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HAND DELIVERY

May 5, 1989

Dr. Thomas E. Murley
Director, Office of Nuclear
Reactor Regulation
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
12th Floor
Rockville, Maryland 20852

**RE: Shearon Harris Nuclear Power Plant,
Request for Commencement of Informal Complaint
Procedures Under Section 5.3.2, NUREG-0970**

Dear Dr. Murley:

This letter is submitted on behalf of North Carolina Eastern Municipal Power Agency ("Power Agency") for the purpose of requesting commencement of informal complaint procedures pursuant to Section 5.3.2 of NUREG-0970 (May 1985). The purpose of this request is to obtain enforcement of antitrust license conditions contained in License No. NPF-53, the Facility Operating License for the Shearon Harris Nuclear Power Plant, Unit No. 1 ("Harris Unit 1"), operated by Carolina Power & Light Company ("CP&L") on behalf of itself and Power Agency, as co-licensees.

A brief summary of the background of this complaint is as follows. In 1981, Power Agency entered into agreements with CP&L pursuant to which Power Agency purchased ownership interests in generating units that were then in existence or under construction on CP&L's system, including Harris Unit 1 (collectively, the "Joint Units"). Since April 22, 1982, Power Agency has been providing all requirements bulk power supply service to its 32 Participants, each of which is a municipality

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located in central or eastern North Carolina that owns and operates its own electric distribution system.

One of the contracts executed in connection with Power Agency's purchase of ownership interests in the Joint Units is the Power Coordination Agreement dated July 30, 1981 ("the 1981 PCA") between Power Agency and CP&L. Under the 1981 PCA, Power Agency purchases several types of partial requirements power from CP&L to supplement power from Power Agency's ownership interests in the Joint Units. Among these types of power is firm partial requirements service from CP&L, referred to in the 1981 PCA as "Supplemental Capacity" and "Supplemental Energy". Each month, Power Agency purchases and CP&L provides Supplemental Capacity in an amount equal to Power Agency's peak demand in that month, less the firm capacity available to Power Agency from the Joint Units and certain other resources available to Power Agency. The 1981 PCA also provides for a range of other interconnection services, including backstand services related to the Joint Units, reserve sharing arrangements, certain other interchange services, and transmission.

Article 6 of the 1981 PCA expressly recognizes Power Agency's right to obtain power from sources other than CP&L to serve its Participants. (A copy of Article 6 of the 1981 PCA is provided as Attachment 1 to this letter. 1/) Power Agency currently purchases firm capacity and associated energy from the South Carolina Public Service Authority ("Santee Cooper") under an agreement that will expire on December 31, 1993. Power Agency has negotiated with Santee Cooper for additional purchases of firm capacity after 1993, and also for other inter-utility power exchange services (including Short Term Power and Economy Energy) that Santee Cooper could provide to Power Agency as soon as the necessary agreement with CP&L is finalized. Power Agency seeks to purchase these services from Santee Cooper because they are expected to be less costly than the CP&L services they are expected to supplant, and because they could be economically integrated into Power Agency's overall power supply in a manner that is expected to reduce Power Agency's total cost of providing service to its Participants.

The basis for Power Agency's complaint is that CP&L is obstructing the effectuation of Power Agency's inter-utility exchange arrangement with Santee Cooper. Throughout lengthy and ultimately unfruitful negotiations over the power coordination agreement that would integrate the Santee Cooper resource into the Power Agency-CP&L power supply arrangement, CP&L repeatedly

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1/ If the Commission believes it would be helpful, Power Agency would be happy to provide a complete copy of the 1981 PCA, or any other materials or information that bear on the matters discussed in this letter.

has asserted untenable and illogical interpretations of the 1981 PCA in order to block the effective use of that resource. When Power Agency exercised what it believes to be its contractual and statutory right to obtain from the Federal Energy Regulatory Commission ("FERC") a determination of the terms and conditions that would govern Power Agency's proposed use of the Santee Cooper resource, CP&L opposed Power Agency's request for such a FERC determination. Moreover, in the proceedings before FERC, CP&L advanced the contention that the 1981 PCA prohibits Power Agency's proposed use of its new Santee Cooper resource. In subsequent negotiations, CP&L adhered to that position, and argued in effect that Power Agency must negotiate for, and make economic concessions in order to obtain, the right to purchase inter-utility exchange services from Santee Cooper.

Power Agency submits that CP&L's effort to obstruct Power Agency's proposed use of its Santee Cooper resource violates the antitrust conditions included in Appendix C to the Facility Operating License for Harris Unit 1, NFP-63 (issued January 12, 1987), which conditions are provided as Attachment 2. More specifically, Commitment No. 4 of these antitrust conditions states as follows:

> Licensee will facilitate the exchange of bulk power by transmission over its system between or among two or more entities with which it is interconnected on terms which will fully compensate it for the service performed, to the extent that such arrangements reasonably can be accommodated from a functional and technical standpoint.

License Condition No. 4 is directly applicable to the situation herein described. Power Agency is interconnected with CP&L's system at each of the Joint Units and at each of the delivery points that serve Power Agency's Participants. Santee Cooper is interconnected with CP&L's system at high voltage at a number of points of interconnection. CP&L has not contended that there are any "functional or technical" impediments to the effectuation of Power Agency's proposed Santee Cooper resource. Indeed, CP&L itself is party to an interchange agreement with Santee Cooper under which it conducts the same sort of transactions that Power Agency and Santee Cooper contemplate. Finally, the instant dispute is not simply a disagreement about appropriate compensation; rather, the linchpin of CP&L's position is that Power Agency is <u>prohibited</u> from making use of the inter-utility exchange services that are available to Power Agency from the Santee Cooper resource.

Power Agency believes that CP&L's continuing effort to frustrate Power Agency's proposed use of its Santee Cooper resource contravenes and violates License Condition No. 4 (and,

possibly, other antitrust license conditions to which CP&L is subject). Power Agency seeks prompt and full enforcement of the license conditions that CP&L has violated. CP&L's conduct has prevented Power Agency from dealing with an alternate power supplier, Santee Cooper, that is ready, willing and able to provide power and energy to Power Agency. Conversely, by forcing Power Agency to maintain its purchases from CP&L and preventing Power Agency from using substitute power sources, CP&L has foreclosed Santee Cooper's ability to reach a willing customer, Power Agency. In addition, CP&L's conduct forces Power Agency to forego purchasing less expensive capacity and/or energy available from an alternative power supplier, resulting in higher costs to Power Agency for its resources and, necessarily, higher costs of power supply to Power Agency's Participants, which resell such power at retail. Many of the Participants compete directly with CP&L to provide retail electric service. Thus, CP&L's conduct has had, and will continue to have, the effect of suppressing competition in the electric power markets in North Carolina and South Carolina, contrary to the Commission's objectives in adopting the aforementioned antitrust conditions. CP&L's conduct also deprives Power Agency of the benefits of coordination that could be obtained through full implementation of the proposed arrangement with Santee Cooper.

