BEFORE

THE PUBLIC SERVICE COMMISSION

OF

SOUTH CAROLINA

S. C. PUBLIC SERVICE COMMISSION
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IN RE: Application of Cherokee County Cogeneration Corporation and Duke Power Company for Approval of Purchased Power Agreement.)))) APPLICATION

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9/21/94

Cherokee County Cogeneration Corporation, as general partner on behalf of Cherokee County Cogeneration Partners, L.P., ("Cherokee"), and Duke Power Company ("Duke"), collectively "the Applicants," file the within Application for approval of the Purchased Power Agreement, executed by the Applicants on August 26, 1994 ("the Agreement"). A copy of the Agreement is attached hereto and incorporated herein by reference. In support of the relief which they request herein, Cherokee and Duke would respectfully state unto this honorable Commission:

1. The Commission has jurisdiction to consider this matter under S.C. Code Ann., § 58-27-820 (1976) and 26 S.C. Code Ann. Regs. 103-303 (1976).

2. Cherokee County Cogeneration Corporation, a corporation organized and existing under the laws of the State of Delaware and is general partner for Cherokee County Cogeneration Partners, L.P., a limited partnership under the Delaware Revised Uniform Limited Partnership Act.

3. Duke Power Company is a corporation organized and existing under the laws of the State of North Carolina with its principal offices in Charlotte, North

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Carolina. Among other things, Duke provides electric service to retail customers in the State of South Carolina, which subjects such operations to the jurisdiction of the Commission as an "electrical utility," pursuant to S.C. Code Ann. §§ 58-27-10 et seq. (1976).

4. Cherokee intends to construct, own, operate and maintain a natural gas-fueled (with liquid propane pipeline back-up) combined-cycle electric cogeneration facility in the vicinity of Gaffney, South Carolina ("the Facility"). Integral with the Facility, Cherokee will construct and operate a hydrocarbon processing facility using a "proprietary process" which will include a thermal absorption process system. All steam produced through the operation of the hydrocarbon processing facility will be retained for use by Cherokee. The Facility will be a qualifying facility ("QF") under the rules and regulations of the Federal Energy Regulatory Commission ("FERC"), promulgated pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 19 U.S.C. §§ 2601 et seq. (1978). The Facility will have an installed generating capacity of approximately 80 megawatts (nameplate rating). Upon approval of the Agreement, Cherokee will submit an application for a certificate of environmental compatibility and public convenience and necessity from this Commission pursuant to S.C. Code Ann. §§ 58-33-10 et seq. (1976). Cherokee will likewise seek FERC's determination of its status as a QF pursuant to the certification procedure set forth in 18 C.F.R. § 292.207(b).

5. As more fully set forth in the provisions of the Agreement, Cherokee will sell and deliver exclusively to Duke all the electric power and energy generated by the Facility, net of the Facility's own auxiliary electrical requirements, and Duke shall purchase, receive, use and pay for such power and energy. The Agreement contains an initial term

of fifteen (15) years which may be extended for an additional five (5) year period. The Applicants estimate that Cherokee will initially deliver energy to Duke under the Agreement on or about August 1, 1996.

6. Duke has agreed to make capacity and energy payments to Cherokee under rates incorporated in Appendix A of the Agreement. The rates set forth in the Agreement are based upon Duke's projections of its avoided capacity and energy costs in the most recent regulatory proceeding in which Duke's avoided cost rates for purchases from QFs were determined (in North Carolina Utilities Commission Docket E-100, Sub 66), and such rates employ the Commission's currently approved methodology for the determination of avoided costs (Order No. 89-59, SCPSC Docket No. 80-251-E).

7. Duke will provide back-up and maintenance power for the Facility pursuant to a separate electric service agreement under Duke's approved rate schedules for such services.

8. Duke will supply electric service to Cherokee's manufacturing plant which Cherokee will operate on a site adjacent to the Facility pursuant to a separate electric service agreement under Duke's approved rate schedule applicable to such service.

9. The Agreement is consistent with the intent of PURPA to encourage the development of qualifying facilities for cogeneration and the Agreement is consistent with the principles which this Commission has established in its orders implementing PURPA. See Order No. 81-214, dated March 20, 1981, and Order No. 85-347, dated August 2, 1985, and Order No. 89-59, dated February 8, 1989, issued in SCPSC Docket No. 80-251-E. Moreover, the terms of the Agreement, which provide that Duke's payments to

Cherokee for capacity and energy will be at or below Duke's projections, as of the date of contract negotiations, of its future avoided costs, are consistent with the public interest. Finally, the availability, purchase and use of the capacity and energy from the Facility is consistent with Duke's Integrated Resource Plan which this Commission has approved. See Order No. 93-008, dated January 25, 1993, in SCPSC Docket No. 92-208-E.

10. Because the Agreement complies with existing law and complies with this Commission's requirements and policies, Cherokee and Duke request that the Commission's approval of the Agreement include the determinations that the payments which Duke would make to Cherokee under the Agreement constitute a prudent expenditure and that such approval will entitle Duke to recover the cost of those payments under the Agreement, absent some extraordinary circumstance, such as a situation in which the Commission's finding of prudence was later determined to have been induced through perjury, fraud, collusion, deceit, mistake, inadvertence or the intentional withholding of material information.

11. Because the nature of this proceeding for approval of the Agreement, Cherokee and Duke submit that no formal hearing would be necessary for the Commission to review these matters and provide the relief which the Applicants request.

WHEREFORE, Cherokee and Duke respectfully pray unto this honorable Commission:

1. To issue its order approving the Agreement, including the determinations of prudence more fully described in this Application; and

2. For such other and further relief as is just and proper.

Respectfully submitted,

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August 29, 1994

PURCHASED POWER AGREEMENT

between

DUKE POWER COMPANY

and

CHEROKEE COUNTY COGENERATION PARTNERS, L.P.

"Gaffney Cogeneration Facility"

Contract No. 94-02

Contract Execution Date August 26, 1994

"This Agreement is subject to review by the South Carolina Public Service Commission upon complaint by either party, or pursuant to its own motion, and the terms herein may be modified in whole or in part or declared null and void by the South Carolina Public Service Commission." ***(NOTE: From SCPSC Orders No. 81-214 and 85-347 in Docket No. 80-251-E.)***

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"This Agreement is subject to review by the South Carolina Public Service Commission upon complaint by either party, or pursuant to its own motion, and the terms herein may be modified in whole or in part or declared null and void by the South Carolina Public Service Commission." ***(NOTE: From SCPSC Orders No. 81-214 and 85-347 in Docket No. 80-251-E.)***

PURCHASED POWER AGREEMENT

THIS PURCHASED POWER AGREEMENT ("Agreement") is made this 26th **day of** August, **19**94, by and between

DUKE POWER COMPANY,

a North Carolina Corporation ("Duke"), and

CHEROKEE COUNTY COGENERATION PARTNERS, L.P.,

a limited partnership under the Delaware Revised Uniform Limited Partnership Act ("Cherokee"), for the

"Gaffney Cogeneration Facility."

(Hereinafter, the parties are also referred to individually as "Party" and collectively as "Parties". Duke is also referred to as "Company" and Cherokee is also referred to as "Customer" in Duke's Service Regulations and in the Rules and Regulations of the South Carolina Public Service Commission ("Commission")).

WHEREAS, Cherokee intends to construct, own, operate and maintain a natural-gas-fueled (with liquid propane pipeline back-up) combined-cycle electric cogeneration facility on a site located in Gaffney, South Carolina (the "Gaffney Cogeneration Facility" or "Facility") which is a qualified facility ("QF") as determined by the Federal Energy Regulatory Commission ("FERC") pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), having an installed electric generating capacity of approximately 80,000 kilowatts and consisting of **a gas-fired combustion turbine generator with a nameplate rating of 55,000 kilowatts, a 1,270 psia, 189,000 lbs./hr. heat recovery steam generator, and a steam turbine with a nameplate rating**

of 25,000 kilowatts; and,

WHEREAS, Duke's purchase of capacity and energy from QFs is in compliance with PURPA and the Commission's rulings implementing PURPA and is consistent with integrated resource planning procedures adopted by the Commission;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto do hereby agree to the following:

1. Service Requirements.

1.1 Beginning with the Initial Delivery Date as defined in Article 3.3, Cherokee shall sell and deliver exclusively to Duke all the electric power generated by the Facility, net of the Facility's own auxiliary electrical requirements, and Duke shall purchase, receive, use and pay for the same, subject to the conditions contained in this Agreement.

1.2 Service under this Agreement shall be furnished solely to Cherokee in a single enterprise, located entirely on a single contiguous premises, at one metering point, at one delivery point and at one voltage. Service hereunder shall be restricted to the net production capacity of Cherokee's generating facilities which will be operated in parallel with Duke's system.

1.3 The electric power to be delivered hereunder shall be three phase, alternating, at a frequency of approximately sixty (60) hertz, and at approximately **100,000 volts**.

1.4 Delivery of said power shall be made in **Cherokee County** at or near **Gaffney, South Carolina** at a delivery point described as follows:
At the disconnecting switches on the 100 kV bus located in Duke's substation between Duke's 100 kV circuit breaker and Cherokee's generator step-up transformers.

1.5 (a) The nameplate capacity of Cherokee's generating facilities is **80,000 kilowatts**, consisting of **a gas-fired combustion turbine generator with a nameplate rating of 55,000 kilowatts, a 1,270 psia, 189,000 lbs./hr. heat recovery steam generator, and a steam turbine with a nameplate rating of 25,000 kilowatts.**

(b) Beginning with the Commercial Operations Date as defined in Article 3.4, Cherokee shall deliver to Duke approximately **72,700 kilowatts** as its "Capacity Commitment" during On-Peak Hours in accordance with the provisions of Article 5 hereof.

1.6 (a) Duke will install, own, operate and maintain such meter(s) as shall be necessary to measure and record the electrical energy and demand(s) delivered and received in accordance with the terms and conditions of this Agreement, such meter(s) to be located:
On a metering structure located adjacent to Cherokee's transformer substation on the low voltage side of Cherokee's generator step-up transformers.

(b) Duke will read, test, calibrate, and repair its meter(s) and will estimate and correct metering errors in accordance with Duke's Service Regulations ("Service Regulations"), which are on file with the Commission, and Commission rules, as amended. In the event of a partial or total failure of Duke's metering system(s), Duke may utilize Cherokee's metering, which Cherokee may elect to install, own and maintain, at its own expense, as a source of information to assist in estimating the billing information, provided that Cherokee shall read, test, calibrate, and repair its meters, at its own expense, in accordance with the Service Regulations and Commission rules.

(c) The metering installation described in Article 1.6(a) above will require manual compensation of certain meter readings in order to reflect transformer losses for power delivered into Duke's transmission system from the Facility. Each month, the meter readings for the meter recording kilowatthours which flow into Duke's transmission system through Cherokee's step-up transformer will be multiplied by a "Loss Adjustment Factor," which shall be estimated by Duke based on the expected average flow of power through the transformer and based upon the impedance and loss characteristics of the transformer. The initial Loss Adjustment Factor for the Cherokee Facility shall be _____. The Loss Adjustment Factor may be revised by Duke after at least one full year of operation of the Facility, and no more often than once per calendar year, to reflect historical average power flows through the transformer.

1.7 (a) In addition to the regular meter readings to be taken once each month for billing purposes, Duke may require additional meter readings, records, transfer of information, etc., in such form or by such means as may be agreed upon by the Parties.

(b) Cherokee shall provide to Duke, on a monthly basis within ten (10) days of the meter reading date, information on the Facility's fuel costs (coal, oil, natural gas, supplemental firing, etc.), if any, for the power delivered to Duke during the preceding month's billing period.

1.8 The obligations of Duke in regard to service under this Agreement are dependent upon its securing and retaining all necessary rights-of-way, privileges, franchises and permits for such service and Duke shall not be liable in the event it is delayed in or prevented from purchasing power by its failure to secure and retain such rights-of-way, rights, privileges, franchises, and permits, due

to circumstances beyond its reasonable control.

1.9 Back-up and maintenance power for the Facility's auxiliary electrical requirements shall be provided to Cherokee by Duke pursuant to a separate electric service agreement under Duke's rate schedule appropriate for such service.

1.10 Electrical service to Cherokee's manufacturing facility which is adjacent to the Gaffney Cogeneration Facility shall be supplied in full by Duke through the above described delivery point and metering location pursuant to a separate Electric Service Agreement under Duke's rate schedule appropriate for such service.

2. Service Regulations and Regulatory Approval.

2.1 Except as otherwise provided herein, Duke's obligations under this Agreement are contingent upon Cherokee obtaining and maintaining approvals for the Facility to operate from all regulatory bodies as required by law, including a certificate of environmental compatibility and public convenience and necessity from the Commission ("Certificate") and status as a PURPA qualifying facility as determined by the FERC pursuant to the procedure for FERC certification as set forth in 18 CFR §292.207(b).

2.2 Except as provided in Article 2.4, the terms of this Agreement are subject to change, revision, alteration or substitution, in whole or in part, upon order of the Commission or any other judicial or regulatory authority having appropriate jurisdiction.

