

OPERATING AGREEMENT
BETWEEN
THE UNITED STATES (service branch)
AND (utility company)

THIS OPERATING AGREEMENT is made and entered into this ___ day of (Month), (Year), by and between the UNITED STATES (Name Service Branch), as “Lessor”, and (Name Utility), a (Name State of Incorporation for the Utility) corporation, as “Lessee”.

1. Purpose

This Operating Agreement implements the terms and conditions of Lease No. ____, entered into (Date), between the Lessor and the Lessee as identified above, for the purpose of (1) constructing, operating, and maintaining _____ (“Facility”); and, (2) constructing, operating, and maintaining adjacent to, and for purposes of this Operating Agreement, part of, the Facility, fuel facilities for receipt, storage, and delivery of fuels for the operation of the Plant or for other ancillary needs.

2. Definition and Interpretation

The Operating Agreement is incorporated as Exhibit C to the Lease. The term “Section” or “Sections” of the Lease shall mean the numbered paragraphs (1 – 33), including any and all subparagraphs, of the Lease. Unless otherwise specifically stated, the terms “Lessee” and “Said Officer” as used in the Lease shall have the same meaning in this Operating Agreements as in the Lease. The term “Lessor” shall mean the (Name Military Service) or its successors in interest or assigns. The term “Leased Premises” shall mean the property described in the Lease under “WITNESSETH” and in Exhibit A of the Lease. In the event of any inconsistency between the Sections of the Lease and any language of this Operating Agreement, the Lease will control.

3. General

(a) The Lessee shall perform all construction work upon the Leased Premises described in and in accordance with the terms and conditions of the Lease.

(b) The Lessee is constructing the Facility for its own benefit, and will maintain the Facility and operate it at no cost to the Lessor. The Lessee shall, at all times, construct, operate, and maintain the Facility in a manner consistent with the terms and conditions of the Lease, this Operating Agreement and Prudent Utility Practice. As used in this Operating Agreement and the Lease "Prudent Utility Practice" at a particular time shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry with facilities similar to the Facility, prior to such time, or any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. "Prudent Utility Practice" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts having due regard for, among other things, manufacturers' warranties, safety, security, reliability and the requirements of governmental authorities of competent jurisdiction and the requirements of this Operating Agreement and the Lease.

(c) Lessee shall have the right to (i) subcontract any or all of the construction work to be performed on the Leased Premises, and (ii) subcontract any or all of the maintenance work to be performed on the Leased Premises. Lessee shall have the right to subcontract the operation of the Facility subject to the prior written approval of the Lessor, which such approval shall not be unreasonably withheld. Notwithstanding such contracts, however, the Lessee shall remain fully liable for performing all terms and conditions of the Lease and this Operating Agreement. Nothing in this Paragraph 3(c) shall be construed as permitting Lessee to enter into any contract which violates Lessee's obligations under Condition 14 of the Lease.

(d) The authorized representative for executing and amending this Operating Agreement on behalf of the Lessor is the (Provide Title of Lessor's representative). The authorized representative for executing and amending this Operating Agreement on behalf of the lessee is the (Provide Title of Utility Representative).

4. Primacy of the Military Mission

The Lessee acknowledges it understands and accepts that the military mission at (Name Installation) has priority and primacy over all other operations at the base. In the event a national emergency is declared by Congress or the President, war involving the United States (declared or undeclared) breaks out, or the paramount interest of national defense requires it, Lessor may direct the Lessee to delay or otherwise alter its construction activities or operation to accommodate the military mission of the base. Any such delay or alteration shall constitute an excusable delay as such term is used in Section 16.2.3 and Section 16.2.3.1 of the Lease.

5. Security

(a) The Lessee, its officers, agents, employees, independent contractors and subcontractors, and any invitees of them must obtain identification passes from base security police before being admitted to the base. Vehicles of the aforesaid personnel must be registered with security police and issued appropriate passes before they may be driven on base. Such vehicles are subject to inspection by security police. Drivers and vehicles must have proof of adequate insurance before passes will be issued.

(b) The Lessor may refuse to allow the Lessee, its officers, agents, employees, independent contractors or subcontractors, or any invitees of any of them to have access to the base or the leased premises in the event of a national emergency is declared by Congress or the President, war involving the United States (declared or undeclared) breaks out, or the paramount interest of national defense requires it.