The subject matter of this complaint is included among the matters as to which Power Agency, on May 4, 1989, initiated formal arbitration pursuant to Article 22 of the 1981 PCA. Inasmuch as the facts surrounding Power Agency's complaint herein are set forth in greater detail in Power Agency's Notice of Intention to Arbitrate, a copy of that Notice is provided as Attachment 3. Power Agency believes that, despite its initiation of arbitration proceedings, it is nevertheless entitled to seek enforcement of the Harris antitrust license conditions by initiating complaint procedures before the Commission, for at least three reasons. First, the Commission has an independent regulatory interest in ensuring compliance by licensees with antitrust license conditions included in Facility Operating Licenses. Second, even assuming arguendo that CP&L's conduct were found by an arbitrator to be consistent with the 1981 PCA, such conduct might nevertheless be deemed by the Commission to contravene antitrust license conditions to which CP&L is subject. Finally, in view of the fact that any delay in effectuation of the proposed Santee Cooper arrangement imposes economic penalties on Power Agency and its Participants, Power Agency believes it has an obligation to its Participants to pursue any and all avenues of relief that may be available.

For the foregoing reasons, Power Agency hereby requests the convening of a conference with NRC representatives to discuss the subject matter of this complaint, as provided for in Section 5.3.2 of NUREG-0970. Power Agency also requests that

copies of all correspondence concerning this matter be provided to me, and also to the following persons:

Mr. William G. Wemhoff
Director - Engineering
North Carolina Eastern
Municipal Power Agency
1427 Meadowwood Blvd. (27604)
P.O. Box 29513
Raleigh, N.C. 27626-0513

Michael S. Colo, Esq.
Poyner & Spruill
133 So. Franklin St. (27804)
P.O. Drawer 353
Rocky Mount, N.C. 27802-0353

A courtesy copy of this letter (without attachments) is being provided by mail to Carolina Power & Light Company's designated recipient for official notices under the 1981 PCA.

Very truly yours,

Gary J. Newell
Counsel for North Carolina
Eastern Municipal Power Agency

cc (w/o encl.):
Mr. Bobby L. Montague
Vice President - System Planning
and Operations
Carolina Power & Light Company
P.O. Box 1551
Raleigh, N.C. 27602

ATTACHMENT 1

POWER COORDINATION AGREEMENT
BETWEEN
CAROLINA POWER & LIGHT COMPANY
AND
NORTH CAROLINA MUNICIPAL POWER AGENCY NUMBER 3
AND EXHIBITS

JULY 30, 1981

ARTICLE 6

SUPPLEMENTAL CAPACITY AND ENERGY

6.1 Amount of Supplemental Capacity and Energy

(A) Commencing with the First Closing Date, CP&L shall sell, and Power Agency shall purchase, Supplemental Capacity and Energy which shall be available to Power Agency as a resource for the service of its load. CP&L undertakes hereby to provide Supplemental Capacity and Energy in the amounts required by Power Agency so that its Participants, including its Participants not supplied fully by CP&L prior to the First Closing Date, can serve their present and future loads, other than increases in such loads which arise from an undertaking by Power Agency, or one or more of its Participants, to serve: (1) a source of demand outside the geographical area served by CP&L; provided, however, that CP&L shall provide Supplemental Capacity for loads of a Participant not located in the geographical area in which CP&L serves, or in which CP&L proposes to serve, if such loads are in an area adjacent to or in reasonable proximity to an area served by such a Participant, and would be served directly by such Participant; or (2) any additional load of a Participant which because of its type and size would not be included by CP&L in planning its system and which, if served, (a) would compel an enlargement of CP&L's generating facilities not otherwise included by CP&L in its system planning, including planning for Power Agency's Supplemental

Capacity requirements; or (b) would impair CP&L's ability to render adequate service to its retail and wholesale customers, including Power Agency. Prior to the First Closing Date and in each calendar year thereafter, CP&L shall inform representatives designated by Power Agency of the basis on which the load projections utilized by CP&L in its system planning, including planning for Power Agency's Supplemental Capacity requirements, are developed.

(B) Commencing on the First Closing Date, the amount of Supplemental Capacity purchased by Power Agency in each calendar month shall be Power Agency's Monthly Peak Resource Demand, as defined in Section 4.1, in that month less its total Retained Capacity from Joint Facilities in Commercial Operation during that month. Such amount shall be adjusted in accordance with Section 6.1(D), (E), (F) or (G) where applicable.

(C)(1) A resource or resources provided by Power Agency either independently or with entities other than CP&L shall be a New Resource under this Agreement if (a) Power Agency provides backstand sufficient to meet the intended use of such resource in providing Power Agency with a firm power supply; and (b) the sum of (i) the firm capacity of such resource; (ii) Retained Capacity; and (iii) the firm capacity of other New Resources existing or for which notice has been given to CP&L pursuant to Section 6.1(D) or (E), does not exceed Power Agency's projected Annual Peak Resource Demand in any calendar year

following the projected date of Commercial Operation of such resource.

(2) Power Agency (or a Participant) may, for any calendar year, meet a portion of its load with resources provided by it, either independently or with entities other than CP&L, but such resources may not be used to meet Hourly Resource Demand unless they are New Resources.

(3) If a resource to be provided by Power Agency is not a New Resource, CP&L and Power Agency shall undertake negotiations for an interconnection agreement concerning such resource. Either party may make appropriate application to FERC concerning such interconnection at any time such party concludes that such negotiations will not produce an agreement.

(4) Power Agency shall be responsible for making the necessary arrangements, if any, to have the Output of New Resources delivered to CP&L's transmission system.

(5) When Power Agency begins to consider use of a resource or a New Resource, it shall advise CP&L of such consideration at the earliest stage which is reasonably feasible and, in any event, Power Agency shall advise CP&L as soon as a decision is made to recommend to the Board of Power Agency the expenditure of funds for study or construction of a specific resource or New Resource.

(D) Notwithstanding the provisions of Section 6.1(B), if Power Agency plans to provide the required backstand for a

New Resource by purchasing Reserve Capacity for such New Resource from CP&L at the same reserve level required by Section 7.4(A) (but including the capacity of the New Resource in such calculation), and if Power Agency plans for such New Resource to be dispatched against the Combined System loads under CP&L's dispatch control, and if such New Resource is located on the line side of a Delivery Point or is located on the load side of a Delivery Point but has a mode of operation which precludes the transmission of energy from such resource into the CP&L System, Power Agency may meet its Hourly Resource Demand with such New Resource and may obtain the required backstand capacity and energy from CP&L under the applicable provisions of this Agreement if the New Resource is located on the line side of a Delivery Point and may reduce the amount of Supplemental Capacity to be taken by giving written notice to CP&L not later than December 31 of the calendar year eight (8) years prior to the calendar year to which the notice applies. Any notice hereunder shall state the expected dependable capacity of such New Resource, its source, the means proposed by Power Agency for the backstand of the New Resource, the period during which the New Resource is expected to be available to Power Agency, and the amount of capacity, in KW, which Power Agency intends to declare for the purpose of reducing Supplemental Capacity. In such event, the following provisions shall apply:

(1) Power Agency shall notify CP&L of its intention to bring on such a New Resource and CP&L and Power Agency shall undertake negotiations for a power coordination agreement applicable to that New Resource; such negotiations to include, if the New Resource is to be located on the load side of a Delivery Point, (1) whether CP&L shall provide backstand capacity and energy; (2) rates, terms and conditions relating to provision of backstand capacity and energy, whether provided by CP&L or others; and (3) rates, terms and conditions relating to transmission service. The terms of such power coordination agreement shall include the provisions of this Agreement applicable to such New Resource; provided, however, that in the case of New Resources which have intermittent or limited useability of capacity, the determination of MNDC and the required reserve level shall be subject to negotiation which takes account of such intermittent or limited useability of capacity from such resources. The terms of such power coordination agreement shall also include provisions for the disposition by Power Agency to CP&L or others of (a) capacity and associated energy from such New Resource which is in excess of the capacity which Power Agency declares for purposes of reducing Supplemental Capacity and (b) capacity and associated energy from such New Resource which is in excess of the amounts for which Power Agency is actually credited in each month under this Agreement;

provided, however, that the specific terms and conditions of this Agreement with respect to Surplus Energy, backstand and transmission service shall not apply to such excess capacity and associated energy unless CP&L so agrees in said power coordination agreement and CP&L shall not unreasonably withold such agreement. Either party may make appropriate application to FERC for determination of the terms and conditions for interconnection at any time that it appears to such party that negotiations will not produce such an agreement.

(2) Upon arriving at a power coordination agreement under Section 6.1(D) or Section 6.1(E), the amount of Supplemental Capacity to be purchased from CP&L by Power Agency when bringing on such a New Resource either pursuant to Section 6.1(D) or Section 6.1(E) shall be as follows:

(a) If Power Agency has given eight (8) years notice to CP&L pursuant to Section 6.1(D) or Section 6.1(E) with respect to a New Resource but the eight (8) year notice period has not expired, Power Agency may nonetheless, upon at least eighteen (18) months prior written notice, schedule such New Resource to serve Hourly Resource Demand in less than eight (8) years; provided, however, that in such circumstances, the Supplemental Capacity to be purchased by Power Agency in each month shall not be reduced below zero and shall be the higher of:

(i) A - [B+C] (This calculation shall be made with respect to each New Resource and the highest result obtained shall be used.); or

(ii) A - D; or

(iii) A - E;

Where "A" = Power Agency's Monthly Peak Resource Demand in KW in that month less the sum of (1) Power Agency's Retained Capacity from Joint Facilities in Commercial Operation during that month and (2) the total capacity (as defined in the power coordination agreement negotiated pursuant to Section 6.1(D) or 6.1(E)) of New Resources for which the eight (8) year notice period has expired that are in Commercial Operation during that month.

"B" = "A" times .04 times the number of full calendar years which have elapsed since December 31 of the calendar year in which the eight (8) year notice was given on such New Resource in Commercial Operation; provided, however, that the result in KW shall not be greater than the capacity of each such New Resource (as defined in the power coordination agreement negotiated pursuant to Section 6.1(D) or 6.1(E)).

"C" = The sum of the capacities allowed for that month of all New Resources which are in Commercial Operation and whose eight (8) year notice period has not expired, exclusive of the capacity of the New Resource in Commercial Operation for which the result in (i) herein is being calculated.

"D" = "A" times .04 times the number of full calendar years which have elapsed since December 31 of the calendar year in which the eight (8) year notice was given on the New Resource which is in Commercial Operation and has the longest unexpired notice period; provided, however, the result in KW shall not be greater than the capacity (as defined in the power coordination agreement negotiated pursuant to Section 6.1(D) or 6.1(E)) of all such New Resources then in Commercial Operation for which the eight (8) year notice period has not expired.

"E" = The sum of the capacities allowed for that month of all New Resources which are in Commercial Operation and whose eight (8) year notice period has not expired.

Only those New Resources in Commercial Operation prior to the hour in which the Monthly Peak Resource Demand is established shall be used in the application of the formulas in this Section 6.1(D)(2)(a).

(b) If Power Agency has given eight (8) years notice to CP&L pursuant to Section 6.1(D) or Section 6.1(E) with respect to New Resources and all such notice periods have expired, the Supplemental Capacity purchased by Power Agency in each month shall be equal to the amount in KW resulting from the calculation of the term "A" in the formula set forth in Section 6.1(D)(2)(a).

(3) If the New Resource is available for use and the required power coordination arrangement has neither been agreed to by the parties nor is effective through application to FERC, CP&L agrees to sell Power Agency backstand capacity on an interim basis under this Agreement until such power coordination arrangement is effective; provided that following such sale CP&L shall have available to it reserve capacity of twenty percent (20%) or more. If Power Agency wishes to purchase such backstand capacity on an interim basis, it shall give CP&L sixty (60) days notice. If Power Agency does not choose to purchase backstand capacity from CP&L or if CP&L does not have such backstand capacity available for sale, the New Resource involved shall not be utilized by Power Agency unless and until the requisite power coordination arrangement is in effect, either as a result of

agreement between CP&L and Power Agency or through an order of FERC; provided, however, (a) that neither Power Agency nor CP&L waives its rights to seek rehearing or judicial review of such FERC order or to seek a stay of such an order from FERC or from a court; and (b) that any relief granted as a result of rehearing or judicial review shall be given effect as of the effective date of the FERC order.

(E) Notwithstanding the provisions of Section 6.1(B), if Power Agency plans to meet a portion of its Hourly Resource Demand during any hour of any calendar year either (1) with a New Resource the backstand capacity for which is to be provided by an entity other than CP&L, or (2) with a New Resource the backstand capacity for which is to be provided by CP&L and which is to be located on the load side of a Delivery Point and has a mode of operation which contemplates the transmission of energy from such New Resource into the CP&L system, Power Agency may reduce the amount of Supplemental Capacity to be taken by giving written notice to CP&L not later than December 31 of the calendar year eight (8) years prior to the calendar year to which the notice applies. Any notice hereunder shall state the expected dependable capacity of such New Resource, its source, the means proposed by Power Agency for the backstand of the New Resource, the period during which the New Resource is expected to be available to Power Agency, and the amount of capacity, in KW, which Power Agency intends to declare for the purpose of reducing

Supplemental Capacity. In such event, the following provisions shall apply:

(1) Power Agency shall notify CP&L of its intention to bring on such a New Resource and CP&L and Power Agency shall promptly undertake negotiations for a power coordination agreement to reflect the terms and conditions applicable to that New Resource. The terms of such power coordination agreement shall also include provisions for the disposition by Power Agency to CP&L or others of (a) capacity and associated energy from such New Resource which is in excess of the capacity which Power Agency declares for purposes of reducing Supplemental Capacity and (b) capacity and associated energy from such New Resource which is in excess of the amounts for which Power Agency is actually credited in each month under this Agreement; provided, however, that the specific terms and conditions of this Agreement with respect to Surplus Energy, backstand and transmission service shall not apply to such excess capacity and associated energy unless CP&L so agrees in said power coordination agreement and CP&L shall not unreasonably withhold such agreement. Either party may make appropriate application to FERC for determination of such terms and conditions for interconnection at any time that it appears to such party that negotiations will not produce such an agreement.

(2) Upon arriving at a power coordination agreement under Section 6.1(E)(1) for a New Resource, the amount

of Supplemental Capacity to be purchased from CP&L by Power Agency when bringing on such New Resource shall be as follows:

(a) Where (i) the backstand sufficient to provide firm power from such New Resource is to be provided by an entity other than CP&L and (ii) such New Resource is to be dispatched by CP&L, the Supplemental Capacity to be purchased by Power Agency in each month shall be determined pursuant to Section 6.1(D)(2).