2.3 The sale, delivery, receipt and use of electric power hereunder, and all services to be performed in connection therewith, shall be subject to and in accordance with all of the terms and conditions of the Service Regulations, as they exist on the date of execution of this Agreement (the "Existing Service Regulations"). The Existing Service Regulations are attached hereto as Appendix E and are incorporated by reference herein and made a part hereof. To the extent that the terms and provisions of this Agreement may conflict with the terms and provisions of the Existing Service Regulations, the terms of this Agreement shall be controlling, provided that, any changes, revisions, alterations or substitutions in or to the Existing Service Regulations which may become effective after the date of execution of this Agreement and which are in conflict with the terms and provisions of this Agreement shall be controlling over the terms and provisions of this Agreement.

2.4 To the extent that this Agreement is explicitly approved by an order of the Commission, the provisions of Article 2.2 shall not apply. The provisions of Article 2.3 shall apply,

except that the terms and provisions of this Agreement shall be controlling over any changes, revisions, alterations or substitutions in or to the Existing Service Regulations which may become effective after the date of execution of this Agreement and which are in conflict with the terms and provisions of this Agreement, provided that, changes in either the Rules and Regulations of the Commission or the Service Regulations which relate to Extra Facilities and metering shall be controlling over the terms and provisions of this Agreement.

2.5 Upon execution, the Parties shall submit this Agreement to the Commission and the North Carolina Utilities Commission for review. In the event that either commission fails to issue an order satisfactory to the Parties by December 1, 1994, each Party shall have thirty (30) days from said date to notify the other Party that it wishes to terminate this Agreement without liability to the other Party effective immediately upon such notification, and Security provided by Cherokee pursuant to Article 14 hereof shall be returned or terminated, as appropriate, within ten (10) business days of such notification. If neither Party elects to so terminate, this Agreement shall remain in effect, and Duke shall submit the Agreement to both commissions for acceptance for filing.

2.6 Duke reserves the right to provide to the Commission or the FERC or any other regulatory body, upon request, information pertaining to this Agreement, including but not limited to: records of the Facility's generation output and Duke's purchases thereof (including copies of monthly statements of power purchases and data from load recorders and telemetering installed at the Facility); copies of this Agreement; information on the Facility's fuel costs, as provided under Article 1.7(b) hereof; information regarding the Interconnection Facilities, as set forth in Article 6 hereof. Duke will advise Cherokee of the furnishing of any information hereunder. Duke will not provide any information developed solely by Cherokee and designated by Cherokee in writing to be "proprietary" unless required to do so by order of the Commission or the FERC or any other regulatory body or court, in which event, Duke will notify Cherokee prior to supplying the proprietary information.

3. Term.

3.1 The term of the Agreement shall commence upon execution of this Agreement by both Parties and shall continue for **fifteen (15) years** from the Commercial Operations Date, as defined in Article 3.4, unless extended for an additional five (5) years pursuant to Article 3.8, in which case the word "term" used throughout this Agreement shall include any such extended term.

3.2 Cherokee shall commence construction of the Facility on or before **February 1, 1996** ("Anticipated Construction Start Date"); provided, however, that Cherokee may revise said

Anticipated Construction Start Date one time only within the first six (6) months following the date of execution of the Agreement, upon written notice to Duke. Cherokee shall provide written notice to Duke of the date upon which construction of the Facility commences. Duke shall notify Cherokee of its confirmation that construction has begun. For the purposes of this Agreement, commencement of construction shall be defined as the initiation of physical activities of a permanent nature on the footprint of the Facility itself, including but not limited to the installation of building supports or foundations or the laying of underground pipework. Site work such as grading or road-building shall not constitute construction.

3.3 The Initial Delivery Date shall be the first date upon which energy is generated by the Facility and delivered to Duke, and such energy is metered by Duke. The Anticipated Initial Delivery Date is **August 1, 1996**, provided that Cherokee may change the Anticipated Initial Delivery Date upon written notice to Duke at least twelve (12) months prior to such revised date. In no event shall the Initial Delivery Date be earlier than **June 1, 1996.**

3.4 (a) The Commercial Operations Date shall be the date of the first regular meter reading following receipt by Duke of written notice from Cherokee declaring the Facility to be in commercial operation, said notice to be given after the Facility has passed acceptance testing. The Anticipated Commercial Operations Date is **November 1, 1996**; provided, however, that Cherokee may revise said Anticipated Commercial Operations Date one time only within the first six (6) months following the date of execution of the Agreement, upon written notice to Duke. Said revision may be to a date not later than twelve (12) months after, and not earlier than, the date set forth above. However, should Cherokee be unable to obtain the Certificate within six (6) months following the date of execution of this Agreement, then the time limitations in this Article 3.4(a) and in Article 3.2 shall each be extended by three (3) months.

(b) Notwithstanding any other provisions of this Agreement, in no event shall the Commercial Operations Date be later than twelve (12) months after the Anticipated Commercial Operations Date. Failure to begin commercial operations within sixty (60) days of the Anticipated Commercial Operations Date shall subject Cherokee to liquidated damages pursuant to Article 11.1(g) and Appendix B. Unless otherwise agreed to by Duke, at its sole option, in no event shall the Commercial Operations Date be more than sixty (60) days earlier than the Anticipated Commercial Operations Date.

3.5 Cherokee shall provide written notice to Duke, delivered at least forty-five (45) months prior to the expiration of the term of the Agreement, but no earlier than sixty (60) months prior to said expiration, as to whether or not it wishes to continue to generate electricity at the Facility after

the expiration of the term of the Agreement.

3.6 If Cherokee notifies Duke that it will so continue to generate electricity, Duke shall, within nine (9) months of Cherokee's notice, notify Cherokee in writing as to whether or not it wishes to continue to purchase energy and capacity from the Facility after the expiration of the term of the Agreement.

(a) If Duke notifies Cherokee that it does wish to continue such purchases, the Parties shall promptly enter into good faith negotiations to conclude, within twelve (12) months of the date of Duke's notice, a new agreement to succeed this Agreement. The terms and conditions of such a new agreement shall take into account then-current conditions and the operating performance of the Facility during the term of this Agreement, and the rates under such new agreement shall be determined based upon Duke's then-current projections of avoided capacity and energy costs and other relevant factors.

(b) If Duke notifies Cherokee that it does not wish to continue such purchases, or if the parties cannot conclude a new agreement to succeed this Agreement by twenty-four (24) months prior to the expiration of the term of this Agreement, the Parties shall negotiate disposition of the power to be generated at the Facility. Nothing contained herein shall be construed to require Duke to transmit power from the Facility directly to any of Duke's ultimate consumers or to the ultimate consumers of any other provider of electricity.

3.7 If Cherokee notifies Duke that it will not continue to generate electricity beyond the expiration of the term of the Agreement, this Agreement shall expire according to its terms.

3.8 Cherokee shall have a one-time option to extend the term of this Agreement beyond the expiration of the initial fifteen (15) year term for an additional five (5) years only, which option Cherokee may exercise by providing written notice to Duke of Cherokee's election of such option, delivered at least forty-five (45) months prior to the expiration of the initial fifteen (15) year term of the Agreement, but no earlier than sixty (60) months prior to said expiration. In the event Cherokee provides such notice, the term of this Agreement shall be extended for five (5) years beyond the expiration of the initial fifteen (15) year term, but only upon the following terms and conditions: (i) the rates for payment in each year of the five (5) year extension period shall be fifteen (15%) percent below the cost of capacity and energy that Duke avoids by making such purchases from Cherokee, as calculated solely by Duke on an annual basis, taking into account the past performance of the Facility and other relevant factors; (ii) the Liquidated Damage Rate, as set forth in Appendix B, applicable for each year of the five (5) year extension period shall be calculated

solely by Duke at the time of Cherokee's election of its extension option; (iii) all other substantive terms and conditions of the extended Agreement shall be identical to this Agreement; (iv) the provisions of Articles 3.5, 3.6 and 3.7 shall apply to the end of the extended term; and, (v) Cherokee shall not have the option to further extend the Agreement.

4. Rate Schedule.

4.1 Energy and capacity payments made by Duke to Cherokee for electric power delivered to Duke by Cherokee from the Initial Delivery Date and Commercial Operations Date, respectively, through the end of the term of the Agreement shall be determined by Duke using the rates set forth in Appendix A, which is attached hereto and made a part hereof, subject to the conditions set forth in this Article 4. The rates set forth herein are, as of the date of execution of this Agreement, based upon Duke's projections of its avoided capacity and energy costs approved in the most recent regulatory proceedings at which Duke's avoided cost rates for purchases from QFs were determined, utilizing the methodology currently approved by the Commission for the determination of avoided costs.

4.2 No capacity credits will be applied to power delivered to Duke prior to the Commercial Operations Date.

4.3 The term "month" as used in this Agreement means the period intervening between meter readings for the purposes of monthly billing, such readings normally being taken once per calendar month at intervals of approximately thirty (30) days. The "On-Peak Months" shall be the billing months of June through September and December through March. The "Off-Peak Months" shall be the billing months of April, May, October and November.

4.4 "On-Peak Hours" shall be those hours, Monday through Friday, beginning at 7 A.M. and ending at 11 P.M. All other weekday hours and all Saturday and Sunday hours shall be "Off-Peak Hours."

4.5 For the purposes of determining the amounts to be paid to Cherokee by Duke, the appropriate energy credit rates as determined pursuant to Appendix A shall be applied to all of the energy in kilowatthours delivered to Duke during the On-Peak Hours and Off-Peak Hours of each month. The appropriate capacity credit rates will be applied only to the energy in kilowatthours delivered to Duke during the On-Peak Hours of each month up to a maximum of one-hundred ten percent (110%) of the Capacity Commitment applicable to that month times the number of On-Peak Hours in the month.

4.6 When the average monthly power factor of the power supplied by Cherokee to Duke is less than 90 percent or greater than 97 percent, as determined by the kilowatthours and kilovarhours metered during the month by Duke, Duke will adjust the kilowatthours for which energy and capacity payment shall be made hereunder in accordance with the formulas set forth in Appendix D. Facilities necessary for the measurement of power factor will be a part of the Interconnection Facilities as set forth in Article 6.

4.7 Should Duke at any time during the term of this Agreement fail to obtain or be denied authority from the Commission, or any other regulatory body which now has or in the future may have jurisdiction over Duke's rates and charges, to recover from its customers all of the payments required to be made to Cherokee under the terms and conditions of this Agreement, or any subsequent amendment to this Agreement, the Parties agree that, at Duke's option, Duke may reduce payments to be made to Cherokee under this Agreement to the highest payment level allowed by the Commission or such other regulatory body. Duke will not initiate or support before the Commission, or such other regulatory body, any direct action with the specific intention of reducing the recovery from its customers of payments required to be made to Cherokee under this Agreement. Any amounts initially recovered by Duke from its customers but for which recovery is subsequently disallowed by the Commission and charged back to Duke may be offset or credited against subsequent payments made by Duke for purchases from Cherokee, or alternatively, shall be repaid by Cherokee, upon further agreement of the Parties.

5. Capacity Commitment.

5.1 Cherokee shall operate its generating facilities so as to meet its Capacity Commitment as designated in Article 1.5(b) in each On-Peak Month during the term of this Agreement, pursuant to the following terms and conditions:

(a) The "Capacity Commitment" shall be the average capacity in kilowatts Cherokee commits to deliver to Duke during On-Peak Hours taking into account Service Interruptions (as defined in Article 8), fuel availability and characteristics, steam sales requirements, and any other conditions which might impact the average capacity during On-Peak Hours.

(b) For each On-Peak Month, Cherokee's "Average On-Peak Capacity", in kilowatts, will be calculated by Duke by dividing the on-peak energy, in kilowatthours, delivered to Duke during the month by the number of On-Peak Hours in the month.

(c) A "Monthly Capacity Ratio" will be calculated by Duke for each On-Peak

Month by dividing the Average On-Peak Capacity for the month by the Capacity Commitment applicable to the month.

(d) An "Annual Capacity Ratio" will be determined monthly by Duke, beginning one (1) year after the Commercial Operations Date, by calculating the average of the six (6) highest On-Peak Monthly Capacity Ratios during the most recent twelve (12) month period, not including the month during which the calculation is being made, subject to Article 5.1(f).

(e) Reductions in capacity resulting from Service Interruptions (subject to the provisions of Article 9.2), changes in steam sales requirements or for reasons other than Force Majeure that occur during the On-Peak Hours of the On-Peak Months shall not be excluded from the calculations of the Average On-Peak Capacity and the Capacity Ratios.

(f) On-Peak Months during which performance has been affected by a condition or event of Force Majeure, as set forth in Article 9.1, shall be excluded from the calculation of the Annual Capacity Ratio. However, prior to the meter reading date following Duke's receipt of notice of a condition or event of Force Majeure, Cherokee may notify Duke in writing not to exclude any months affected by such condition or event of Force Majeure. Additional On-Peak Months extending beyond the twelve (12) month period, if necessary, shall be included until six (6) On-Peak Months not affected by a condition or event of Force Majeure are averaged, provided however, that On-Peak Months affected by a condition or event of Force Majeure which occur more than one (1) year after the date of notice of such condition or event of Force Majeure provided for in Article 9.3(a) shall not be excluded from the calculation of the Annual Capacity Ratio.

5.2 (a) If, at any time during the term of this Agreement, the Annual Capacity Ratio is less than ninety percent (90%) for two (2) consecutive months, the Capacity Commitment will automatically be reduced. The revised Capacity Commitment will be determined by multiplying the Capacity Commitment in effect prior to said two (2) month period by the Annual Capacity Ratio in effect at the end of said two (2) month period.