(c) Upon notice to the individual concerned and for good cause, the Lessor may bar any person from entering the base or the Leased Premises, or may eject any person from the base or the Leased Premises. In this connection "good cause" includes, but is not limited to, any credible evidence that the person barred or ejected has committed a criminal act or is the subject of outstanding criminal warrants.

(d) Lessor will not provide security for the Facility. However, Lessor does provide security generally for the entire (Name Military Base) and will occasionally patrol the outside perimeter of the Facility. If the Base security personnel note anything which indicates a

probability of criminal conduct in our around the Facility, they will investigate the matter, consistent with Lessee's security requirements such as NERC/CIP.

6. Safety

(a) The Lessee will furnish to the Lessor a copy of any report made by Lessee or of which Lessee is aware to federal, state, or local authorities about any accident, incident or mishap involving Lessee, its officers, agents, employees, independent contractors or subcontractors or any invitee of any of them as soon as possible after the report is made to the federal, state or local authority or Lessee becomes aware that the report was made..

(b) The Lessee will provide such safety and health information relating to the Lessee's use of the Leased Premises as the Lessor may reasonably require. The Lessee will notify the Lessor as soon as Lessee knows of any inspection of the Leased Premises performed or scheduled by the Occupational Safety and Health Administration (OSHA) or the (Name State) Division of Occupational Safety and Health.

7. Scheduling, Dispatch, and Delivery of Power –

(a) Normal Operations. Except in the event of an Emergency, Lessee shall schedule, dispatch, and deliver power from the Facility to Lessee's electric system for use as Lessee deems necessary or appropriate.

(b) Emergency Operations. (This Section deals with the issue of what happens if an emergency occurs and the Installation requires electricity from the Facility. The language found in this Section will be highly site specific to a site and as a result, what follows below is only a rough outline that the Parties may want to consider when negotiating their Lease and Operating Agreement.

(1) In the event the Facility is incapable of operation when needed during an Emergency due to a planned outage or otherwise, Lessee shall use reasonable efforts to bring the Facility into operation at the earliest feasible time. Following the commencement of Emergency operations, the Facility shall be returned to normal operation as soon as Lessee can do so without returning (Name Military Base) to a state of Emergency.

(2) Planned outages will be scheduled in accordance with Prudent Utility Practice.

(c) Lessee's sale's price of electricity to (Name Military Base) during Emergencies

(d) "Emergency" as used in this Operating Agreement shall mean ...

(e) In order to enable Lessee to black-start the Plant in the event of an Emergency, Lessor shall supply electric power to the Facility to the extent it is reasonably capable of supplying such power at no charge to the Lessee in the event Lessee is unable to supply electric power to the Facility from an off-site location. Lessee estimates that it shall require ____ KW to black-start the Facility.

(f) The parties agree that the Facility will operate to serve the ratepayers of Lessee whenever needed and, absent a national emergency, will not be operated with the (Name Military Base) separated from the Lessee's grid system unless required by Lessee's normal operating procedures. Further unless ordered under duly authorized governmental proclamation in the event of a national emergency, the Facility will not be commandeered or operated by the (Name Military Service) but instead will be operated at all times by Lessee.

8. Connection of Facility to Transmission and Distribution Facilities

Lessee's deliveries of power during Emergencies from the Facility to the (Name Military Base) service point meters shall be made through transmission lines and substations on (Name Military Base) site. Lessee shall have the right to deliver power from the Facility into the Lessee's electric system at such voltage levels as Lessee deems appropriate. All connections between the Facility and (Name Military Base) or Lessee, including transfer switching, metering and controls, shall be planned, designed, constructed, installed, tested, operated, maintained, added to, modified, disposed of, replaced and otherwise controlled by Lessee. Lessee shall not be responsible for the use or characteristics of power delivered to (Name Military Base) beyond the (Name Military Base) service point meter, nor does it assume any liability for any damage to property or injury to persons, including but not limited to death, arising from such delivery.

9. Governing Law

The rights, obligations and remedies of the parties as specified under this Operating Agreement shall be interpreted and governed in all respects by the laws of the United States.

10. Notices

All notices under this Operating Agreement from the Lessee shall be sent to the Lessor's address as set out in Condition 22 of the Lease. All notices under this Operating Agreement from the Lessor shall be sent to the Lessee's address as set out in Condition 22 of the Lease.