(b) Where the conditions set forth in Section 6.1(E)(2)(a) are not met, the Supplemental Capacity to be purchased by Power Agency in each month shall be determined in the manner agreed to in the power coordination agreement negotiated pursuant to Section 6.1(E)(1).

(3) If the New Resource is available for use and the required power coordination arrangement has neither been agreed to by the parties nor is effective through application to FERC, CP&L agrees to sell Power Agency backstand capacity on an interim basis under this Agreement until such power coordination arrangement is effective; provided that following such sale CP&L shall have available to it reserve capacity of twenty percent (20%) or more. If Power Agency wishes to purchase such backstand capacity on an interim basis, it shall give CP&L sixty (60) days notice. If Power Agency does not choose to purchase backstand capacity from CP&L or if CP&L does not have such backstand capacity available for sale, the New Resource involved

shall not be utilized by Power Agency unless and until the requisite power coordination arrangement is in effect, either as a result of agreement between CP&L and Power Agency or through an order of FERC; provided, however, (a) that neither Power Agency nor CP&L waives its rights to seek rehearing or judicial review of such FERC order or to seek a stay of such an order from FERC or from a court; and (b) that any relief granted as a result of rehearing or judicial review shall be given effect as of the effective date of the FERC order.

(F) Subject to Section 6.1(A), if the New Resource planned by Power Agency to implement the noticed Supplemental Capacity reduction (Supplemental Capacity Reduction) is not available at the end of the eight (8) year notice period provided for in Section 6.1(D) or 6.1(E), or such shorter notice period provided to CP&L pursuant to Section 6.1(D)(2)(a), as applicable, for any reason other than the status of the power coordination arrangement referred to in Section 6.1(D) or 6.1(E), CP&L shall, upon request by Power Agency, supply the Supplemental Capacity Reduction; provided that the Supplemental Capacity Reduction shall not be available to Power Agency for use as Unused Supplemental Capacity. Power Agency shall pay for such Supplemental Capacity Reduction on the following basis:

(1) If CP&L's actual reserve level as computed in accordance with Section 7.4(A) in the year following the end

of the notice period provided in Section 6.1(D) or 6.1(E), as applicable, is twenty percent (20%) or greater with CP&L supplying the Supplemental Capacity Reduction, Power Agency shall pay CP&L for the Supplemental Capacity Reduction at the applicable Supplemental Capacity rate.

(2) If CP&L's actual reserve level as computed in accordance with Section 7.4(A) in the year following the end of the notice period provided in Section 6.1(D) or 6.1(E), as applicable, is less than twenty percent (20%) with CP&L supplying the Supplemental Capacity Reduction, Power Agency will pay CP&L for the demand component of the Supplemental Capacity Reduction at the higher of the Supplemental Capacity rate or CP&L's actual cost of obtaining such capacity from other suppliers.

(3) Power Agency shall pay CP&L for the energy component of the Supplemental Capacity Reduction at the Deficiency Energy rate. Such energy component shall be the energy delivered when, and to the extent that, the Supplemental Capacity demand in any hour exceeds what the monthly peak Supplemental Capacity demand would have been had the New Resource been in service at the capacity declared by Power Agency in its notice given to CP&L for reducing Supplemental Capacity pursuant to Sections 6.1(D) and 6.1(E) during the hour that the Monthly Peak Resource Demand was established.

(4) The terms of this Section 6.1(F) shall apply only to the period beginning with the commencement of the

period of availability of the affected New Resource as stated in the notice provided pursuant to Section 6.1(D) or 6.1(E) or the shorter notice period pursuant to Section 6.1(D)(2)(a), as applicable, and continuing until either (i) the capacity of the New Resource as stated in the notice provided pursuant to Section 6.1(D) or 6.1(E) becomes available; (ii) eight (8) years after Power Agency gives CP&L written notice of Power Agency's intent permanently to cancel, retire, or decommission the New Resource or to dispose permanently of the output of the New Resource; or (iii) Power Agency obtains or acquires, and continues to provide, pursuant to Section 6.1(G), another New Resource (Substitute New Resource) to replace capacity and energy which otherwise would have been available from the former New Resource (Former New Resource) to the extent the Substitute New Resource so replaces the Former New Resource.

(G) The eight (8) year notice provisions of Sections 6.1(D) and 6.1(E) and the shorter notice provisions of Section 6.1(D)(2)(a), and the limitations in Section 6.1(D)(2)(a) on the amount of capacity that Power Agency can utilize from a New Resource to reduce Supplemental Capacity shall not be applied to a Substitute New Resource to the extent that such Substitute New Resource replaces capacity or energy or both capacity and energy of a Former New Resource which is cancelled or is delayed for any reason beyond the eight (8) year notice provided pursuant to Section 6.1(D) or 6.1(E) or the shorter

notice provided pursuant to Section 6.1(D)(2)(a). In addition, if the delay or cancellation of any Joint Unit results in dangerously low reserve levels for CP&L, Power Agency, or the Combined System, CP&L shall, upon request, enter into negotiations with Power Agency with respect to waiving the notice provisions and limitations on the amount of capacity Power Agency can utilize from any New Resource that Power Agency has scheduled or could schedule that would alleviate such dangerously low reserve levels. Similarly, if Power Agency is considering the addition of a New Resource which could be made available in less than eight (8) years and which if placed in Commercial Operation would cause abnormally high reserve levels on the Combined System or the CP&L system, Power Agency shall, upon request, enter into negotiations with CP&L with respect to the timing of completion of such New Resource that would alleviate such abnormally high reserve levels.

6.2 Utilization of Supplemental Capacity and Energy

The extent to which Power Agency utilizes Supplemental Capacity in each hour shall be determined in accordance with Sections 7.5, 8.2(C) and 8.3.

6.3 Charges for Supplemental Capacity and Energy

(A) Power Agency shall pay a monthly capacity charge for Supplemental Capacity calculated in accordance with Section 16.2 and Exhibit PCA-I-27. Power Agency shall pay for energy associated with Supplemental Capacity at a rate per kilowatt

hour calculated in accordance with Section 16.4 and Exhibit PCA-I-36.

(B) If Power Agency notifies CP&L in accordance with Section 6.1(C), (D) or (E) that it plans to meet a portion of its Hourly Resource Demand with a New Resource or with any other resource to be provided by it, either independently or with an entity other than CP&L, and if the sum of the capacity of such New Resource or other resource, plus the capacities of Power Agency's other resources (including Retained Capacity), exceeds eighty percent (80%) of Power Agency's projected Annual Peak Resource Demand in any calendar year following the projected date of Commercial Operation of such New Resource or other resource, Power Agency and CP&L shall promptly undertake negotiations for a revised monthly capacity charge for Supplemental Capacity which appropriately takes account of the annual pattern of Supplemental Capacity usage in such circumstances; provided, however, that if Power Agency declares that the capacity of the New Resource or other resource utilized to serve its Hourly Resource Demand shall be limited to an amount such that the sum of capacities described above does not exceed eighty percent (80%) of the projected Annual Peak Resource Demand described above, the monthly capacity charge for Supplemental Capacity set forth in Section 6.3(A) need not be renegotiated. Either party may make appropriate application to FERC for determination of

such revised Supplemental Capacity charge at any time that it appears to such party that negotiations will not produce such an agreement.