(b) In addition, should the Parties believe that the Capacity Commitment will in the future be automatically reduced pursuant to Article 5.2(a), then the Parties may mutually agree to reduce the Capacity Commitment at any time prior to the contemplated automatic reduction; provided, however, that such mutually agreed revised Capacity Commitment is no higher than the revised Capacity Commitment as would be calculated pursuant to Article 5.2(a) and provided further that the costs and damages provisions of Article 11.1 shall continue to apply in the case of such mutually agreed reduction in the Capacity Commitment.

5.3 The capacity credit rates as determined pursuant to Appendix A shall be applied only to the kilowatthours delivered to Duke during the On-Peak Hours of the month up to a maximum of one-hundred ten percent (110%) of the Capacity Commitment applicable to that month times the number of On-Peak Hours in the month.

5.4 In the event of a reduction in the Capacity Commitment pursuant to Article 5.2, Cherokee shall be responsible for the costs and damages associated with the capacity reduction as set forth in Article 11.1.

5.5 In the event that the Capacity Commitment has been reduced pursuant to Article 5.2 and Cherokee wishes to subsequently increase the Capacity Commitment to any level up to the original Capacity Commitment as set forth in Article 1.5(b); then Duke agrees to accept, and pay capacity credits for, the increment of additional capacity, subject to the following terms and conditions:

(a) The increased Capacity Commitment shall become effective only if: (i) Cherokee gives Duke at least six (6) months notice of the level of such increased Capacity Commitment and the date upon which the increased Capacity Commitment will become effective, which date shall be on a regular meter reading date; and (ii) at the time of such notice, the purchase of such proposed additional increment of capacity and the rate to be paid for such additional increment of capacity are consistent with Duke's requirements pursuant to integrated resource planning and the Commission's then current provisions governing the purchase of capacity from QFs (or, if integrated resource planning and said provisions are not then applicable, the purchase and rate are consistent with Duke's resource acquisition plans, in Duke's sole judgement), and Duke has not already satisfied such requirements through previously executed agreements or other previous commitments.

(b) Upon receipt of Cherokee's notice that it wishes to increase the Capacity Commitment, if the conditions set forth in Article 5.5(a) above are satisfied, then Duke shall notify Cherokee of its acceptance of the increased Capacity Commitment, and thereafter the provisions of this Article 5, and all other provisions of this Agreement, shall apply to the revised Capacity Commitment to the same extent as applicable to the original Capacity Commitment (except that no provision shall be construed to permit any delay in the effective date of the increased Capacity Commitment), beginning on the effective date set forth in Cherokee's notice as provided for in Article 5.5(a) above. If the conditions set forth in Article 5.5(a) above are not satisfied, then Duke shall notify Cherokee of its rejection of the proposed increased Capacity Commitment.

(c) In the event of an increase in the Capacity Commitment as provided for in this Article 5.5, liquidated damages which may have been previously paid by Cherokee for any earlier reductions in the Capacity Commitment shall not be refunded.

(d) The Interconnection Facilities provided for in Article 6 hereof shall be, in the judgement of Duke, suitable to serve the increased increment of capacity, provided that, if any modifications or additions to said Interconnection Facilities are necessary or appropriate to serve said additional increment of capacity, Duke shall perform such installation or modification, for which Cherokee shall make an up-front cash payment to Duke pursuant to Article 6.3(a), and Duke shall further adjust the Interconnection Facilities Charge in accordance with Article 6.3 hereof.

6. Interconnection Facilities.

6.1 In accordance with the Extra Facilities provisions of the Service Regulations, as amended, Duke will furnish, install, own and maintain such interconnection facilities as are necessary for service under this Agreement, including suitable control and protective devices installed on Duke equipment to permit parallel operation of Cherokee's generating facilities with Duke's system, metering facilities for the measurement of service under this Agreement, telemetering into Duke's System Operating Center, and any other modification to its system required to serve Cherokee under this Agreement as determined by Duke ("Interconnection Facilities"). A description of the Interconnection Facilities is included in Appendix C hereto.

6.2 (a) Prior to installation of the Interconnection Facilities, Cherokee shall make an up-front cash payment to Duke in the amount of $_____ as reimbursement for the installed capital cost of the Interconnection Facilities, including appropriate amounts for income and sales taxes, if applicable. Cherokee has selected this optional method of payment for the Interconnection Facilities, as authorized by the Commission in Order No. 85-347 in Docket No. 80-251-E, dated August 2, 1985.

(b) Upon completion by Duke of installation of the Interconnection Facilities, and continuing for as long as service is provided, Cherokee shall pay a monthly charge for the Interconnection Facilities ("Interconnection Facilities Charge") which shall be calculated in accordance with the Extra Facilities provisions of the Service Regulations, as amended, and pursuant to the Commission's Order No. 85-347 in Docket No. 80-251-E. The total Interconnection Facilities Charge shall be $_____ per month which is the sum of:

(1) $_____, for operation and maintenance of the Interconnection Facilities, which is

0.5% of the installed cost of the Interconnection Facilities, which installed cost is $_____, and

(2) $_____, which is the monthly charge for a leased telephone line, and

(3) $_____, for monthly charges for other equipment, property or services necessary to provide the Interconnection Facilities.

(c) The costs and charges to be set forth above, as well as any other up front costs and charges associated with providing the Interconnection Facilities, shall be determined no earlier than twelve (12) months prior to the installation of the Interconnection Facilities to reflect then current costs, conditions, Duke engineering practices and service requirements. Preliminary estimates of such costs and charges, based on costs, conditions, Duke engineering practices and service requirements as of the date of execution of the Agreement, are set forth in Appendix C hereto and such estimates shall not be binding on either Party.

6.3 (a) The payments set forth in Article 6.2 provide only for the initial installation of the Interconnection Facilities, without provision for future modifications or replacements. Any future changes in the Interconnection Facilities, whether requested by Duke or by Cherokee, or whether due to equipment failure or obsolescence, or otherwise, may require additional up-front payments and changes in the monthly Interconnection Facilities Charges.

(b) Duke reserves the right to install at any time, upon reasonable advance notice to Cherokee, such additional facilities as may become necessary for service under this Agreement. In such event, Duke shall require additional up-front payments and shall adjust the Interconnection Facilities Charge accordingly, solely at the option of Duke.

(c) The Interconnection Facilities Charge may also be changed from time to time to reflect Commission approved changes in the Extra Facilities provisions of the Service Regulations.

6.4 The Interconnection Facilities Charge may also be adjusted, and additional up-front payments by Cherokee may be required, at the sole option of Duke from time to time in the event that (a) actions taken by the Parties pursuant to the Electric Service Agreement between the Parties covering Duke's delivery of power to Cherokee's adjacent manufacturing facility (including, but not limited to, termination) or (b) amendments made by the Parties to said Electric Service Agreement, impact upon or result in changes to the furnishing, installation, installed cost or maintenance of the Interconnection Facilities.

6.5 Cherokee's obligation to pay the Interconnection Facilities Charge in a timely manner shall not be excused by Force Majeure, as defined in Article 9, or by any condition, situation, or event described in Article 8.

6.6 Notwithstanding the provisions of Article 6.2, in the event that Duke, relying on this Agreement, incurs costs associated with providing Interconnection Facilities (including but not limited to labor costs, rights-of-way, transformers, meters, or protective equipment), and any portion of such Interconnection Facilities is not used for service under this Agreement or is no longer required for such service at any time during the term of this Agreement, then Cherokee shall promptly reimburse Duke, upon notice from Duke, for any non-recoverable costs or loss due to early retirement associated with the discontinued use and/or removal of the Interconnection Facilities or any portion thereof.

7. Payments.

7.1 Duke shall submit to Cherokee as promptly as possible, but within thirty (30) days following each regularly scheduled monthly meter reading, a statement showing Cherokee's on-peak and off-peak energy deliveries and total net reactive energy deliveries for the month, the associated capacity credits and energy credits along with appropriate adjustments pursuant to this Agreement, and the Interconnection Facilities Charge. Actual payment to Cherokee, net of the Interconnection Facilities Charge, shall be included with the submittal of said statement.

7.2 (a) Amounts due to Duke under this Agreement are due and payable on the date of the statement at the office of Duke. Such amounts are past due and delinquent on the fifteenth day after the date of the statement. If any such amount is not so paid, Duke has the right to suspend service. In addition, all such amounts not paid by the twenty-fifth day after the date of the statement shall be subject to a one percent (1%) late payment charge on the unpaid amount. This late payment charge shall be rendered on the following month's statement and it shall become part of and be due and payable with the statement on which it is rendered.

(b) Amounts due to Cherokee under this Agreement are due and payable on the date of the statement. All such amounts not paid by the twenty-fifth day after the date of the statement shall be subject to a late payment charge on the unpaid amount. Such late payment charge for amounts due to Cherokee from Duke shall be calculated based on an annual interest rate equal to one hundred five percent (105%) of the prime rate quoted on the date of the statement by Morgan Guaranty Trust Company of New York.

7.3 In the event that any data required for the purpose of determining payment hereunder is unavailable when required, such unavailable data may be reasonably estimated by Duke, subject to any required adjustment based on actual data in a subsequent month's payment, if such actual data is subsequently available.

7.4 Any errors or inaccuracies in computation or billing shall be corrected as appropriate in the earliest possible succeeding statement and payment.

7.5 Duke reserves the right to set off against any amounts due from Duke to Cherokee, any amounts which Duke asserts in good faith are due from Cherokee to Duke, including, but not limited to, unpaid Interconnection Facilities Charges or past due balances on other accounts Cherokee has with Duke for other services.

8. Service Interruptions.

8.1 The Parties do not guarantee continuous service. They shall use reasonable diligence at all times to provide satisfactory service, and to remove expeditiously the cause or causes in the event of failure, interruption, reduction or suspension of service.

8.2 Each of the following conditions or events shall be deemed to be a "Service Interruption", subject to Article 9.2 hereof:

(a) An emergency action due to an adverse condition or disturbance on Duke's system, or on any other system directly or indirectly interconnected with it, which requires automatic or manual interruption of the supply of electricity from the Facility to: limit the extent or damage of the adverse condition or disturbance; or to prevent damage to generating or transmission facilities; or to expedite restoration of service; or to effect a reduction in service to compensate for an emergency condition on an interconnected system.

(b) Interruptions in circumstances when, in Duke's reasonable opinion, the continuance of service from Cherokee's premises would endanger persons or property, or would make adjustments to, changes in, or repairs on Duke lines, substations, and facilities impractical or dangerous to persons or property.

(c) Scheduled outages or reductions in the electrical output of the Facility for maintenance and/or overhaul of the generators, turbines, boilers, furnaces, electrical systems, or associated equipment, provided that Cherokee gives Duke reasonable advance notice of such outages

or reductions in electrical output, as set forth in Article 12.3 below.

(d) Start-up, shakedown, and acceptance testing of the Facility.

(e) Forced outages or reductions in the electrical output of the Facility resulting from damage to or breakdown of necessary mechanical or electrical facilities within the Facility or due to a change in the BTU value or other characteristics of the energy source used for production of electricity at the Facility.

(f) Duke's exercise of its rights under the Service Regulations and Article 12.1 hereof to suspend or discontinue the supply of electricity from the Facility due to the operation of the Facility in a manner which is detrimental to Duke's facilities or to Duke's service to any of its customers.

8.3 Neither Party shall be liable for any loss or damage resulting from the occurrence of any Service Interruption, provided that, Cherokee shall be liable to Duke for costs and damages as set forth in Article 11.1 if the occurrence of any Service Interruption, or any combination of them, results in a reduction in the capacity made available to Duke pursuant to Article 5.

9. Force Majeure.

9.1 Circumstances beyond the reasonable control of a Party (the "affected Party") which solely cause the affected Party to experience delay or failure in its performance hereunder, including acts of God; unusually severe weather conditions; earthquake; strikes or other labor difficulties; war; riots; requirements, actions or failures to act on the part of governmental authorities (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state or local government bodies) but only if such requirements, actions or failures to act prevent or delay performance; inability, despite due diligence, to obtain required licenses, permits or approvals; fire; or transportation delays or accidents (other than those associated with the delivery of fuel to the Facility) shall be deemed to be "conditions or events of Force Majeure". Conditions or events of Force Majeure do not include: events or circumstances which affect the cost of Cherokee's fuel or other costs of operating the Facility but do not prevent or delay performance, including, but not limited to, requirements, actions or failures to act on the part of governmental authorities (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state or local government bodies) or changes in market conditions; and events or conditions attributable to normal wear and tear or flaws randomly experienced in power generation materials and equipment and their assembly and operation, unless such events and

conditions are caused by an occurrence which would fit the definition of a condition or event of Force Majeure as set forth in this Article.

9.2 For the purposes of this Agreement, if a Service Interruption resulting from conditions or events set forth in Article 8.2(a) hereof exceeds seventy-two (72) consecutive hours, then either Party may declare said Service Interruption to be a condition or event of Force Majeure, subject to the provisions of this Article 9.

