. Purchaser shall be entitled to modify the hourly schedule provided



such notice of modification is furnished to the Seller not less than three (3) hours in advance of the hour in which the change in schedule is to occur.

(c) Power scheduled from the Project shall not exceed the reasonable and proper capability of the Project less required reserve margins maintained for or by Sikeston. Such restriction or scheduling will not diminish scheduling of contract demand by Purchaser.

(d) The Seller will establish, to the extent practicable, scheduled periods when the Project shall be shut down for maintenance and will give the Purchaser, whenever possible, at least one hundred twenty (120) days' notice of such periods.

(e) Regulation of voltage shall be within such limits on which the Seller and the Purchaser shall agree and in accordance with Prudent Utility Practice.

(f) The Seller may temporarily interrupt or reduce deliveries of energy from the Project if the Seller determines that such interruption or reduction is necessary in case of emergencies affecting the ability of the Seller to produce or deliver energy from the Project and in order to install equipment, make repairs and replacements to and make investigations and inspections of or perform maintenance work on the Project. In order that operation of the Purchaser's electric utility system will not be unreasonably interrupted or interfered with, the Seller, after consulting with the Purchaser regarding any planned interruption or reduction, will to the best of its ability schedule such interruption or reduction at a time which will cause the least interference to the operation of the Purchaser's electric utility

system and interconnection systems. For temporarily reduced deliveries of energy from the Project, the Purchaser's delivered amounts will be reduced on a pro rata basis.

(g) Should all or a portion of the Contract Demand not be available to the Purchaser in any month because of equipment failure or breakdown, the Seller shall use its best efforts to correct such failure or breakdown as promptly as possible. Except as provided for in paragraph (i) of this Section 6, if Seller has

~~not corrected the failure or breakdown and restored the full~~  
Contract Demand within 180 days following the failure or breakdown, the Purchaser will withhold the Monthly Power Cost to the Seller for the amount by which the Contract Demand has been reduced as a result of such equipment failure or breakdown. After the 180 day period, when equipment is repaired and total Contract Demand is made available to the Purchaser, as demonstrated by appropriate test or operation, the Seller shall be entitled to begin receiving monthly payment for total Contract Demand. However, if the Seller has not repaired equipment and restored Contract Demand for two (2) years from the date of equipment failure, the Purchaser may, at its option, not pay for this portion of the Contract Demand. Notwithstanding Section 5, the Seller shall not increase the cost per kilowatt of capacity received by the Purchaser due to a reduction in Project capability caused by equipment failure or breakdown for a period of twelve (12) months from the date of such failure.

(h) Except as provided for in paragraph (i) of this Section 6, during any period of repair, restoration or reconstruction of the Project, in which the unit is inoperative, if, upon reasonable request by the Purchaser, the Seller is unable to obtain and provide to the Purchaser a written certificate of an engineer or engineering firm of national reputation having demonstrated expertise in the field of electric power generation, power supply and utility operations to the effect that the Seller using its best efforts to repair, restore or reconstruct the Sikeston Unit, then the Purchaser's financial obligations under this agreement shall be suspended. Provided the Project becomes operative within two (2) years of the date of failure, and upon completion of the repairs, restoration or reconstruction, the Parties' obligations, rights and interests relating to the Project shall again be as specified in this Contract. If the inoperative period extends beyond two (2) years from the date of failure, the Purchaser may terminate this Contract.

(i) Notwithstanding paragraphs (g) and (h) of this Section 6, the Purchaser will not withhold monthly payment or terminate the Contract because of equipment failure or Project inoperation if the Seller, at its option, will commit to and provide, replacement power and energy from another source for the remaining term of the Contract at the Point of Delivery which, together with any remaining Project capacity, provide the full Contract Demand and which is provided by the Seller to the Purchaser at an energy cost

equal to or less than the cost of energy that would have been provided by the Project had an equipment failure or breakdown or period of inoperation not occurred.

(j) Except as interrupted or reduced by Uncontrollable Forces, or as otherwise provided in this Contract, the Seller shall operate the Project and make power and energy therefrom available to the Purchaser in accordance with this Contract at all times during the term of this Contract.

(k) Nothing contained in this Contract shall be construed to prohibit the Seller from contracting with others for the operation, maintenance or dispatch of the Project.

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#### Section 7. Coordination Operation.