ATTACHMENT 2

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

January 12, 1987

Docket No. 50-400

Mr. E. E. Utley, Senior Executive
Vice President
Power Supply and Engineering
and Construction
Carolina Power & Light Company
Post Office Box 1551
Raleigh, North Carolina 27602

Dear Mr. Utley:

Subject: Issuance of Facility Operating License No. NPF-63
Shearon Harris Nuclear Power Plant, Unit 1

The NRC has issued the enclosed Facility Operating License No. NPF-63 together with the Technical Specifications and Environmental Protection Plan for the Shearon Harris Nuclear Power Plant, Unit 1. The license authorizes operation of the Shearon Harris Nuclear Power Plant, Unit 1, at reactor power levels not in excess of 2775 megawatts thermal (100% of rated core power). Also enclosed is a Safety Evaluation which resolves several new issues or issues that remained to be resolved from the previous issuance of the Shearon Harris Safety Evaluation Report (NUREG-1038) and Supplements 1 through 4.

A copy of a related notice, the original of which has been forwarded to the Office of the Federal Register for publication, is also enclosed.

Three signed copies of Amendment No. 2 to Indemnity Agreement No. B-103, which covers the activities authorized under License No. NPF-63, are enclosed. Please sign all copies and return one copy to this office. License condition 2.B.8 provides that byproduct and special nuclear materials as may be produced by the operation of the Brunswick Steam Electric Plant, Units 1 and 2, and H. B. Robinson Steam Electric Plant, Unit 2 may be received and possessed at the Shearon Harris plant. It is our understanding that such byproduct and special nuclear materials will not be received on the Shearon Harris site until the appropriate indemnity agreement amendment has been resolved.

Sincerely,

Thomas M. Novak, Acting Director
Division of PWR Licensing-A
Office of Nuclear Reactor Regulation

Enclosures:
1. Facility Operating License No. NPF-63
2. Safety Evaluation
3. Federal Register Notice
4. Amendment No. 2 to Indemnity
Agreement No. B-103

cc w/enclosures: See next page

APPENDIX C

ANTITRUST CONDITIONS

The licensee, Carolina Power & Light Company, is subject to the following antitrust conditions:

Commitment No. 1

Licensee recognizes that it is generally in the public interest for electric utilities to interconnect, coordinate reserves, and engage in bulk power supply transactions, in order to increase electric system reliability and reduce the costs of electric power. Bulk power supply arrangements should be such as to provide benefits, on balance, each to licensee and to other participant(s), respectively. The benefits to participants in such arrangements need not be equal and the benefits realized by a small system may be proportionately greater than those realized by a larger system. In implementing the commitments which it makes in the succeeding paragraphs, licensee will act in accordance with the foregoing principles.

Explanatory Note*

(a) Neither licensee nor any other participant shall be obligated to enter into such arrangements (1) if to do so would violate, incapacitate, or limit its ability to perform any other existing contractual arrangement, or (2) to do so would adversely affect its system operations or the reliability of power supply to its customers, or (3) if to do so would jeopardize the licensee's ability to finance or construct on reasonable terms facilities needed to meet its own anticipated system requirements.

Commitment No. 2

Licensee will interconnect with and coordinate reserves by means of the sale and exchange of emergency bulk power with any entity or entities in its service area** engaging in or proposing to engage in electric bulk power supply on terms that will provide for licensee's costs (including a reasonable return) in connection therewith; and allow the other participant(s), as well as licensee, full access on a proportionate basis to the benefits of reserve coordination. ("Proportionate basis" refers to the equalized percentage of reserves concept rather than the largest single-unit concept, unless all participants otherwise agree).

*In order to clarify the commitments, certain explanatory notes have been added.

**The use of the term "service area" as found in this commitment or in any other section of the commitments is intended to describe those areas in North Carolina and South Carolina where licensee provides some class of electric service, but in no way indicates an assignment or allocation of wholesale market areas.

Explanatory Notes

(a) Interconnections will not be limited to low voltages when higher voltages are available from licensee's installed facilities in the area where interconnection is desired, when the proposed arrangement is found to be technically and economically feasible.

(b) Emergency service agreements will not be limited to a fixed amount, but emergency service provided under such agreements will be furnished if and when available and desired where such supply does not impair or threaten to impair service to the supplier's customers due to capacity availability, fuel supply, system reliability or other good cause. Licensee, however, shall not be obligated to provide emergency service to another entity in lieu of such entity's maintaining its own adequate system reserves or fuel supply.

(c) An example of the type of reserve sharing arrangement available to any participant and which would provide "full access on a proportional basis to the benefits of reserve coordination" would be one in which the following conditions would obtain:

(i) The licensee and each participant(s) shall provide to the other emergency power if and when available from its own generation, or through its transmission from the generation of others to the extent it can do so without disrupting or threatening to impair service to its own customers due to capacity availability, fuel supply, system reliability or other good cause.

(ii) The participants to the reserve sharing agreement, including licensee, shall, consistent with licensee's reserve policy as established from time to time by licensee, determine a minimum percentage reserve to be installed and/or purchased by the participants, including licensee, as necessary to maintain in total an adequate and reliable power supply on the interconnected system of licensee and participant(s).

Commitment No. 3

Licensee will purchase from or sell "bulk power" to any other entity in its service area engaging in or proposing to engage in the generation of electric power in bulk at the seller's cost (including a reasonable return) whenever such transactions would serve to reduce the overall costs of new bulk power supply, each, for itself and other participant(s) to the transaction, respectively. ("Costs" refers to costs of bulk power supply determined in accordance with the seller's normal practices, without regard to the purchaser's intended use of the power or the status of the purchaser). This paragraph refers specifically to the opportunity to coordinate in the planning of new generation, transmission and associated facilities. If licensee questions the desirability of a proposed transaction on the ground that it would not reduce its overall bulk power costs, it will make available upon request to the entity proposing the transaction such information as is relevant and reasonably necessary to establish its bulk power costs.

Explanatory Notes

(a) It is not to be considered that this condition requires licensee to purchase or sell bulk power if such purchase or sale is technically infeasible or that the benefits therefrom do not exceed the costs in connection with such purchase or sale.

Commitment No. 4

Licensee will facilitate the exchange of bulk power by transmission over its system between or among two or more entities with which it is interconnected on terms which will fully compensate it for the service performed, to the extent that such arrangements reasonably can be accommodated from a functional and technical standpoint.

Explanatory Notes

(a) This condition applies to entities with which licensee is interconnected in the future as well as to which it is now interconnected.

Commitment No. 5

Licensee will sell power in bulk to any entity in the aforesaid area now engaging in or proposing to engage in the retail distribution of electric power.

Explanatory Notes

(a) This is provided that licensee has such power available for sale after making adequate provision for the capacity, fuel and other requirements of its service area customers.