9.3 Except for the requirement to begin commercial operation as set forth in Article 3.4 and subject to the limitations set forth in Article 9.4, neither Party shall be responsible or liable for any delay or failure in its performance hereunder due solely to conditions or events of Force Majeure, provided that:

(a) The affected Party gives the other Party written notice describing the particulars of the condition or event of Force Majeure, such notice to be provided within forty-eight (48) hours of the determination by the affected Party that a condition or event of Force Majeure has occurred, but in no event later than thirty (30) days from the date of the occurrence of the condition or event of Force Majeure; and,

(b) The delay or failure of performance is of no longer duration and of no greater scope than is required by the condition or event of Force Majeure; and,

(c) The affected Party uses its best efforts to remedy its inability to perform; and,

(d) When the affected Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party prompt written notice to that effect; and

(e) The condition or event of Force Majeure was not caused by or connected with any negligent or intentional acts, errors, or omissions, or failure to comply with any law, rule, regulation, order or ordinance, or any breach or default of this Agreement.

9.4 In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated term. In the event of any delay or failure of performance caused by conditions or events of Force Majeure, which would otherwise constitute a default pursuant to Article 10, the cure provisions of Article 10.1 shall not apply and such delay or failure of performance shall, if not previously cured, become a default on that date which is one (1) year from the date of notice provided for in Article 9.3(a). The other Party may,

at any time following the end of such one year period, terminate this Agreement upon written notice to the affected Party, without further obligation by the terminating Party except as to costs and balances incurred prior to the effective date of such termination. The other Party may, but shall not be obligated to, extend such one year period, for such additional time as it in its sole discretion deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. In the event of such an extension, On-Peak Months during the extension period which are affected by conditions or events of Force Majeure shall not be excluded from the calculation of the Annual Capacity Ratio, as set forth in Article 5.1(f).

9.5 If any condition or event of Force Majeure causes a reduction in the capacity Cherokee makes available to Duke pursuant to Articles 5.1(f) and 5.2(a), the Parties may at any time agree to reduce the Capacity Commitment pursuant to Article 5.2(b), and in such event Cherokee shall pay costs and damages to Duke for such reduction in capacity pursuant to Article 11.1.

9.6 In the event that Cherokee experiences a failure of a turbine, boiler or generator so that the Facility is inoperable, which failure is not the result of Cherokee's negligence in the design, installation, operation or maintenance of the failed component(s) or the Facility, and the complete replacement of one or more of said components is required in order for the Facility to become fully operable, and the restart of the Facility is anticipated to take more than 12 months but no more than 18 months from the initial outage date, then Cherokee may, within 30 days of the initial outage date, notify Duke that it wishes to declare a period of extended outage beginning on the initial outage date for the purpose of replacing said component(s) ("Extended Forced Outage"), upon the following terms and conditions:

(a) The Extended Forced Outage shall be available only once during the term of this Agreement, and shall last for no less than 12 months nor more than 18 months from the initial outage date, but in the event that it does last more than 18 months, then Duke may in its sole discretion terminate this Agreement at any time prior to the restart of the Facility, and in such event the default and damages provisions set forth in this Agreement shall apply.

(b) The Extended Forced Outage shall take effect only if Cherokee's notice to Duke is accompanied by payment (in a form satisfactory to Duke) to Duke of a non-refundable sum which shall be 15 percent of the product of the Liquidated Damage Rate (as then applicable pursuant to Table B-1 of Appendix B) times the Capacity Commitment in effect immediately prior to the initial outage date.

(c) Cherokee's notice to Duke shall also be accompanied by evidence reasonably

satisfactory to Duke of its plans to replace the major component(s).

(d) During the pendency of the Extended Forced Outage, Cherokee shall provide, at the request or requests of Duke, evidence reasonably satisfactory to Duke of Cherokee's due diligence in proceeding with the replacement of the component(s), and failure to exercise due diligence may result in termination of this Agreement, in which event the default and damages provisions set forth in this Agreement shall apply.

(e) Cherokee shall notify Duke of the date of completion of the Extended Forced Outage within ten days following its completion. Beginning with the date of completion, Cherokee shall maintain for two consecutive monthly periods a Monthly Capacity Ratio of at least 90 percent of the Capacity Commitment in effect prior to the initial date of the Extended Forced Outage, to demonstrate that the Facility can meet such a Capacity Commitment. If such a Monthly Capacity Ratio cannot be maintained, then there shall be a reduction in the Capacity Commitment pursuant to Article 5.2 and the damages provisions set forth in this Agreement shall apply. After completion of the Extended Forced Outage, calculations of the Annual Capacity Ratio pursuant to Article 5.1 (d) shall be based upon the output of the Facility during the months following the completion of the Extended Forced Outage.

(f) Except as provided in Subparagraph (e) above, no reductions in the Capacity Commitment shall occur as a result of the Extended Forced Outage, but reductions resulting from calculations of the Annual Capacity Ratio prior to the initial date of the Extended Forced Outage may occur during the Extended Forced Outage.

(g) During the pendency of the Extended Forced Outage, Cherokee shall continue to pay Interconnection Facilities charges pursuant to Article 6.

(h) Exercise of the Extended Forced Outage option shall not extend the term of this Agreement.

10. Default.

10.1 If Duke defaults under this Agreement then Cherokee shall give Duke written notice describing such default. If Cherokee defaults under this Agreement then Duke shall give Cherokee written notice and concurrently provide Cherokee's lender with a copy of such notice. Unless the default is the result of a condition or event of Force Majeure in which case the provisions of Article 9 shall apply, the defaulting party (or, if Cherokee is the defaulting Party, Cherokee's lender) shall

be given sixty (60) days from the receipt of such notice to cure such default. If the defaulting party fails to cure such default within the prescribed period, then the non-defaulting Party may, in addition to any other rights or remedies available at law or at equity, consider the defaulting Party in material breach of its obligations under this Agreement and collect damages arising out of such default and/or terminate this Agreement immediately upon notice to the defaulting party (with concurrent notice to Cherokee's lender if Cherokee is the defaulting Party). However, if the default cannot be cured within sixty (60) days with exercise of due diligence, the defaulting Party (or, if Cherokee is the defaulting Party, Cherokee's lender) shall within such period submit to the non-defaulting party for its prior approval, which approval shall not be unreasonably withheld, a plan to correct the default within a reasonable additional period of time not to exceed six (6) months. If the defaulting Party or Cherokee's lender fails to submit such a plan, or if the non-defaulting Party does not approve the plan, or if the defaulting Party or Cherokee's lender fails to cure such default within the additional period of time specified by the plan, then the non-defaulting Party may exercise its rights and remedies, including but not limited to collection of damages and/or termination, as set forth above.

10.2 If Cherokee defaults under this Agreement and has a lender, Duke shall allow the lender to correct the default by submitting a plan, as set forth in Article 10.1 above, which includes provisions for the lender to assume, or for the lender to cause a new lessee or purchaser of the Facility to assume, Cherokee's rights and obligations under this Agreement, provided that:

(a) said plan shall provide for the lender or new lessee or purchaser to correct the default within a reasonable additional period of time not to exceed eight (8) months from the end of the sixty-day cure period set forth in Article 10.1 above; and

(b) lender shall not cause a new lessee or purchaser to assume any of Cherokee's rights and obligations without complying with the requirements of Article 16 hereof, unless any such requirements are waived by Duke in its sole discretion.

10.3 For the purposes of this Agreement, any one of the following shall constitute a default by Cherokee:

(a) failure to commence construction of the Facility by the Anticipated Construction Start Date, as set forth in Article 3.2, and to proceed diligently toward completion of construction by the Anticipated Commercial Operations Date (however, in such event, the cure provisions of Article 10.1 shall not apply); or,

(b) failure to begin commercial operation of the Facility within sixty (60) days

after the Anticipated Commercial Operations Date (however, in such event, the cure provisions of Article 10.1 shall not apply); or,

(c) failure by Cherokee to deliver energy to Duke for two (2) consecutive months, including failures resulting from the occurrence of any of the events or conditions set forth in Articles 8.2(a-f), but not including failures resulting from conditions or events of Force Majeure; or,

(d) failure to obtain and maintain security for its performance hereunder in accordance with the provisions of Article 14 (however, in such event, the provisions of Article 14.6 shall control over the provisions of Article 10.1); or,

(e) rejection of this Agreement in any proceeding under Title 11 of the United States Code involving Cherokee as debtor (however, in such event, the cure provisions of Article 10.1 shall not apply);

(f) failure to comply with the dispatch provisions of Article 12; or,

(g) failure to comply with any other material obligation under this Agreement for which a specific remedy is not otherwise provided in this Agreement.

11. Costs and Damages.

11.1 Cherokee shall pay to Duke the costs and damages set forth in this Article, if any of the following events occur at any time during the term of this Agreement: a reduction in the capacity Cherokee makes available to Duke pursuant to Article 5.2; termination by Duke due to Cherokee's default pursuant to Article 10; default by Cherokee pursuant to Article 10 which does not result in termination or a reduction in capacity; termination pursuant to Article 9.4; or, an agreed upon reduction in capacity pursuant to Articles 5.2(b) or 9.5:

(a) Any unpaid charges due Duke under this Agreement including, but not limited to, any Interconnection Facilities Charges or up-front payments provided for in Article 6; and,

(b) if the Interconnection Facilities, or any portion thereof, are removed from the Facility site area as a direct consequence of such default, termination or capacity reduction, the costs associated with their removal; and,

(c) the loss due to the early retirement of the Interconnection Facilities based on

the installed cost of the Interconnection Facilities as specified in Article 6.2 plus any subsequent additions or modifications to such facilities, less depreciation and salvage value; and,

(d) in the event of a termination or capacity reduction, liquidated damages for the detrimental effect of the early termination or capacity reduction on Duke's cost of power. The Parties recognize that the precise nature and amount of such damages are difficult to determine and therefore agree that such liquidated damages shall be payable as calculated by Duke pursuant to the formulas set forth in Appendix B. If Cherokee's Capacity Commitment, on the effective date of termination, is less than ninety percent (90%) of Cherokee's Capacity Commitment on the date of notice of termination, then Cherokee shall remain liable for any liquidated damages due to Duke pursuant to this Article 11.1(d) for the reduction in Cherokee's Capacity Commitment which may have occurred subsequent to the date of notice of termination and which may be unpaid as of the effective date of termination; and,

(e) in the event Cherokee fails to commence construction of the Facility by the Anticipated Construction Start Date set forth in Article 3.2, as required pursuant to Article 10.3(a) hereof (unless such failure is the result of a condition or event of Force Majeure pursuant to Article 9), liquidated damages for the detrimental effect of such failure on Duke's cost of power, as calculated pursuant to the formulas set forth in Appendix B; and,

(f) in the event Cherokee fails to begin commercial operations within sixty (60) days after the Anticipated Commercial Operations Date, as required pursuant to Article 10.3(b) hereof, liquidated damages for the detrimental effect of such failure on Duke's cost of power, as calculated pursuant to the formulas set forth in Appendix B; and,

(g) in the event of a default by Cherokee, other than a default described in Articles 10.3 (a) and (b) hereof, which does not result in a termination or capacity reduction, any actual damages incurred by Duke in addition to those specifically set forth in this Article.

11.2 At such time as Duke notifies Cherokee in writing of costs and damages due to Duke pursuant to Article 11.1, such amounts shall become due and payable immediately without presentation, protest or further demand or notice of any kind and Duke may proceed to enforce payment of such amounts as it may elect, without limiting any rights or remedies Duke may have pursuant to this Agreement or otherwise.

12. Operation of the Generating Facilities.

12.1 Cherokee shall be responsible for providing suitable control and protective devices on its equipment to assure no disturbance to other customers of Duke or to Duke's facilities, and to protect Cherokee's facilities from all loss or damage which could result from operation in parallel with Duke's system. In the event of any disturbance to other customers of Duke or to Duke's facilities, Duke shall have the right to suspend or discontinue the supply of electricity from the Facility until such condition has been remedied to Duke's satisfaction.

12.2 Cherokee, including its contractors or agents, shall operate and maintain the Facility in accordance with applicable electric utility industry standards and good engineering practices and in a prudent manner which will produce maximum electric energy output to the extent that conditions permit, subject to the dispatch provisions of this Article 12, if any, and also subject to the Capacity Commitment provisions set forth in Article 5.

12.3 Cherokee shall coordinate its schedule for routine maintenance such that scheduled outages and capacity reductions occur during Off-Peak Hours or during the Off-Peak Months. Scheduled maintenance resulting in outages or capacity reductions should not exceed 45 days per calendar year. Cherokee shall provide reasonable advance notice to Duke of scheduled outages or capacity reductions as follows:

Expected Duration of Scheduled Outage/Reduction	Advance Notice to Duke
Less than one day	24 hours
1 day to 6 days	1 week
7 days or more	1 month

12.4 Cherokee shall adjust the Facility's voltage output and reactive power deliveries within reasonable limits of the Facility upon reasonable advance notice from Duke's system coordinators. Duke shall take such requested adjustments in reactive power deliveries into consideration prior to making any energy adjustments pursuant to Article 4.6.

12.5 Unless otherwise requested by Duke's system coordinators, Cherokee shall adjust the output of the Facility during Off-Peak Hours in accordance with the following schedule ("Dispatch Schedule"):

(a) On weekdays (Monday through Thursday) from approximately 11:00 p.m. until approximately 6:00 a.m. and on weekends, beginning on Friday night at approximately 11:00 p.m. and continuing until approximately 6:00 a.m. on the following Monday morning, Cherokee shall

reduce the output of the Facility to the maximum extent possible while complying with all applicable regulations and maintaining adequate steam supplies to Cherokee's adjacent manufacturing facility by operating the gas turbine at reduced load and by operating the steam turbine at reduced load. It is expected that the net output of the Facility under these conditions will be approximately 59,000 kilowatts.