(a) The Project shall be operated in coordination with other power producing electric systems with which the power Purchaser's electric utility system and the Electric System are interconnected. In order to maintain and operate the Project in such coordinated manner and at the most economical cost, the Seller agrees that to the maximum feasible extent consistent with Prudent Utility Practice, it will undertake the operation and maintenance of the Project so as to produce the amounts of power and energy, including reactive power, usable for and coordinated with the load requirements of the Seller and the power Purchaser, and coordinated with other interconnected electric systems; provided, however, that if at any time and from time to time, the Seller determines that it is able to provide energy to the Purchaser from another source

more efficiently and economically than energy, at the time, can be provided from the Project, it may cease, suspend, interrupt or reduce delivery of energy from the Project for such periods of time as it may determine to the extent it is able to purchase power and energy from such other source. The actual cost to the Seller for such purchased energy shall be deemed a part of Fuel Costs which is charged monthly in accordance with Section 5 of the Contract, and such energy shall be deemed delivered at the Point of Delivery.

(b) Each Party shall designate, in writing an Authorized Operating Representative and an alternate to act on such Party's behalf and shall promptly notify the other Party of any subsequent changes in designations. The Authorized Operating Representatives of the Parties shall mutually adopt operating procedures necessary for implementing the provisions of this Contract. Each Authorized Operating Representative shall advise the other of any happening concerning his or her Party which may affect operation under the agreement, including but not limited to, possible increases or decreases in the charges specified in Section 5, potential dispute, and determinations of the cost effectiveness of temporarily ceasing to operate the Sikeston Unit.

Authorized Operating Representatives shall make recommendations to the Parties concerning coordination of maintenance schedules.

#### Section 8. Measurement of Power and Energy.

The Seller will install, maintain and operate the metering equipment required to measure the quantities of power and energy









be necessary in the reasonable judgment of the Seller to protect the Project, the Existing System, the electric utility systems of all other power purchasers and any interconnected system from disturbance thereto caused by the Purchaser.

Section 15. Source of Purchaser's Payments.

The obligation of the Purchaser to make payments to the Seller under Section 5 of this Contract shall be limited to the obligation to make payments from revenues of the Purchaser's electric utility system and available electric utility system reserves. All payments made by the Purchaser pursuant to this Contract shall constitute operation and maintenance expenses of its electric utility system. The Purchaser shall not be obligated to levy any taxes, general or special, for the purpose of paying to the Seller any sum due under Section 5.

PART VII

Section 16. Additional Bonds.

It is understood by the Purchaser that additional Bonds may be issued and sold by the Seller in accordance with the provisions of the Seller's Bond Ordinance at any time and from time to time in the event funds are required to pay all or a portion of the cost of (i) any major renewals, replacements, repairs, additions, improvements, betterments and modifications to the Project necessary, in the opinion of the Consulting Engineer, to keep the Project in good operating condition or to prevent a loss of revenues

therefrom, (ii) any major additions, improvements, repairs or modifications to the Project required by any governmental agency having jurisdiction over the Project (other than the Seller in its capacity as owner of the Project) or for which the Seller shall be responsible by virtue of any obligation of the Seller arising out of any contract to which the Seller may be a party relating to the ownership of the Project and (iii) additional fuel inventories for the Project in any Contract Year to the extent that sufficient funds are not available in any reserves for such purpose under the Bond Ordinance; provided, however, that no such additional bonds may be issued for the purpose of adding additional generating units to the Project. Prior to the issuance of additional bonds, the Seller will notify the Purchaser of the impending issue and, at the option of the Purchaser, meet with the Purchaser to discuss uses of funds and impact on demand costs.

#### Section 17. Refunding Bonds.

In the event that the Monthly Power Costs may be reduced by the refunding at any time of all or from time to time of less than all of the Project Bonds then outstanding or in the event it shall otherwise be advantageous in the opinion of the Seller to refund any Project Bonds, the Seller may issue and sell refunding bonds.

#### Section 18. Excess Funds.

In the event the proceeds derived from the sale of Project Bonds exceed in the aggregate the aggregate amount of funds required for the purposes specified in this Contract for the

application thereof, the amount of such excess shall be used to retire, by purchase or redemption Project Bonds in the manner permitted under the Bond Ordinance.

Section 19. Other Bonds.

This Contract shall not be interpreted to restrict the amount of or purpose for which bonds other than Project Bonds may be issued under the Bond Ordinance except that the Seller may not issue bonds under the Bond Ordinance prior in right in any manner to the Project Bonds.

P A R T V I I I

Section 20. Sale of Energy Not Taken by the Purchaser.

Any energy which the Purchaser is entitled to receive under Section 3 but does not schedule may be sold by the Seller to any party upon such terms and conditions as the Seller in its sole discretion shall determine and all receipts, revenues and other moneys received shall be applied as a credit against Monthly Power Costs; and, except as the Purchaser may thereby receive a portion of the benefit of such sale, the Purchaser shall have no right, by offset or otherwise, to any amounts realized by the Seller in connection with such sale.

Section 21. Other Sales of Power and Energy.

It is understood that, as between the Purchaser and the Seller, subject to the provisions of the Bond Ordinance, the Seller may sell power and energy which the Purchaser is not entitled to

receive pursuant to this Contract on such terms and conditions as the Seller in its discretion shall determine.