Commitment No. 6

The implementation of these numbered paragraphs shall be in all respects on reasonable terms and conditions as consistent with the Federal Power Act and all other lawful regulation and authority, and shall be subject to engineering and technical feasibility for licensee's system. Licensee will negotiate (including the execution of a contingent statement of intent) with respect to the foregoing commitments with any entity in its service area engaging in or proposing to engage in bulk power supply transactions, but licensee shall not be required to enter into any final arrangements prior to resolution of any substantial questions as to the lawful authority of an entity to engage in the transactions.

Commitment No. 7

In contracts between licensee and its wholesale customers, licensee will not attempt to restrict such customers from electrically connecting with other sources of power if reasonable written notice to licensee has been made and agreement reached by the parties on such measures or conditions, if any, as may be required for the protection and reliability of both systems.

ATTACHMENT 3

PROCEEDING IN ARBITRATION

NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY Initiating Party	)	
v.	)	NOTICE OF INTENTION TO ARBITRATE
CAROLINA POWER & LIGHT COMPANY Other Party	)	

May 4, 1989

North Carolina Eastern
Municipal Power Agency
Post Office Box 29513
Raleigh, NC 27626-0513

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NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY, Initiating Party v. CAROLINA POWER & LIGHT COMPANY, Other Party	NOTICE OF INTENTION TO ARBITRATE

Pursuant to Section 22.3(B) of the Power Coordination Agreement dated July 30, 1981 ("1981 PCA") between Carolina Power & Light Company ("CP&L") and North Carolina Eastern Municipal Power Agency ("Power Agency"), Power Agency hereby notifies CP&L of its intention to seek arbitration of the matters in dispute that are described herein.

PART I:

INTRODUCTION

This arbitration proceeding is being initiated by Power Agency as part of its continuing effort to secure economical resources to meet the electric power requirements of its Participants. This proceeding arises out of a dispute between Power Agency and CP&L as to whether, as CP&L alleges, the 1981 PCA prohibits certain arrangements with the South Carolina Public Service Authority ("Santee Cooper") that would allow Power Agency to reduce the costs of providing service to its Participants. CP&L has refused to enter into arrangements that would facilitate Power Agency's use of economical sources of

capacity and energy that can be made available to Power Agency by Santee Cooper.

CP&L bases its refusal to accommodate the Santee Cooper purchase on an unsupported and unreasonable interpretation of the 1981 PCA. Contrary to CP&L's claims, the 1981 PCA does not preclude or prohibit Power Agency's proposed use of power available to it from Santee Cooper. 1/ Power Agency's arrangement with Santee Cooper is a conventional inter-utility exchange arrangement of the type that CP&L and other utilities themselves utilize to reduce their costs and increase their reliability of service. 2/ CP&L is attempting to frustrate Power Agency's full use of the Santee Cooper resource by refusing, under the guise of the 1981 PCA, to allow Power Agency to integrate fully the services available from Santee Cooper into the power supply framework in fact created by the 1981 PCA. CP&L has taken the position that the 1981 PCA precludes Power Agency from using the services available from Santee Cooper to substitute for more costly power sold by CP&L, except under very

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1/ In this Notice, Power Agency makes reference to the arrangement with Santee Cooper as the "Santee Cooper resource." This term is intended to refer collectively to the full range of power and energy services that are available to Power Agency under the arrangement it has structured with Santee Cooper.

2/ As Power Agency will demonstrate in the course of this proceeding, the arrangements it has structured with Santee Cooper are directly modeled on the interchange agreements entered into by CP&L and other utility companies operating within the Virginia-Carolinas (VACAR) subregion of the Southeastern Reliability Council (SERC). Indeed, as a member of VACAR, Santee Cooper was careful to ensure that its arrangements with Power Agency were not inconsistent with VACAR interchange practices.

limited circumstances. CP&L has even asserted the position that the 1981 PCA precludes Power Agency from using energy available from Santee Cooper to substitute for energy from Power Agency's own shares of the five generating units it jointly owns with CP&L (the "Joint Units"), even if the energy from Power Agency's ownership shares is more costly.

The direct result of CP&L's refusal to accommodate the Santee Cooper resource is to force Power Agency to purchase from CP&L, or to take from the Joint Units, energy that is more expensive than the Santee Cooper energy. By obstructing Power Agency's use of power and energy from alternative, more economical suppliers, CP&L is able to maintain its own sales of power and energy at a profit, to the economic detriment and competitive disadvantage of Power Agency and its Participants. CP&L would also deprive Power Agency of one of a utility's most basic power supply rights: the right to purchase energy from an alternative supplier rather than to accept more costly energy from its own generating units.

The linchpin of CP&L's position is that Power Agency's rights as a bulk power supplier are established, and defined in their entirety, by the 1981 PCA. CP&L's position ignores the fact that Power Agency was created as a public body and body corporate and politic of the State of North Carolina for the purpose of providing adequate, reliable and economical bulk power to certain of the State's municipal electric systems, and, as such, Power Agency enjoys the basic rights vested in any other

bulk power supplier under Federal and state law (including Power Agency's enabling legislation, Chapter 159B of the General Statutes of North Carolina). Power Agency exercised certain of these basic rights by executing the 1981 PCA, and, in some instances, the 1981 PCA sets forth express limitations on the further exercise of those rights in the context of the power supply arrangement established by that agreement. The presence of these limitations does not mean, however, that other basic rights not exercised, restricted or addressed in the 1981 PCA are, by the omission of their mention in that agreement, extinguished or waived. Power Agency's rights can only be extinguished or waived by express contractual limitation, not by implication.

The principal purpose of this proceeding is to obtain from the Arbitrator a confirmation of Power Agency's rights to make use of the Santee Cooper resource, and similar resources that Power Agency might acquire in the future, in the manner contemplated by the 1981 PCA and proposed by Power Agency. Contrary to CP&L's contention, in entering into the 1981 PCA Power Agency did not waive or forfeit its basic rights to use economic alternative power supply resources to substitute for more costly capacity and/or energy it would otherwise obtain from the Joint Units or through purchases from CP&L. Power Agency will show that CP&L is wrong in claiming that Power Agency's proposed use of the Santee Cooper resource is prohibited by the 1981 PCA. In fact, the prohibitions claimed by CP&L are

completely inimical to the inter-utility exchange practices commonly found in the electric industry, and are anticompetitive on their face. 3/ Most assuredly, such unusual and restrictive provisions would have been expressly stated in the 1981 PCA. No such prohibitions will be found in that contract, however, and they cannot properly be implied. To the contrary, Article 6 of the 1981 PCA clearly contemplates that Power Agency may utilize alternative power and energy resources to reduce its costs, and the agreement permits such use. CP&L's refusal to facilitate Power Agency's use of the Santee Cooper resource is without contractual or other support.

3/ The prohibitions that CP&L asserts would prevent Power Agency from dealing with an alternate power supplier, Santee Cooper, that is ready, willing and able to provide power and energy to Power Agency. Conversely, by forcing Power Agency to maintain its purchases from CP&L and preventing Power Agency from using substitute power sources, the prohibitions asserted by CP&L would foreclose Santee Cooper's ability to reach a willing customer, Power Agency. In addition, the prohibitions that CP&L asserts would force Power Agency to forego purchasing less expensive capacity and/or energy available from an alternative power supplier, resulting in higher costs to Power Agency for its resources and, necessarily, higher costs of power supply to Power Agency's Participants, which resell such power at retail. Many of the Participants compete directly with CP&L to provide retail electric service.