(b) In the event of an emergency condition on Duke's system during On-Peak Hours or Off-Peak Hours, Cherokee shall increase or decrease the output of the Facility, within the design limits of the Facility, upon notice from Duke's system coordinators.

12.6 Telemetering and communications to provide instantaneous and hourly information on actual performance of the Facility to Duke's System Operating Center in order to incorporate the Facility's output into the Duke control area total generation resources shall be a part of the Interconnection Facilities.

13. Liability and Indemnity.

13.1 Neither Party shall hold the other Party (including its corporate affiliates, parent, subsidiaries, directors, officers, employees and agents) liable for any claims, losses, costs and expenses of any kind or character (including, without limitation, loss of earnings and attorneys' fees) for damage to property of Duke or Cherokee in any way occurring incident to, arising out of, or in connection with a Party's performance under this Agreement, except as provided in Article 13.2 below.

13.2 Subject to the provisions of Article 13.4, each Party (the "Indemnifying Party") agrees to indemnify and hold harmless the other Party (the Party to be indemnified) from and against all claims, demands, losses, liabilities and expenses (including reasonable attorneys' fees) for personal injury or death to persons and damage to the other Party's property or facilities or the property of any other person or corporation to the extent arising out of, resulting from or caused by default of this Agreement or by the negligent or tortious intentional acts, errors, or omissions of the Indemnifying Party.

13.3 The Party to be indemnified shall give prompt written notice to the Indemnifying Party of any assertion of liability by a third party which might give rise to a claim by the Party to be indemnified against the Indemnifying Party based on the indemnity provision contained in Article 13.2.

13.4 Except as provided in Articles 11 and 13, and elsewhere in this Agreement, neither Duke nor Cherokee shall, in any event, be liable to the other or to any third party for any consequential, incidental, indirect or special damages to persons or property, whether arising in tort, contract or otherwise, by reason of this Agreement or any services performed or undertaken to be performed by Duke or Cherokee hereunder.

14. Security.

14.1 Cherokee shall provide and maintain, at Cherokee's sole expense, security for Cherokee's performance under this Agreement including, but not limited to, Cherokee's obligation to pay costs and damages to Duke as set forth in Article 11.1 ("Security"). The schedule and amount of Security required is set forth in Article 14.2 hereof. Duke shall have the right and authority to draw upon the Security for the purpose of collecting actual and/or liquidated damages resulting from termination or capacity reduction, or actual damages resulting from an event of default, as set forth in Article 11.1.

14.2 (a) Cherokee shall establish and maintain the Security pursuant to the following schedule. Cherokee shall maintain the full Security required for each milestone at all times until the Security required for the next milestone is established. Cherokee shall notify Duke of each milestone date. Security to be established at Milestone Number 5 shall be maintained throughout the remainder of the term of this Agreement and until all balances due Duke from Cherokee pursuant to this Agreement have been calculated and paid.

Milestone Number	Milestone Date	Amount of Security*
1	30 days following execution of this Agreement	$5.00/kW
2	30 days following the date set forth in Article 2.5	$10.00/kW
3	30 days following the financial closing for the Facility	$15.00/kW
4	5 days following commencement of construction (as defined in Article 3.2)	$25.00/kW
5	5 days following the Commercial Operations Date (as defined in Article 3.4)	See Article 14.2(b)

* Expressed in dollars per kilowatt ($/kW) of the Capacity Commitment set forth in Article 1.5 (b).

(b) The Security to be established at Milestone Number 5 shall be that amount sufficient to pay the liquidated damages due to Duke by Cherokee in the event of early termination or reduction in capacity, which amount shall be calculated in accordance with the following formulas and provisions:

$$\text{Security} = LDR_{(n)} \times \text{Capacity Commitment}$$

where:

n	=	calendar year for which the Security balance applies
$LDR_{(n)}$	=	Liquidated Damage Rate expressed in dollars per kilowatt, from Table B-1 of Appendix B, for the applicable calendar year.
Capacity Commitment	=	the Capacity Commitment, in kilowatts, pursuant to Articles 1.5(b) and 5, in effect for the calendar year for which the Security balance applies.

14.3 The formulas and calculations set forth in this Article shall be used only for the purpose of determining the amount of Security to be provided hereunder and shall in no way be construed to reflect the nature or amount of any sums due from Cherokee to Duke under this Agreement.

14.4 Security to be provided under this Agreement shall be maintained at Cherokee's expense, shall be originated by or deposited in a financial institution acceptable to Duke ("Issuer"), and shall be in the form of:

(a) an irrevocable standby letter of credit or a performance bond in form and substance acceptable to Duke and consistent with this Agreement, including a provision for advance notice to Duke of any expiration of the Security so as to allow Duke sufficient time to exercise its rights under said Security if Cherokee fails to extend or replace the Security; or,

(b) cash, deposited with Issuer, either: (i) in an account under which Duke is designated as beneficiary with authority to draw drafts on the Issuer or otherwise access the Security; or, (ii) held by Issuer as trustee with instructions to pay claims made by Duke pursuant to Article 11 of this Agreement, such instructions to be in a form satisfactory to Duke. Security provided in this form shall include a requirement for immediate notice to Duke from Issuer and Cherokee in the event that the account or trust is discontinued or that the sums held as Security in such account or trust do not at any time meet the minimum Security requirements as set forth in Article 14.2.

14.5 No later than fifteen (15) days prior to the effective date of: (a) any requirement for Security hereunder; or, (b) any change in the amount of Security required hereunder; or, (c) the extension or replacement of any Security required hereunder; Cherokee shall provide to Duke written evidence that the Security is or shall be in effect as required pursuant to this Article 14. Cherokee shall also provide Duke with immediate notice of any amendments or changes to any such account or trust agreement.

14.6 In the event said Security, or any portion thereof, expires, becomes insufficient, or will otherwise not be in force (or if Duke receives advance notice of the impending occurrence of same), then Duke may declare Cherokee to be in default of Articles 10 and 14. (However, the cure provisions of Article 10.1 shall not apply.) Duke may also exercise its rights under any Security prior to its expiration. To the extent that the Security is in the form of a letter of credit, then Duke must first give written notice, effective upon receipt, of any action pursuant to this Article, permitting Cherokee a reasonable period of time consistent with the advance notice provisions of the letter of credit as set forth in Article 14.4(a) hereof to extend the term of said letter of credit, or to obtain replacement Security. If, upon the exercise of Duke's rights under the Security, said Security is insufficient for a full payment of Liquidated Damages, or if the Security has not been extended or replaced as set forth herein, then Duke may terminate this Agreement immediately upon notice to Cherokee.

15. Communications.

15.1 Any notice, request, consent or other communication required or authorized by this Agreement to be given by one Party to the other Party shall be in writing. It shall either be personally delivered or mailed, postage prepaid, to the representative of said other Party designated below. Any such notice, request, consent or other communication so delivered or mailed shall be deemed to be given when so delivered or mailed. Routine communication during Facility operations shall be exempt from this Article 15.

15.2 Notices and other communications by Cherokee to Duke shall be addressed to:

Kenneth B. Keels, Jr.
Non-Utility Generation Manager
Duke Power Company
P.O. Box 1006 - EC03U
Charlotte, NC 28201-1006

15.3 Notices and other communications by Duke to Cherokee shall be addressed to:

John C. Hooker
Cherokee County Cogeneration Corp.
109 West 45th Street
New York, New York 10036

15.4 Either Party may, by written notice to the other, change the representative or the address to which such notices and communications are to be sent.

15.5 The Parties' representatives designated above shall have full authority to act for their respective principals in all technical matters relating to performance of this Agreement. However, they shall not have the authority to amend or modify any provision of this Agreement.

16. Assignability.

16.1 Cherokee shall advise Duke and the Commission of any plans to sell, transfer or assign the Facility.

16.2 Neither Party shall assign this Agreement, or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, such consent shall not be required prior to an assignment by Duke to a parent, subsidiary or affiliated corporation or by Cherokee to a trustee or mortgagee pursuant to a financing agreement (in which case, however, such trustee or mortgagee shall agree that any further assignments by such trustee or mortgagee shall require the prior written consent of Duke, which consent shall not be unreasonably withheld); but, provided further that in any event: (i) prior notice of any such assignment shall be provided to the other Party; (ii) any assignee shall expressly assume assignor's obligations hereunder, unless otherwise agreed to by Duke, provided that no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform; (iii) no such assignment shall impair any security given by Cherokee hereunder; and (iv) before such rights and obligations are assigned by Cherokee, the assignee must first obtain such approvals as are required by all applicable regulatory bodies including, but not limited to, the Commission.

16.3 Cherokee may not subcontract any of its duties or obligations hereunder without the prior written consent of Duke, which shall not be unreasonably withheld and, in any event, no such subcontract shall relieve Cherokee of any of its obligations hereunder.

16.4 Any financing agreement entered into by Cherokee shall provide that prior to or upon the exercise of trustee's or mortgagee's assignment rights pursuant to said agreement, trustee or

mortgagee shall notify Duke of the date and particulars of any such exercise of assignment rights.

16.5 Any assignment or subcontract made without fulfilling the requirements of this Article shall be null and void.

17. Representations of Cherokee.

17.1 Cherokee will construct, own and operate a gas-separation manufacturing facility adjacent to the Facility, which manufacturing facility will utilize steam produced by the Facility in sufficient quantities to maintain Cherokee's status as a qualifying cogeneration facility, and which manufacturing facility will purchase all of its electrical requirements from Duke under a separate Electric Service Agreement on Duke's rate schedule appropriate for such service. Cherokee represents that its primary purpose in constructing the Gaffney Cogeneration Facility is to provide cost-effective thermal energy to Cherokee's manufacturing facility.

17.2 Cherokee represents that it has discussed with the Commission potential issues arising out of the production and delivery of steam from the Facility to the adjacent manufacturing facility and knows of no reason why its steam supply arrangements would adversely impact upon this Agreement or the actions contemplated hereunder.

17.3 Cherokee represents that it has entered into contracts with reliable suppliers of natural gas which provide for adequate fuel supplies and transportation at stable prices sufficient for Cherokee to meet its obligations under this Agreement throughout the term of the Agreement. Cherokee has provided documentation of the existence of such fuel supply contracts to Duke prior to execution of this Agreement.

18. Miscellaneous.

18.1 Waiver. The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

18.2 Access to Facility. Properly accredited representatives of Duke shall at all reasonable times have access to the Facility to inspect and read meters, examine and maintain Interconnection Facilities and obtain information relative to this Agreement. While at the Facility, such representatives shall observe such reasonable safety precautions as may be required by Cherokee and shall conduct themselves in a manner that will not interfere with the operation of the Facility.

18.3 Governing Law. The interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of South Carolina.

18.4 Taxes. Cherokee shall be responsible for any and all taxes, including, but not limited to, the Electric Power Excise Tax for the electric power generated by the Facility which may be imposed under S.C. Code Ann. §12-23-10, as amended, or any equivalent statute or regulations. To the extent that Duke may be authorized by law, regulation or Commission order to charge any tax levy to its customers, the Parties shall make arrangements to transmit the revenue collected from said customers to the taxing authority through Duke or Cherokee, as appropriate under the applicable law.

18.5 Disclaimer. In executing this Agreement, Duke does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Cherokee, nor does it create any third party beneficiary rights.

18.6 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Appendices, or the application of any such terms, covenants or conditions, shall be held invalid, illegal, or unenforceable by any court having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in force and effect.

18.7 Complete Agreement; Amendments. The terms and provisions contained in this Agreement and referenced documents constitute the entire Agreement between Duke and Cherokee and shall supersede all previous communications, representations, or agreements, either verbal or written, between Duke and Cherokee with respect to the Facility's generation of electricity and this Agreement. No amendment or modification to this Agreement shall be binding unless it shall be set forth in writing and duly executed by both Parties with the same formality as this Agreement. Should (a) any provisions of the Electric Service Agreements between the Parties dated _____ for electric service to Cherokee's adjacent manufacturing facility and for back-up and maintenance power for the Gaffney Cogeneration Facility; or (b) any amendments to said Electric Service Agreements; or (c) any actions taken by the Parties pursuant to said Electric Service Agreements, result in changed circumstances or conditions impacting upon this Agreement, then the Parties shall amend this Agreement accordingly.

18.8 Binding Effect. This Agreement, as may be amended from time to time pursuant to Article 18.7, shall be binding upon and inure to the benefit of the Parties' respective successors-in-interest and legal representatives.

18.9 Headings. Captions and headings used in the Agreement are for ease of reference only and do not constitute a part of this Agreement.

18.10 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF, on the day and year first above written, the Parties hereto have caused their official names to be hereunto subscribed, and their seals to be hereunto affixed by their respective Presidents, Vice Presidents or Authorized Representatives, and attested by their respective Secretaries or Assistant Secretaries.

ATTEST:

~~Assistant~~ Secretary

DUKE POWER COMPANY

By William F. Reinke

~~Senior~~ Vice President

CHEROKEE COUNTY COGENERATION CORP., as General Partner on behalf of

CHEROKEE COUNTY COGENERATION PARTNERS, L.P.

ATTEST:

Gordon C. Osmond
Assistant Secretary

By John C. Hooker

John C. Hooker
President

Duke Power Company

APPENDIX A
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CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

CHEROKEE SCHEDULE 1

AVAILABILITY

Available only to Cherokee for the "Gaffney Cogeneration Facility" which is a generating facility not in excess of eighty (80) megawatts nameplate which is interconnected with Duke's system and which is a qualified facility as determined by the Federal Energy Regulatory Commission pursuant to Section 210 of the Public Utilities Regulatory Policies Act of 1978.