#### PART IX

Section 22. Default by the Purchaser, Remedies of the Seller.

(a) In the event the Purchaser shall fail to perform any obligation under this Contract, including failure to make to the Seller when due any payment for which provision is made therein ~~the Seller shall have, in addition to any other rights or remedies~~ it may have under law, the following rights and remedies:

(1) The Seller may bring any suit, action or proceedings in law or in equity, including mandamus and action for specific performance, as may be necessary and appropriate to enforce against Purchaser any covenant, agreement or obligation to make any payment for which provision is made in this Contract;

(2) If such failure shall continue for sixty (60) days following written notice to Purchaser from the Seller specifying such failure, the Seller may at any time thereafter, upon 24 hours' written notice to Purchaser, cease and discontinue delivering energy to Purchaser so long as such failure shall continue; provided, however, that any such cessation and discontinuance shall not relieve Purchaser of any obligation under this Contract, including the obligation to pay amounts becoming due on and after the date of such cessation and discontinuance; and

(3) Whether or not the Seller shall have ceased and discontinued delivering energy pursuant to clause (2) above, if such

failure shall continue for six months following written notice to Purchaser from the Seller specifying such failure, the Seller may at any time thereafter while such failure shall be continuing, upon written notice to Purchaser, terminate this Contract; provided, however, that such termination shall not relieve Purchaser of the obligation to pay any amounts required to be paid under this Contract with respect to any Month ending on or prior to such termination and for the Month in which such termination shall occur, without proration.

Section 23. Default by Seller.

In the event of any default by the Seller in the performance of any of its obligations under this Contract, the Purchaser may bring any suit, action or proceeding in law or in equity, including mandamus, injunction, and action for specific performance as may be necessary or appropriate to enforce such obligation against the Seller, but the same shall not give the Purchaser the right to discontinue the performance of its obligations under this Contract.

Section 24. Abandonment of Remedy, No Waiver.

In the event any action or proceeding taken by the Seller or the Purchaser in connection with the default by the other shall have been discontinued or abandoned for any reason, the Seller and the Purchaser shall be restored to their former positions under this Contract, and all rights, remedies, power and obligations

## Section 25. Reduction of Contract Demand.

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of such reduction.

## PART XI

### Section 26. Assignment, Sale of Purchaser's System.

(a) This Contract shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties to this Contract, which may not be assigned or transferred without the express written consent of the other Party, which consent shall not be unreasonably withheld. No assignment or transfer shall relieve the assigning or transferring Party of any obligation contained in this Contract. The Purchaser acknowledges that the rights of Seller to transfer or assign its interest in this Contract may be limited by the Bond Ordinance.

(b) The Purchaser agrees that it will not sell or otherwise dispose of its electric utility system except on ninety (90) days prior written notice to Seller. Purchaser will not sell or otherwise dispose of its electric utility system in a manner which will adversely affect Purchaser's ability to perform its obligations under the Contract.

### Section 27. Termination, Amendment.

(a) This Contract may not be terminated by either party hereto under any circumstances, including upon the default of the other party, except as otherwise specifically provided in this Contract.

(b) In the event that the Purchaser shall be unable to arrange reasonable wheeling agreements or make other arrangements

necessary to transfer energy from the Point of Delivery to its electrical system, the Purchaser may upon twelve (12) months written notice, terminate this Contract; provided that the Purchaser obtains a written determination, by an engineer or engineering firm of national reputation having demonstrated expertise in the field of electric power generation and transmission, that wheeling arrangements are not reasonably available to the Purchaser. Such notice shall not be given prior to June 1, 1986.

(c) If this Contract shall be terminated pursuant to paragraph (b) of this Section 27, neither the Seller nor the Purchaser shall have any liability to the other after the twelve (12) month notice period including any liability for costs and expenses of the other incurred after such termination.

(d) This Contract may not be amended, modified or otherwise altered in any manner except in writing signed by both parties. The Purchaser acknowledges that the Bond Ordinance may contain provisions restricting the right of the Seller to amend, modify or alter this Contract.

(e) Failure of Sikeston No. 1 Notwithstanding Section 6, if, prior to the expiration of the term of this Agreement, Sikeston No. 1, for any reason, becomes permanently inoperative, then the Parties' rights, duties and obligations hereunder shall cease and terminate as of the date the Purchaser obtains a written determination, by an engineer or engineering firm of national reputation having demonstrated expertise in the field of electric power generation, power supply and electric utility operations, that Sikeston No. 1 has become permanently inoperative. The



Purchaser shall pay the costs of providing such a written determination.

Section 28. Compliance with Laws.