PART II:

FACTUAL BACKGROUND

A. Identity of Parties

Power Agency is a public body and body corporate and politic organized pursuant to the Joint Municipal Electric Power and Energy Act (codified as Chapter 159B of the General Statutes of North Carolina). Since April 22, 1982, Power Agency has been providing All Requirements Bulk Power Supply service to its 32 Participants, each of which is a municipality located in central or eastern North Carolina that owns and operates its own electric distribution system. 4/ Under certain circumstances, the Participants compete with other electric suppliers to provide retail electric service; many of the Participants compete directly with CP&L.

CP&L is an integrated electric utility that is engaged in the generation, transmission, distribution and sale of electric energy in the states of North Carolina and South Carolina. CP&L serves more than 700,000 customers at retail, and four municipalities, 18 electric cooperatives and two public utilities at wholesale, in addition to providing services to Power Agency under the 1981 PCA.

4/ "All Requirements Bulk Power Supply" is defined as all electric power and energy required by the Participants exclusive of any allocations from the Southeastern Power Administration and certain power and energy that may be generated and utilized directly by the Participants from their own facilities.

In 1981, Power Agency entered into agreements with CP&L, including the 1981 PCA, that provide Power Agency with resources that enable it to furnish All Requirements Bulk Power Supply service to its Participants. 5/ Power Agency's principal sources of power currently are (1) ownership interests in the five Joint Units, (2) purchases of partial requirements capacity and energy from CP&L under the terms of the 1981 PCA, and (3) since December 8, 1987, small amounts of firm power purchases from Santee Cooper. Also, two Participants, Elizabeth City and Edenton, have installed a total of approximately 8 MW of diesel-fueled generation on their systems. The 1981 PCA and an agreement between Power Agency and Virginia Electric and Power Company provide for transmission services required by Power Agency to deliver power from its resources to its Participants. In 1988, the total energy requirement of Power Agency's members was 5,173,200 MWh, approximately 65% of which was provided from its ownership interests in the Joint Units. The Participants' annual coincident peak demand supplied by Power Agency in 1988 was 1,094 MW.

5/ The agreements are (1) the Purchase, Construction and Ownership Agreement, which provides for the purchase and sale of ownership interests in the Joint Units, (2) the Operating and Fuel Agreement, which provides for the operation of the Joint Units, and (3) the 1981 PCA, which, as described more fully below, provides for the purchase and sale of additional services. These agreements were executed by CP&L and Power Agency on July 30, 1981, and have not been subsequently amended or supplemented in any respect material to the issues discussed in this Notice.

B. Contractual Provisions Relevant to Power Agency's Use of Alternative Power Resources

Under the 1981 PCA, Power Agency purchases several types of partial requirements power from CP&L to supplement power from Power Agency's ownership interests in the Joint Units. Among these types of power is firm partial requirements service from CP&L, referred to in the 1981 PCA as "Supplemental Capacity" and "Supplemental Energy". Each month, Power Agency purchases and CP&L provides Supplemental Capacity in an amount equal to Power Agency's peak demand in that month, less the firm capacity available to Power Agency from the Joint Units 6/ and certain other resources available to Power Agency. The 1981 PCA also provides for a range of other interconnection services, including backstand services related to the Joint Units, reserve sharing arrangements, certain other interchange services, and transmission.

Article 6 of the 1981 PCA expressly recognizes Power Agency's right to develop and utilize future power supply resources to serve its Participants, and Article 6 establishes an orderly mechanism for integrating such future resources into the power supply framework created by that agreement. In so doing, the 1981 PCA distinguishes between resources that are intended by

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6/ Under the 1981 PCA, Power Agency sells a portion of its capacity entitlement in certain of the Joint Units to CP&L. That portion of the capacity that is not sold to CP&L and that is available to Power Agency is referred to in the 1981 PCA and herein as "Retained Capacity."

Power Agency to reduce its purchases of Supplemental Capacity (termed "New Resources"), and resources that are not intended by Power Agency to reduce its Supplemental Capacity purchases.

A New Resource (i.e., a resource which is intended by Power Agency to reduce the amount of Supplemental Capacity purchased from CP&L) must meet certain requirements expressly set forth in Article 6 of the 1981 PCA. These requirements include: (1) the New Resource must be a firm power supply source, and (2) the total capacity of it, Retained Capacity from the Joint Units, and other New Resources will not exceed Power Agency's projected annual peak demand. 7/ Power Agency is obligated to notify CP&L of its intent to bring on a New Resource, in which event the parties are obligated to negotiate a power coordination agreement to apply to the New Resource. In addition, if Power Agency wishes to reduce its purchases of Supplemental Capacity from CP&L with the New Resource, it must provide to CP&L additional notice setting forth certain details concerning the New Resource. 8/

The power coordination agreement for a New Resource is required to provide for the integration of the New Resource into Power Agency's power supply arrangement with CP&L by addressing such matters as backstand services, disposition by Power Agency

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7/ See Section 6.1(C)(1) of the 1981 PCA.

8/ See Sections 6.1(D) and 6.1(E) of the 1981 PCA. Under certain circumstances, Power Agency may reduce its Supplemental Capacity payment obligations on less than eight years notice to a limited extent. See Section 6.1(D)(2)(a) of the 1981 PCA.

of capacity and energy from the New Resource that exceed Power Agency's needs, transmission, and the effects of the New Resource on services provided by CP&L under the 1981 PCA. Either party may make appropriate application to the Federal Energy Regulatory Commission ("FERC") for the terms and conditions of a power coordination agreement concerning a New Resource at any time it appears to such party that the negotiations will not produce an agreement. 9/

If Power Agency desires to acquire a resource which does not meet the requirements for a New Resource (and which therefore may not be used to reduce the amount of Supplemental Capacity that Power Agency purchases from CP&L), then CP&L and Power Agency are required to negotiate for an interconnection agreement concerning the resource, and either party may make appropriate application to FERC concerning such interconnection at any time that party concludes that negotiations will not produce an agreement. 10/

C. The Failure to Obtain An Agreement With CP&L Regarding Appropriate Terms and Conditions for a New Power Coordination Agreement to Implement the Santee Cooper Resource

The Santee Cooper resource at issue in this proceeding is an expansion of an existing bulk power supply arrangement between Power Agency and Santee Cooper. The currently ongoing

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9/ See Sections 6.1(D)(1) and 6.1(E)(1) of the 1981 PCA.

10/ See Section 6.1(C)(3) of the 1981 PCA.

arrangement provides for Power Agency to purchase firm power from Santee Cooper during the period 1987-1993. 11/ The proposed new arrangement would provide for firm power purchases during the period after 1993, and for a broader range of conventional inter-utility exchange services (including Short Term Power and Economy Energy services) which are available from Santee Cooper now.