The Rate, as shown below, expires on the fifteenth (15th) anniversary of the Commercial Operations Date. The rates set forth herein are, as of the date of execution of this Agreement, based upon Duke's projections of its avoided capacity and energy costs approved in the most recent regulatory proceedings at which Duke's avoided cost rates for purchases from QFs are determined, utilizing the methodology currently approved by the Commission for the determination of avoided costs.

RATE:

	Energy Credit Rate (¢/kWh)			Capacity Credit Rate (¢/kWh)	
YEAR	On-Peak Hours	Off-Peak Hours	YEAR	On-Peak Month	Off-Peak Month
1996	2.53	1.83	1996	2.02	0.46
1997	2.73	1.95	1997	2.15	0.49
1998	2.95	2.09	1998	2.28	0.52
1999	3.19	2.23	1999	2.42	0.55
2000	3.45	2.39	2000	2.57	0.59
2001	3.73	2.56	2001	2.73	0.62
2002	4.04	2.73	2002	2.90	0.66
2003	4.36	2.92	2003	3.08	0.70
2004	4.72	3.13	2004	3.27	0.74
2005	5.10	3.34	2005	3.47	0.79
2006	5.52	3.58	2006	3.69	0.84
2007	5.96	3.82	2007	3.92	0.89
2008	6.45	4.09	2008	4.16	0.95
2009	6.97	4.37	2009	4.42	1.01

- All rates stated on a cents/kWh basis.
- Capacity rates applicable during On-Peak Hours only.
- On-Peak Hours: 7AM - 11PM, Mon-Fri.
- Off-Peak Hours: All other weekday hours and all weekend hours.
- On-Peak Months: June - September and December - March.
- Off-Peak Months: April, May, October and November.
- No capacity credits will be applied to power delivered to Duke prior to the Commercial Operations Date.
- If the fifteenth (15th) anniversary of the Commercial Operations Date occurs beyond the end of calendar year 2009, the rate which shall be in effect from the end of calendar year 2009 until the fifteenth (15th) anniversary of the Commercial Operations Date shall be the rate for calendar year 2009 as set forth above .

APPENDIX A - CHEROKEE SCHEDULE 1
CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

Duke Power Company

CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

LIQUIDATED DAMAGES

Liquidated Damages for the detrimental impact of a reduction in capacity Cherokee makes available to Duke pursuant to this Agreement shall be calculated in accordance with the following formula:

$$\text{LIQUIDATED DAMAGES} = LDR_{(n)} \times \text{Capacity Commitment Reduction}$$

where:

$LDR_{(n)}$ = Liquidated Damage Rate, expressed in dollars per kilowatt ($/kW), applicable in year "n", as set forth in the table below.

n = the year in which the Capacity Commitment Reduction occurs.

Capacity Commitment Reduction = the magnitude, in kilowatts, of the reduction in Cherokee's Capacity Commitment as determined pursuant to Article 5.2. In the event of a termination, the Capacity Commitment Reduction shall be deemed to be equal to the Capacity Commitment in effect at the time of such termination.

TABLE B-1
LIQUIDATED DAMAGE RATE

YEAR	$LDR_{(n)}$ ($/KW)
1996	$46.00
1997	$48.00
1998	$51.00
1999	$54.00
2000	$57.00
2001	$60.00
2002	$63.00
2003	$67.00
2004	$70.00
2005	$74.00
2006	$78.00
2007	$83.00
2008	$87.00
2009	$92.00
2010	$97.00
2011	$102.00

If Cherokee notifies Duke, pursuant to Article 3.5, that it does not wish to continue to generate electricity at the Facility following expiration of the term of this Agreement, or if Cherokee notifies Duke that it does wish to continue to generate electricity at the Facility following expiration of the term of this Agreement, and Duke responds that it does not intend to purchase said electricity, then the Liquidated Damage Rate ($LDR_{(n)}$) set forth in Appendix B shall be reduced to $82.00 in 2008, to $63.00 in 2009, to $40.00 in 20010, and to $14.00 in 2011.

If the Agreement is extended pursuant to Article 3.8, the Liquidated Damage Rate applicable for each year of the five (5) year extension period shall be calculated solely by Duke at the time of Cherokee's election of its extension option.

(Continue)

Duke Power Company

CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

LIQUIDATED DAMAGES (Cont'd)

Liquidated Damages for the detrimental effect of Cherokee's failure to meet certain milestones on Duke's cost of power shall be calculated in accordance with the following formulas, which shall apply at all times from the date of execution of this Agreement until the Commercial Operations Date:

TABLE B-2
PRE-COMMERCIAL OPERATIONS LIQUIDATED DAMAGES

Milestone	Liquidated Damages
From contract execution until Anticipated Construction Start Date (as set forth in Article 3.2 hereof)	LD_{M1} = $10.00/kW x CC
From Anticipated Construction Start Date until sixty (60) days after Anticipated Commercial Operations Date (as set forth in Article 3.4(a) hereof)	LD_{M2} = $ 0.48/kW/week x CC x number of whole weeks since Anticipated Construction Start Date
Beginning sixty (60) days after the Anticipated Commercial Operations Date	LD_{M3} = $ 0.83/kW/week x CC x number of whole weeks since Anticipated Commercial Operations Date

where:

$LD_{M1,M2,M3}$ = Pre-Commercial Operations Liquidated Damages applicable for each milestone set forth in Table B-2 of this Appendix B.

CC = Capacity Commitment, in kilowatts, as set forth in Article 1.5(b)

The Pre-Commercial Operations Date Liquidated Damages set forth in Table B-2 above shall begin to accrue, and Duke will draw on the Security in the appropriate weekly amount, on the following week after the milestone or date was scheduled to occur pursuant to this Agreement and shall continue until the specific milestone or date is achieved.

The Liquidated Damages and Liquidated Damage Rate(s) set forth in this Appendix B are based on Duke's expected additional cost of obtaining replacement power from resources outside of its service territory.

Duke Power Company

APPENDIX C
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CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

ESTIMATED INTERCONNECTION FACILITIES COSTS AND CHARGES

APPENDIX C - ESTIMATED INTERCONNECTION FACILITIES COSTS AND CHARGES
CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

Duke Power Company

APPENDIX D
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CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

POWER FACTOR ADJUSTMENT

When the average monthly Power Factor ("PF") of the power supplied by Cherokee to Duke is less than 90 percent or greater than 97 percent, as determined by the kilowatt-hours ("kWh") and kilovar-hours ("kVarh") metered during the month by Duke, Duke will adjust the kilowatt-hours, for which energy and capacity payment shall be made hereunder by an Adjustment Factor ("AF") calculated in accordance with the formulas set forth below.

Net Reactive Energy Supplied to Duke ("net kVarh") = [kVarh In - kVarh Out]*

*(where Duke's system is the reference.)

$$PF = \cos\theta = \cos[\tan^{-1}(\text{net kVarh} / \text{total kWh})] \times 100$$

Case 1: Net Reactive Energy Flow Into Duke's System (net kVarh > 0)

a) If PF < 90.0,

$$AF = \frac{PF}{90.0}$$

b) If 90.0 ≤ PF ≤ 97.0,

$$AF = 1.0000$$

c) If PF > 97.0,

$$AF = \frac{97.0}{PF}$$

Case 2: Net Reactive Energy Flow Out Of Duke's System (net kVarh < 0)

$$AF = \frac{97.0}{100.0 + (100.0 - PF)}$$

The on-peak energy and off-peak energy metered in each month shall be multiplied by the Adjustment Factor calculated for that month for application of the energy and capacity credits set forth in Appendix A

APPENDIX D - POWER FACTOR ADJUSTMENT
CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

Duke Power Company

APPENDIX E

CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

DUKE POWER COMPANY SERVICE REGULATIONS
(In effect as of the date of execution of this Agreement)

APPENDIX E - DUKE POWER COMPANY SERVICE REGULATIONS
CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

Foreword

The Service Regulations of the Company are filed with the Commission having jurisdiction over public utilities. The regulations are presented here and are incorporated by reference in each contract or agreement for electric service.

Definitions

Duke Power Company is referred to herein as the "Company" and the user and prospective user is referred to as the "Customer" or "Consumer," these terms to be considered as synonymous. The Public Service Commission of South Carolina is referred to as the "Commission."

I.

Agreement

Electric service will be supplied under (a) the Company's standard form of application, service agreement, or contract, (b) the applicable rate schedule or schedules, and (c) these service regulations, unless otherwise specified in any particular rate schedule or contract on file with and approved by the Commission. The Company shall not be required to supply service unless and until such agreement is executed by the Customer and the Company. It is understood and agreed that no promise, statement or representation by an agent, employee or other person shall be binding upon the Company unless it is in writing and attached to and made a part of the agreement. However, when the requested supply of electricity is for residential use, or for nonresidential use under contracts of one hundred twenty-five kilowatts (125 KW) or less, and no additional charges are involved, the Customer's application or agreement may be verbal. When the application or agreement is verbal, the Company's applicable rate schedules, riders, and these Service Regulations will be effective in the same manner as if the Company's standard form of application or agreement had been signed by the Customer and accepted by the Company. A verbal service agreement shall be presumed when there is no written application by a Customer, if electricity supplied by the Company is used by the Customer or on the Customer's premises.

Agreement Personal

The rights of the Customer under the agreement are personal and shall not be transferred or assigned by the Customer without the written consent of the Company.

Service Used In Advance

If service is used by the Customer before the application or agreement is completed, the service shall be governed by these regulations and the appropriate rate schedule. The Company may discontinue service at any time upon failure or refusal of the Customer to complete the application or agreement and pay in full the amount due for service to that date.

Vacated Premises

The Customer will notify the Company before quitting or vacating the premises served under the agreement, and will pay upon presentation, all bills due under all agreements or contracts.

II.

Deposit

Since an accumulation of unpaid bills would tend toward higher rates for all customers, the Company may require a deposit before beginning service or at any later time. The amount of the deposit and the interest paid on deposits will be in accordance with the Rules and Regulations of the Commission. The Company may require an increase or allow a decrease in the deposit if changes occur in the amount of bills rendered to the Customer. The Company may refund a deposit at any time. When service is discontinued, the Company will refund the deposit plus any accumulated interest, less any unpaid bills. Deposits shall cease to bear interest when service is discontinued and the Company has tendered or endeavored to tender to the Customer, the amount due him.

Effective for service on and after November 18, 1991
SCPSC Docket No. 91-216-E
Order No. 91-1022

III.

Customer's Wiring and Equipment

Equipment which will operate in one location may not operate in another location due to difference in voltage, phase, or frequency of electric service. The Customer shall give the Company notice and shall determine type of service available at the premises before wiring or purchasing equipment. The Company may specify the voltage and type of electric service to be furnished, and may also specify the location of the meter and the point where the service connection shall be made.

All the Customer's wiring and equipment must be installed and maintained in accordance with the requirements of the local municipal and state authorities; otherwise, the Company may refuse to connect service or may discontinue service to the Customer. The Customer shall keep in repair all such wiring and equipment to the point of connection with the facilities of the Company.

Changes in Customer's Wiring and Equipment

The Customer shall not use any equipment, appliance or device, or permit the continuation of any condition which tends to create any hazard or otherwise adversely affect the Company's service to the Customer or other customers, without written consent of the Company. When polyphase service is used by any customer, the Customer shall control the use of service so that the load will be maintained in reasonable electrical balance between the phases at the point of delivery.

The Customer shall give the Company reasonable notice in writing of any anticipated increase in demand exceeding 20 KW or ten percent (10%) of the former demand, whichever is greater. The notice shall state the approximate increase and date required. If the Company determines the unexpired term of the agreement is sufficient to justify the additional investment required, the Company will endeavor to provide additional capacity for any increase requested by the Customer within ninety (90) days of said notice.

The Company will extend its facilities and change the point of delivery only when the investment required is warranted by the anticipated revenue and when the extension is permissible and feasible.

IV.

Access to Customer's Premises

The Company shall at all reasonable times have the right of ingress to and egress from the premises of the Customer, for any and all purposes connected with the delivery of service, or the exercise of any and all rights under the agreement.

V.

Right Of Way

The Customer shall at all times furnish the Company a satisfactory and lawful right of way over his premises for the Company's lines and apparatus necessary or incidental to the furnishing of service. The Customer shall also furnish satisfactory shelter for meters and other apparatus of the Company installed on the premises, except where the Company elects to install such equipment outdoors.

The Company may change the location of the right of way upon request of the Customer, and may require the Customer to pay the cost of the change. The change will not be made where it will interfere with or jeopardize the Company's service, either to the Customer requesting the change, or to any other customer or customers. All privileges of the Company related to the original location shall apply to the new location.

The obligation of the Company to supply service is dependent upon the Company securing and retaining all necessary rights-of-way, privileges, franchises or permits, for the delivery of such service, and the Company shall not be liable to the Customer for any failure to deliver service because of the Company's inability to secure or retain such rights-of-way privileges, franchises, or permits.

Effective for service on and after November 18, 1991
SCPSC Docket No. 91-216-E
Order No. 91-1022

VI.

Transmission, Distribution, and Service Facilities

The Company's transmission, distribution, and service facilities will be installed above ground on poles, towers, or other fixtures; however, underground facilities will be provided when requested in accordance with the Company's Underground Distribution Installation Plan, as approved by the Commission.