The Purchaser shall not dispose of power and energy to which it is entitled pursuant to this Contract in any manner which would cause the sale thereof by the Seller to the Purchaser to contravene any provision of law at the time applicable thereto.

Section 29. Taxes.

In the event that any Federal, state or local tax shall be levied upon the sale and delivery of power and energy to the Purchaser pursuant to this Contract or upon the Seller measured by the power and energy sold to the Purchaser or the revenue received by the Seller therefrom, the amount of such tax shall be added to the next statement rendered to the Purchaser pursuant to Section 5.

Section 30. Governing Law.

This Contract shall be governed by the laws of the State of Missouri.

Section 31. Notices and Computation of Time.

Any notice which may be or is required to be given under this Contract shall be deemed properly given if mailed postage prepaid registered mail, receipt requested and addressed to the Seller at Board of Municipal Utilities of Sikeston, Missouri, P.O. Box

370, Sikeston, Missouri 63801 and the Purchaser at Water & Light Department, P.O. Box N, Columbia, Missouri 65205; and in computing any period of time from such notice, such period shall commence at 12:01 a.m. on the day following the date such notice was mailed. The foregoing designations and addresses to which notices shall be addressed may be changed at any time and from time to time by giving notice as above provided.

Section 32. Addresses for Statements and Payments.

(a) Statements rendered by the Seller pursuant to Section 5 shall be mailed to the Purchaser, addressed as follows: Water & Light Department, P.O. Box N, Columbia, Missouri 65205, or if changed, at its then current business address.

(b) Payment thereof shall be made to the Seller at Board of Municipal Utilities of Sikeston, Missouri, P.O. Box 370, Sikeston, Missouri 63801, or if changed, at its then current business address, in a manner so that the Seller will have funds available at the opening of business on the day such payment shall become due.

(c) In the event that any day on which any payment under this Contract shall become due shall be a Saturday or Sunday or a holiday recognized by the Seller, the payment shall be made on the next preceeding day which is not a Saturday, Sunday or such holiday.

Section 33. Severability.

In the event that any provision in this Contract is declared illegal or no longer in force by reason of any judgment or order

Issued by court or regulatory body of jurisdiction, all remaining provisions of this Contract not affected by such judgment or order shall continue in full force and effect.

Section 34. Reports and Information.

Each party hereto shall furnish to the other party such reports and information concerning its operations as the other party may reasonably request from time to time.

Section 35. Right of Access.

Each party grants to the other party right of access to its premises to install, maintain, operate, repair, and renew any and all equipment, apparatus and devices owned or operated by such other party and necessary in the performance of this Contract.

Section 36. Power Pool Participation.

(a) The Seller shall participate in the Power Pool. It is understood that the Seller will observe its own spinning and installed reserve provisions plus other requirements of this pool.

(b) At any time that the Seller is unable to deliver power to the Purchaser from the Project, the Seller will use its best efforts to obtain and deliver to the Purchaser, with the consent of the Purchaser, power from other sources as may be available. The charge for this power will be the Seller's out-of-pocket costs allocable thereto, and shall be added to the next statement submitted to the Purchaser pursuant to Section 5.

Section 37. Emergency Interchange.

When either party, in an emergency, shall request emergency interchange service which the other is in a position to furnish, this service shall be provided to the extent that, in the judgment of the supplier, the generation or purchase and the delivery of such power and energy will not jeopardize service in the system of the supplier or the interconnected systems. Payment for this service shall be at the option of the supplier:

- (1) under the terms of this Contract or
- (2) return in kind, at times mutually agreed upon, or
- (3) an amount equal to out-of-pocket costs.

Section 38. Interconnections.

It is agreed that either party to this Contract may enter into interconnection contracts with third parties.

Section 39. Wheeling.

It is agreed that either party to this Contract will wheel power over its transmission system for the other party in accordance with Prudent Utility Practice, at such rates, in such quantities, for such duration and on such other conditions as may be agreed upon.

Section 40. Liability of the Parties.

Each Party will indemnify and save harmless the other Party against loss, damage or liability resulting from claims asserted by third persons against either or both Parties on account of

injury or death to persons or damage or destruction of property occurring on such indemnifying Party's system, unless such injury or damage shall have resulted from the sole negligence of the other Party; provided, however, that each Party shall be solely responsible for claims of, and payments to, its employees and agents for injuries occurring in connection with their employment or arising out of any worker's compensation law.



Date: Oct 4, 1983

SCHEDULE A

Power Schedule for: Columbia  
(Purchaser)

<u>Contract Year</u> <u>Beginning</u>	<u>(Net Delivery at Plant)</u> <u>Unit Participation</u> <u>Capacity - kW</u>
June 1, 1986	44,000
June 1, 1987	49,500
June 1, 1988	49,500
June 1, 1989	49,500
June 1, 1990	55,000
June 1, 1991 and thereafter	55,000