11. Successors of the Lessor

In the event that (Name Military Base), or any part of it that includes the Leased Premises, is transferred, leased, sold or otherwise conveyed to any other component of the Department of Defense (the "DoD"), the Lessee and the Lessor shall mutually determine if this Operating Agreement shall continue in full force and effect for the benefit of such component of the DoD. The parties agree that the underlying purpose of this Operating Agreement is to provide emergency back-up electrical power to a military installation in the event of a national emergency or the installation's isolation from the Lessee's grid system, and the continued effectiveness of this Operating Agreement must be consistent with such purpose and the intent of the parties entering into this Operating Agreement. Lessor acknowledges that the provisions contained in Paragraph 7 of this Operating Agreement concerning emergency operations relate specifically to the military mission of (Name Military Base) and the rights of Lessor under such Paragraph shall not be assigned or subcontracted without prior written consent of Lessee.

12. Term, Termination and Modification

(a) Term. The term of this Operating Agreement shall commence on the date hereof and shall continue for a period of forty-five (45) years from the date the Facility is completed and declared fully operable by Lessee, but in no event shall the termination date be later than (Provide Date). Under no circumstances will this Operating Agreement continue in force beyond the termination of the Lease.

(b) Termination by (Utility Name). This Operating Agreement may be terminated by (Utility Name) upon written notice to Lessor (i) in the event a material breach by Lessor of any of

its material obligations under this Operating Agreement, the Lease, or the Electric Service Agreement has not been cured within a reasonable time, established by (Utility Name) in its reasonable discretion following written notice thereof to Lessor; or (ii) upon the termination or expiration without replacement of the Electric Service Agreement; or (iii) in the event that force majeure prevents, prohibits or substantially increases the cost to Lessee of continued performance of Lessee's obligations hereunder; or (iv) in the event the Facility is eliminated from Lessee's Planning Requirements (as defined in the Lease); or (v) in the event (Name Military Base) electric demand or consumption under the Electric Service Agreement or its replacements decreases below _____ kilowatts or _____ annual kilowatt hours, respectively, for any reason other than an ordered reduction in command operations or implementation of energy conservation measures; or (vi) in the event the Facility is destroyed or damaged to the extent that Lessee determines restoration would not be appropriate; or (vii) in the event Lessee determines to retire the Plant. Notice of termination given to Lessor under this Condition 12 (b) must (i) specify a date at least sixty days after the date of the notice, that the Plant will cease operation and (ii) if applicable, a date subsequent to the date that the Plant will cease operation, by which decommissioning will be completed and the Lease and the Operating Agreement will terminate.

(c) Termination by Lessor. This Operating Agreement may be terminated by the Assistant Secretary of the (Name Military Service) (Installations), or his successor in interest, only upon the material breach by Lessee of a material term of this Operating Agreement. Prior to termination, the (Utility name) must be informed, in writing, by the Lessor of the terms with which the (Utility name) is not complying and afforded a period of ____ (__) days to return to compliance with the Operating Agreement's provisions or begin the actions necessary to bring it into compliance with the Operating Agreement in accordance with a compliance schedule approved by the Lessor in its reasonable discretion, if the time required to return to compliance exceeds the ____ (__) day period.

(d) Modification. This Operating Agreement may be amended or modified only by mutual agreement of the parties. All such amendments must be in writing and signed by each of the parties hereto. Notwithstanding the foregoing, any amendment or modification to this Operating Agreement which materially affects the Lease shall not be effective unless and until approved by an official of the Lessor authorized to amend the Lease.

13. General Provisions.

(a) Force Majeure. Notwithstanding any other provision of this Operating Agreement, Lessor and Lessee shall be excused from performance of any obligation under this Operating Agreement to the extent and for so long as such performance is prevented by force majeure.

(b) No Liability For Outages. Notwithstanding any other provisions of this Operating Agreement, during an Emergency or otherwise, Lessee shall have no liability whatsoever to Lessor for any damage to property, injury to persons, including death, or other loss arising from or in connection with the partial or total failure of the Facility to generate or deliver electricity.

Agreed to this ____ of _____, 20__

DEPARTMENT OF THE (Name Military Service)

By: _____

Title: _____

Agreed to this ____ of _____, 20__

(Name Utility)

By: _____

Title: _____