The Company will require a contribution in aid of construction when it is requested to provide facilities which it deems economically infeasible.

Service connections will be made as follows:

1. Where both the Company's lines and the Customer's entrance conductors are above ground, and where the service requires a transformer of 500 KVA or less:

   The Company will extend its service conductors to the Customer's building, terminating them on the outside of the building at a location to be provided by the Customer and satisfactory to the Company for this purpose. The location must be of sufficient height to satisfy the requirements of the National Electric Safety Code and of applicable local codes, and the strength of the structure at the point of termination must be satisfactory to the Company.

   The Company will provide and own meter sockets and enclosures, or the Customer may choose to provide and own a meter/switch enclosure (more commonly known as a housepower panel). The Customer will install all meter sockets, enclosures, or meter/switch enclosures. The Company will utilize and provide service through the Customer's meter/switch enclosure under the following conditions:

   a. The meter/switch enclosure shall be in accordance with the Company's specifications.
   b. The wiring and connections are approved by the Company.
   c. The Customer agrees to allow the Company to open and inspect the meter/switch enclosure at any time.
   d. The Customer agrees to notify the Company and obtain permission before altering or performing maintenance inside the metering section of the meter/switch enclosure.

   For residential customers, the Company will provide, own and install all service risers and service laterals and will connect such risers and laterals to the line side terminals of the meter socket enclosure.

   The Company will make the necessary connections from its service conductors to the Customers' entrance conductors.

2. Where both the Company's lines and the Customer's entrance conductors are below ground, or when one is above ground and the other is below ground, or where the size of the Customer's demand or any unusual character of the Customer's location requires the service agreement between the Company and the Customer to be made on one of the Company's long-form Electric Power Contracts, the Company will make the necessary connections from its service conductors to the Customer's entrance conductors as in Section 1 above if applicable, or as in Section 3 below if applicable. If neither Section 1 nor Section 3 is applicable, the connection shall be at a point to be agreed upon by the Company and the Customer.

3. When, in the Company's opinion, an individual transformer installation is necessary to serve the Customer's demand and such demand exceeds the capacity of a pole-type transformer installation, the Company may require the Customer to provide suitable outdoor space on his premises to accommodate a ground-type transformer installation. If the Customer is unable to provide outdoor space for a ground-type transformer installation, then the Company may require the Customer to provide a transformer vault on his premises.

   a. When the Customer provides space for a ground-type, substation installation using overhead conductors, the Company will also erect a structure outside of, and immediately adjacent to, the fence surrounding such transformer installation for purposes of connecting to the Customer's entrance conductors. The Company may require the Customer to provide at the connection point, main disconnecting switches which shall control all of the Customer's load other than the fire pump circuit, if any. In the event the substation space agreed upon is adjacent to one or more of the Customer's building walls, the Company will connect to the Customer's entrance conductors on an outside wall of the building.

Effective for service on and after November 18, 1991
SCPSC Docket No. 91-216-E
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b. When the customer provides space for a ground-type, padmounted transformer installation using underground conductors, the Company will provide and install the transformer. The Customer will provide and install, to the Company's specifications, the concrete pad for the transformer installation. The point of connection with the Customer's entrance conductors will be at the secondary voltage terminals of the Company's transformer.

c. When the Customer provides a transformer vault, the vault shall be constructed in accordance with the Company's specifications, and shall meet the requirements of the National Electrical Safety Code and other applicable safety codes and ordinances. The location of the vault shall meet the Company's requirements for accessibility and ventilation. The Company will provide and install the transformers and necessary associated equipment including circuit breakers, switches, supporting structures for equipment, primary cable and secondary cable to the point of connection with the Customer's entrance conductors. The point of connection shall be 12 inches inside one of the walls of the vault. The Company will coordinate the transformer vault installation with its Underground Distribution Installation Plan for the installation of the primary cable from the Customer's vault to the Company's existing distribution facilities.

4. With respect to any service, after a service connection has been made it may be changed by the Company upon request of the Customer, but the Customer must pay the cost of the change. The change will not be made where it will interfere with or jeopardize the Company's service either to the Customer desiring the change or to any other customer or customers.

Ownership of Equipment

All conductors and conduits, inside work and equipment, switches, fuses, and circuit breakers, from the point of connection with the Company's service shall be installed and maintained by and at the expense of the Customer. All equipment furnished by the Company shall be and remain the property of the Company.

VII.

Meters

The Company will furnish all necessary meters. When a meter is moved from one location to another, all expenses in connection with such removal shall be paid by the Company unless the removal is at the request of the Customer, in which case the cost will be paid by him. The Company shall have the right, at its option, and at its own expense, to place demand meters, volt meters or other instruments on the premises of the Customer for the purpose of making tests with respect to the Customer's service.

Location of Meter

Meters for all residential service, and for all other service to the extent practicable, shall be located out-of-doors on the Customer's structure at a place which is suitable to the Customer, but which meets all of the Company's requirements for reading, testing, and servicing accessibility, and for safety.

Where it is not practicable, in the Company's opinion, to locate the meter and any associated apparatus out-of-doors, the Customer shall provide a suitable indoor location which meets all of the Company's requirements for reading, testing, and servicing accessibility, and for safety.

Failure or Inaccuracy of Meter

In case of the failure of inaccuracy of a meter, the Customer's bill, for the appropriate portion of the period of such failure or inaccuracy, shall be calculated to correct for billing error as provided in the Rules and Regulations of the Commission.

VIII.

Bills Due Where No Notice Received

Meters will be read and bills rendered monthly. The Company will endeavor to deliver to the Customer, by mail or messenger, a monthly statement of the amount due the Company by the Customer.

All bills are due and payable on the date of the bill, during regular business hours, at the office of the Company. Bills are past due and delinquent on the fifteenth (15th) day after the date of the bill.

Failure to receive a statement which has been properly mailed or hand-delivered will not entitle the Customer to any delay in paying the amount due beyond the date when the bill is due and payable.

The word "month" as used herein, and as used in the rate schedules of the Company means the period of time between the regular meter readings by the Company. Readings are taken each month at intervals of approximately thirty (30) days.

Meters with a constant of one may be read to the nearest 10 kilowatt hours except in the case of initial or final bills. For purposes of establishing billing demand and minimum bills, the nearest whole KW shall be used.

Where Meter Is Not Read

If, for any reason, a meter is not read at the regular reading time, the Company may estimate the amount of service used, and make any adjustment which may be necessary in the bill rendered when the meter is next read. Or, the Company may render the Customer a bill for a minimum charge, and credit the Customer for this charge when the meter is read and bills computed for thirty (30) day intervals.

Offsets Against Bills

No claim or demand which the Customer may have against the Company shall be set off or counterclaimed against the payment of any sum of money due the Company by the Customer for services rendered. All such sums shall be paid in accordance with the agreement regardless of any claim or demand.

Adjustment of Billing Errors

In case of a billing error, the Customer's bill, for the appropriate portion of the period of such billing error, shall be calculated to correct for billing error as provided in the Rules and Regulations of the Commission.

IX.

Responsibility Beyond Delivery Point

It is understood and agreed that the Company is merely a furnisher of electricity, deliverable at the point where it passes from the Company's wires to the service wires of the Customer, or through a divisional switch separating the Customer's wires and equipment from the Company's wires and equipment. The Company shall not be responsible for any damage or injury to the buildings, motors, apparatus, or other property of the Customer due to lightning, defects in wiring or other electrical installations, defective equipment or other cause not due to the negligence of the Company. The Company shall not be in any way responsible for the transmission, use or control of the electricity beyond the delivery point, and shall not be liable for any damage or injury to any person or property whatsoever, or death of any person or persons arising, accruing or resulting in any manner, from the receiving or use of said electricity.

Interference With Company Property

The Customer shall not interfere with, or alter the Company's meters, seals, or other property, or permit the same to be done by others than the Company's authorized agent or employee. Damage caused or permitted by the Customer to said property shall be paid for by the Customer.

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XII.

Denial or Discontinuance of Service

The Company, subject to the rules of the Commission, shall have the right to suspend its service for repairs or other necessary work on its lines, or system. In addition, the Company shall have the right to deny, suspend, or discontinue its service as provided in the Rules and Regulations governing service supplied by electric systems in South Carolina.

Removal of Equipment

In the event of discontinuance of service or expiration of contract, then it shall be lawful for the Company to remove its meters, apparatus, appliances, fixtures, or other property.

Waiver of Default

Any delay or omission on the part of the Company to exercise its right to discontinue or suspend service, or the acceptance of any part of any amount due, shall not be deemed a waiver by the Company of such right so long as any default in whole or in part or breach of contract on the part of the Customer shall continue, and whenever and as often as any default or breach of contract shall occur.

Reconnect Fee

In case of discontinuance of service for any reason except repairs or other necessary work by the Company, the Customer shall pay the Company a reconnect charge of $15.00 before service will be restored.

Where the service has been discontinued for any reason except for repairs or other necessary work by the Company, the Company shall have the right to refuse service at the same premises to any other applicant who is a member of the family of the former customer or who resides with the former customer on said premises.

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XIII.

Unavoidable Cessation of Consumption

In the event the Customer's premises is destroyed by fire, natural disaster, or other casualty, or the operation of its plant is shut down because of strike, fire, natural disaster, or other cause beyond the Customer's control, making a complete cessation of service, then upon written notice by the Customer to the Company within thirty (30) days thereafter, advising that the Customer intends to resume service as soon as possible, any minimum charge, or guarantee for which the Customer may be liable will be waived during the period of such cessation, and the contract shall be extended for a corresponding period. Otherwise, the agreement for service shall immediately terminate. When service has ceased under the described conditions, the Company shall have the right to (1) waive the collection of a deposit to reestablish service, (2) waive temporary service charges for temporary facilities or for reestablishment of service when such charges do not exceed a reasonable amount, (3) waive the collection of area lighting charges due to early termination of contract, and (4) waive the collection of a reconnection fee.

XIV.

Copies

Forms of application, service agreement, or contract, schedules of rates, riders, and copies of service regulations are available at the various offices of the Company and will be furnished to the Customer on request.

XV.

Changes

All agreements and contracts for service between the Company and its customers, including the rate schedules and these Service Regulations, are subject to such changes and modifications from time to time as approved by the Commission or otherwise imposed by lawful authority.

XVI.

Types of Service

The types of service supplied and the schedules applicable thereto are as follows:

1. Residential Service

The residential rate schedules are applicable to an individual residence, condominium, mobile home, or individually-metered apartment. The residential rate schedules shall be applicable to only one meter serving an individual residence.

The residential rate schedules are available for a single unit providing permanent and independent living facilities complete for living, sleeping, eating, cooking and sanitation. If the structure does not meet the requirements of a dwelling unit, service will be provided on one of the general service rate schedules.

Outbuildings, garages, swimming pools, water pumps, and other uses which form a part of the general living establishment on the same property with a residence may be connected to the residential service meter, or they may be separately metered; such separately metered services shall be served on one of the general service rate schedules.

Individual meters shall be installed by the Company for each individual residence, condominium, mobile home, housekeeping apartment, or housekeeping unit for which a permit was issued or construction started after January 23, 1981 in accordance with the Commission's Rules and Regulations which prohibit master metering. Exceptions must be approved by the Commission.

Residential service to two or more residences on the same property or to a residence or residences sub-divided into two or more individual housekeeping units may not be supplied through one meter on a residential rate schedule except as provided below:

Block Billing Under Residential Rate Schedules

If, for any reason, the wiring is so arranged by the Customer that rewiring for individual meters is not feasible, but a single meter must be used for two or more residences or units, then for billing purposes through this single meter, the Basic Facilities Charge and each kwh block of the rate schedule shall be multiplied by the number of residence units served.

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2. Service to Mobile Home Parks, Recreational Parks, Portable Structures.

   a. Mobile Home Parks

   Each space designated for the parking of mobile homes will be served through a separate meter and billing will be in accordance with the applicable residential or general service rate schedule.

   The Company will extend its conductors to groups of two or more spaces designated for the parking of mobile homes, and will provide and install at each delivery location a service structure on which its conductors are terminated and on which may be mounted the switch panels and wiring to accommodate a separate meter for each mobile home space. Otherwise, service connections will be the same as set forth in these Service Regulations VI, 1.

   Energy used by the mobile home park in its office, service buildings, area lighting, water pumps, and other purposes connected with the operation of the park, including spaces designated for the overnight parking of mobile homes in transit or awaiting assignment to separately metered spaces available within the park, may be served through a single meter, and will be billed in accordance with the applicable general service rate schedule.

   b. Recreational Parks and Campgrounds

   Service to recreational parks and campgrounds may be supplied to each establishment at one delivery point, and energy used in its offices, service buildings, area lights, water pumps, individual service outlets at campsites, and other purposes connected with its operation, will be billed through one meter in accordance with the applicable general service rate schedule.

   Where a portable structure (travel trailer, camper, motor home, etc.) occupies and remains at an individual campsite in a recreation park or campground under a lease arrangement for twelve (12) months or longer, the Company may, at its option, provide an individual delivery and meter the service to the structure on the individual campsite as provided for under 2. a. above. Energy used will be billed on a residential or general service rate schedule, whichever is applicable.

   c. Locations other than Mobile Home Parks, Recreational Parks or Campgrounds

   Service will be provided as set forth in these Service Regulations, XVI (15) Temporary Service, except that if the Customer presents satisfactory evidence of intent to remain at said location twelve (12) months or longer, service will be provided as for any structure having a permanent foundation. Energy used will be billed on a residential or general service rate schedule, whichever is applicable.

3. Residential Service to Group Facilities

   Facilities designed to provide residential care or a group home in a residential structure for up to and including nine adults or children (excluding houseparent or caregiver) may be served on a residential rate schedule provided the facility is a single housekeeping unit and energy is used only by equipment which would normally be found in a residence. If the facility has a separate housekeeping unit for the caregiver, commercial cooking or laundry equipment, vending machines, or other equipment not normally found in a residence the facility will be served on a general service rate schedule.

4. Professional Offices or Business Activities in Residences

   For residences involving some business, professional, or other gainful activity, a residential rate schedule will be permitted only where:

   a. the electric energy used in connection with such activity is less than 15% of the total energy use; and
   b. the electric energy is used only by equipment which would normally be used in a residence.

   If both of the foregoing conditions cannot be met, the entire premises shall be classified as nonresidential and an appropriate nonresidential rate schedule shall be applied.

   The Customer may, at his option, provide separate circuits so that the residential uses can be metered separately and billed under a residential schedule and the other uses under a general service schedule.

   For residences in which a Day Nursery is operated, a residential rate schedule will be permitted provided:

   a. The operator and the operator's family, if any, live there.
   b. The nursery requires no extra electrical equipment or space in addition to that normally required for the operator's family.
   c. There are no conspicuous business soliciting devices about the premises.

   If all of the foregoing conditions cannot be met, then the facility will be served on a general service rate schedule.

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5. Farm and Rural Service

The residential rate schedules are available for service through one meter to the Customer's personal farm residence, and for the usual farm uses outside the dwelling unit, but not for commercial operations selling at retail, or for non-farming operations, or for the processing, preparing, or distributing of products not indigenous to that farm.

The residential farm service customer may, at his option, elect to take the entire service under one of the general service rate schedules, or he may provide separate circuits so that the residential dwelling unit, together with the usual farm uses outside the dwelling unit, can be metered and served under a residential rate schedule, and the other uses under a general service rate schedule.

6. General Service

General service rate schedules are available to the individual customer for any purpose other than those excluded by the availability paragraph of the schedules, and they shall apply to the following:

a. Customers engaging in retail trade or personal service directly with the public such as hotels, motels, boarding houses; ("Boarding House" is defined as an establishment making a business of providing rooms and/or meals to the public in much the same manner as hotels and restaurants; or which has a license for operating such an establishment. This does not include homes taking in a small number of roomers and/or boarders, where the home owner does not depend on the revenue therefrom as a principal source of income.)
b. Hospitals, nursing homes, institutional care facilities;
c. Office buildings, stores, shops, restaurants, service stations, and other commercial establishments;
d. Schools, dormitories, churches, and other nonresidential customers, and other nonindustrial customers;
e. Energy used in a multi-family residential structure (other than the individual housekeeping units), such as hall lighting, laundry facilities, recreational facilities, etc.
f. Miscellaneous services with individual meters serving well pumps, signs, customer-owned lighting, garages, etc.

General service rate schedules continue to be available for master-metered apartments constructed prior to October 31, 1980, (or after October 31, 1980 with Commission approval) where the establishment consists of:

a. one or more buildings, each three (3) or less stories in height, of three (3) or more individual apartment living units per building, located on contiguous premises and under single ownership, or

b. a single building, under single ownership, four (4) or more stories in height, containing three (3) or more individual housekeeping units,

provided there is no submetering, resale, conjunctional, or sub-billing, or separate charge to tenants for electricity by the landlord, nor any form of variable rental charge based upon the electric usage by any tenant.

Notwithstanding a. above, 10% or less of the total number of living units being served through the single meter may be of two units per building, but no single-family units which may be among the buildings in the establishment can be served through the single meter. The number of buildings and apartment units to be served through a single meter may not be greater than the number for which the developer has secured a construction loan or permanent mortgage as of the date of the contract, and proof of such commitment may be required. Additional units to be built on the original premises or on an adjoining premises, must be contracted for separately and served through a separate meter and served on the applicable general service rate schedule.

Upon mutual agreement by the Customer and the Company, service will be rendered through a single meter to multiple delivery points, with the Company owning the distribution facilities between the meter and the several delivery points as set forth under the Extra Facilities section of these Service Regulations.

Service through a single meter, billed on a general service schedule is available only for general building use and residential use. Any tenant who could otherwise qualify for any of the Company's rate schedules other than residential, must be served separately by the Company.

The landlord must enter into a contract with the Company for each establishment qualifying for the single meter general service rate schedule in a. or b. above, and the contract shall specify the number of buildings and the number of stories and apartment units within each building in the establishment, the total contract demand of the establishment, and the names of streets, roads, or other boundaries of the contiguous premises within which each establishment is located.

Service will be supplied separately to each establishment. The Company shall make the final determination as to what constitutes a single establishment entitled to a service through a single meter at a single delivery point and shall notify the Customer before making a contract with the Customer.

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7. Industrial Service

The industrial service rate schedule is available to customers classified as "Manufacturing Industries" by the Standard Industrial Classification Manual published by the United States Government, and where more than 50% of the electric usage of such establishment is for its manufacturing processes.

8. Water Heating Service

Residential water heating service is available through the same meter as other residential service on Schedule RS, RE, or RT. Residential controlled submetered water heating service is available on Schedule WC.

Customers on Schedule G or I can obtain separately metered water heating service on Schedule W. Water heaters which do not meet the requirements of Schedule W will be served on the other schedule on which the customer is receiving service. Schedule W is not available to residential customers.

9. Outdoor Lighting Service

Customer-owned outdoor lighting service may be connected to the residential, general service, or industrial service meter, or it may be separately metered. Such separately metered services shall be served on the general service schedule.

Where the Company owns and operates the lighting equipment, service will be provided under Schedule OL or FL.

10. Seasonal Service

Where the Customers use of energy is seasonal, generally it will be to his advantage to keep his premises connected to the Company's lines throughout the year. Under certain rate schedules, the Customer may elect to contract for an annual minimum charge, rather than a monthly minimum charge, as outlined in the applicable schedules. The Company will disconnect the service for a period of inactivity upon request, but will make a disconnect charge of $15.00 if the service has been connected less than 6 months.

11. Government and Municipal Service

The regular general service rate schedules are available for government and municipal service to facilities such as offices and schools. Schedule PL is available to governmental entities for street and public area lighting. Schedule TS is available to governmental entities for traffic and safety signals.

12. Time of Use Service

Time of Use rates are optional and are available to residential and nonresidential customers.

13. Load Control and Interruptible Service

Optional Riders for residential load control, interruptible service and standby generator service offer credits for contracting customers who provide a source of capacity to the Company.

14. Breakdown and Standby Service

The Company does not supply breakdown or standby service, and service under its rate schedules may not be used for resale or exchange or in parallel with other electric power, or as a substitute for power contracted for or which may be contracted for, except at the option of the Company, under special terms and conditions expressed in writing in the contract with the Customer.

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15. Temporary Service

Temporary service for construction of buildings or other establishments which will receive permanent electric service from the Company's lines when completed will be provided under Schedule BC if single-phase service is supplied, or under Schedule G if three-phase service is supplied.

Temporary service for construction projects which will not result in permanent electric service, and for rock crushers, asphalt plants, carnivals, fairs, and other nonpermanent installations will be provided on the General Service Schedule where the Customer agrees to pay the actual cost of connection and disconnection. The cost shall include payroll, transportation, and miscellaneous expense for both erection and dismantling of the temporary facilities, plus the cost of material used, less the salvage value of the material removed. A deposit may be required equal to the estimated cost of connection and disconnection plus the estimated billing on the General Service Schedule for the period involved, said deposit to be returned if the contract period is fulfilled.

16. Special Provisions

a. Service to x-ray, welding and other equipment of this type may be operated by the Customer through his regular service meter when such operation will not adversely affect the quality of service to neighboring customers. For purposes of establishing the contract demand, such equipment will be rated at one KW for each 4 KVA of rated capacity.

If, however, the use of such equipment causes voltage fluctuations detrimental to the service of the Customer or other customers, the Company may set a separate transformer for the exclusive use of the Customer, and extend a separate service to the Customer's premises. This service shall be metered, and shall be billed on the applicable rate schedule. In addition, the Customer shall be billed 30 cents per month per KVA of the separate transformer. In lieu of setting the separate transformer, the Company may require the Customer to either discontinue the operation of the equipment or install the necessary motor-generator set or other apparatus to eliminate the disturbance to other customers.

b. Fluorescent lamps. Installation of neon, fluorescent, and/or mercury vapor lamps or tubes, or other types or combinations of gaseous discharge lamps having lower power factor characteristics, made, replaced, relocated, or rearranged after December 31, 1940, should be so equipped that the power factor of each unit or group of units shall not be less than approximately 90% lagging. When an installation has a power factor less than approximately 90% lagging, there shall be added to each monthly bill covering such installation an additional fixed charge of 35 cents for each 100 volt-amperes by which the volt-ampere rating of such installation numerically exceeds the watt rating, as obtained by test or from the manufacturers' nameplates.

c. Optional Schedules. For certain classes of service, optional schedules are available which result in lower average prices to customers because of their usage characteristics. Since this use is under the control of the Customer, the amount of saving, if any, is also under his control and the choice of schedules, therefore, lies with him.

Upon request, investigation will be made and assistance will be given to the Customer in selecting the rate which is most favorable to his condition and to determine whether the rate under which he is being billed is the most advantageous. The Company does not guarantee that each customer will be served under the most favorable rate at all times, and will not be responsible for notifying the Customer of the most advantageous rate. Not more than one change from one optional rate to another will be made within any twelve (12) month period for any customer. When a change is made from an optional rate to another, no refund will be made of the difference in charges under different rates applicable to the same class of service.

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d. Extra Facilities. At the request of the Customer, the Company will furnish, install, own and maintain facilities which are in addition to those necessary for delivery of service at one point, through one meter, at one voltage, in accordance with the applicable rate schedule, such additional facilities to be furnished under an "Extra Facilities Clause" added to and made a part of the Company's standard form of contract and containing the following provisions:

1) Service shall be used solely by the contracting Customer in a single enterprise located entirely on a single, contiguous premises, and there shall be no exemption from any of the other provisions of these Service Regulations.

2) "Extra Facilities" shall consist of such of the following as may be required: voltage regulators, circuit breakers, duplicate service, transformers, substations, connecting lines, or other equipment installed for the exclusive use of the contracting Customer, other than facilities which the Company would furnish to the Customer without cost under its standard form of contract.

3) The facility to be supplied shall be Company standard overhead transmission or distribution, or transmission and distribution, equipment to be installed only on the Company side of the point of delivery.

4) A monthly "Extra Facilities Charge" equal to 1.7% of the installed cost of the facilities, but not less than $25, shall be billed to the Customer in addition to the billing for energy, or for demand plus energy, in accordance with the applicable rate schedule.

5) The "installed cost of extra facilities" shall be the original cost of material used, including spare equipment, if any, plus applicable labor, transportation, stores, tax, engineering and general expenses, all estimated if not known. The original cost of materials used is the current market price of the equipment at the time the equipment is installed, whether said equipment is new or out of inventory.

6) "Extra Facilities" shall include the installed cost of extra meters and associated equipment necessary to record demand and energy at the voltage delivered to the Customer. Upon mutual agreement between the Customer and the Company, demand and energy may be metered at primary voltage, without compensation for transformer loss, and without inclusion of any part of the metering cost as an extra facility. When extra facilities furnished include a voltage regulator, metering equipment shall be installed on the Company side of the regulator, or if this is not feasible, the meter shall be compensated so as to include registration of the regulator losses.

7) When the extra facilities requested by the Customer consist of those required to furnish service at either more than one delivery point on the premises or at more than one voltage, or both, the installed cost of the extra facilities to be used in the computation of the Extra Facilities Charge shall be the difference between the installed cost of the facilities made necessary by the Customer's request, and the installed cost of the facilities which the Company would furnish without cost to the Customer under its standard form of contract.

8) The Company shall have the option of refusing requests for extra facilities if, on its own determination, the requested facilities are not feasible, or may adversely affect the Company's service to other customers.

9) Contracts containing the Extra Facilities clause shall have a minimum original term of 5 years to continue from year to year thereafter, but the Company may require the payment of removal costs in contracts with original terms of 10 years or less, and may require advance payment of the Extra Facilities Charge for a period equal to one-half the original term of the contract.

10) Customers from whom the Company may be furnishing extra facilities under contracts made prior to September 1, 1962 shall be exempted from all provisions of this Extra Facilities Clause except 1) until such time as their contracts may expire, or are terminated by the Customer, or are terminated by the Company for reasons not related to the furnishing of extra facilities.

11) In the event that an existing extra facility must be modified or replaced, whether or not such modification or replacement is requested by the affected extra facility Customer, then the installed cost of extra facilities on which the monthly Extra Facilities Charge is based shall be the installed cost of existing equipment, plus the installed cost of new additions, less the installed cost of equipment removed. The installed cost of existing equipment shall be the same installed cost used for said equipment immediately prior to the modification or replacement. The installed cost of new additions shall be the current market price of said new additions at the time the new additions are installed. The installed cost of equipment removed shall be the same installed cost used for said equipment immediately prior to removal.

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