11/ In 1986, Power Agency had proposed to CP&L negotiation of a single agreement to cover Power Agency's proposed purchases of firm power from Santee Cooper through the year 2000. Late that year, however, CP&L insisted that negotiations be limited to the firm power purchase from Santee Cooper during the period ending December 31, 1993, and that the power coordination agreement for the period after 1993 be negotiated subsequently. CP&L's stated reason for dividing those negotiations involved differences in the effect of the notice requirements under the 1981 PCA for the two time periods; Power Agency acquiesced solely in order to expedite negotiations for the earlier period. The agreement produced by those negotiations was executed in October 1987, and is known by the parties as the "1987A PCA."

After completing the negotiations with CP&L for the 1987A PCA, which covered the firm power purchases for 1987-1993, Power Agency attempted to resume negotiations for a power coordination agreement with CP&L to include the contemplated firm power purchase from Santee Cooper beginning in 1994. Initially, CP&L refused to enter into negotiations for such an agreement until a set of unrelated matters in dispute was resolved. Later (and after these unrelated matters were resolved), CP&L refused again to commence negotiations, informing Power Agency for the first time of CP&L's position that Section 6.1(E) of the 1981 PCA requires Power Agency to give written notice, specifying "the amount of capacity, in KW, which Power Agency intends to declare for the purpose of reducing Supplemental Capacity," before CP&L is obligated to undertake any such negotiations. While disputing that such notice was required by the 1981 PCA as a precondition to negotiations, on December 31, 1987 and on December 29, 1988, Power Agency gave CP&L written notice of the amount of firm power to be purchased from Santee Cooper and the corresponding amount by which Power Agency's purchases of Supplemental Capacity from CP&L would be reduced for the calendar years 1994 through 1996 and 1997, respectively.

After only a brief period of negotiations and the exchange of draft power coordination agreements relating to the proposed Santee Cooper resource, it became obvious to Power Agency that CP&L's unsupported interpretation of the 1981 PCA created numerous fundamental, and apparently irreconcilable, disputes over the terms and conditions of a power coordination agreement that would govern Power Agency's use of that resource. Power Agency concluded that these disputes would not be resolved through further negotiations with CP&L. Therefore, Power Agency exercised what it believes to be its contractual and statutory right, under the 1981 PCA and under Section 306 of the Federal Power Act, to obtain a resolution by FERC of the disputed terms and conditions. 12/ On June 7, 1988, Power Agency filed a "Complaint and Request for Expedited Hearing" before FERC, including a proposed power coordination agreement (the "1988A PCA") setting forth what Power Agency considers to be reasonable terms and conditions of a power coordination agreement applicable to the Santee Cooper resource. 13/

12/ As noted above, Section 6.1(E) of the 1981 PCA provides that, if it appears to either party that negotiations for the terms and conditions of a power coordination agreement for a New Resource will not produce an agreement, that party may make "appropriate application to FERC for determination of [the] terms and conditions for interconnection...."

13/ A copy of the proposed 1988A PCA is attached to this Notice as Appendix A. A narrative description of Power Agency's proposed use of the Santee Cooper resource, as would be established by the 1988A PCA, is set forth in Section II.D, infra.

On July 20, 1988, CP&L filed an answer to Power Agency's Complaint and a motion to dismiss the Complaint. CP&L argued that certain uses proposed by Power Agency of the capacity and energy available from Santee Cooper are prohibited by the 1981 PCA. CP&L asserted that Power Agency's proposed 1988A PCA, which was submitted with Power Agency's Complaint, "seeks, in effect, to rewrite the 1981 PCA to allow [Power Agency] to retain its benefits from that agreement while modifying or replacing other basic and essential terms thereof that [Power Agency] apparently now wishes to avoid." CP&L also claimed that Power Agency's Complaint raised matters that were within the scope of the 1981 PCA provision calling for the submission to arbitration of unresolved disputes.

On December 22, 1988, FERC issued an order denying the relief requested by Power Agency and dismissing its Complaint without prejudice. In its order, FERC concluded that the 1981 PCA requires arbitration in the first instance of the "dispute" presented by Power Agency. On February 22, 1989, FERC denied Power Agency's Motion for Clarification and Conditional Request for Rehearing filed January 23, 1989. The Commission ruled that the 1981 PCA requires arbitration of all disputes under the contract with only two stated exceptions, and that even disputes as to the applicability of the arbitration clause are to be arbitrated. The Commission concluded:

> As we found in our December 22, 1988 order, a dispute exists at least as to the applicability of the arbitration clause. In a situation such as this, where it is at least

> arguable that the arbitration clause applies to this dispute, we believe the appropriate course is to send this matter to arbitration.

Slip op. at 5. Furthermore, despite the clear language of the 1981 PCA and the pleadings of both parties, 14/ the Commission indicated that it believed that an arbitrator should determine initially the appropriate terms and conditions of a power coordination agreement, in addition to resolving the disputes under the 1981 PCA (including the very question of arbitrability). The Commission stated, however, that it would not consider itself bound by the arbitrator's determinations. 15/

14/ In its Complaint, Power Agency stated its position that the matters in dispute between Power Agency and CP&L were disagreements over the terms and conditions of a power coordination agreement applicable to the use of its new Santee Cooper resource, and that these disputes were therefore subject to resolution by FERC pursuant to Sections 6.1(C)(3) and 6.1(E) of the 1981 PCA. In Power Agency's view, such matters are not subject to the arbitration provisions of the 1981 PCA because they do not arise out of or relate to the provisions of that agreement (see Section 22.2(A) of the 1981 PCA). In its Motion to Dismiss, CP&L did not directly contest Power Agency's right to seek FERC resolution of the terms and conditions governing the use of a resource. Rather, CP&L characterized the parties' disagreements over terms and conditions as disputes under the 1981 PCA, and argued that such disputes are subject to arbitration.

In its orders, FERC took a position even more far-reaching than CP&L's. FERC ruled that all matters in dispute concerning the proposed use of the Santee Cooper resource arise under the 1981 PCA and are therefore subject to arbitration (and, in any case, that the applicability of the arbitration provision is itself an arbitrable question). Power Agency continues to believe, however, that issues concerning the terms and conditions governing its use of alternative resources are not issues arising under the 1981 PCA, and that it has a right to seek FERC resolution, in the first instance, of such issues.

15/ Slip op. at 5-6. Copies of FERC's December 22, 1988 and February 22, 1989 orders are attached hereto as Appendix B.

Power Agency has filed a petition for review of FERC's orders in the U.S. Court of Appeals for the District of Columbia Circuit. Power Agency seeks review of that aspect of FERC's orders which directs arbitration of the terms and conditions to be included in a power coordination agreement applicable to the Santee Cooper resource, inasmuch as the plain language of the 1981 PCA gives Power Agency the right to obtain a FERC determination, in the first instance, of those terms and conditions. 16/

During Power Agency's discussions with CP&L in early 1988 concerning Power Agency's proposed use of the Santee Cooper resource, Power Agency viewed the dispute as involving questions of the terms and conditions that would govern the use of that resource (that is, questions of how the resource would be integrated into Power Agency's existing power supply). Power Agency did not view these disagreements as involving questions of its right under the 1981 PCA to make use of the Santee Cooper resource in the manner it proposes (that is, Power Agency did not view these disagreements as involving questions of whether the proposed use was permitted by the 1981 PCA). Only in CP&L's June, 1988 Answer to Power Agency's Complaint to FERC did CP&L clearly express views indicating a dispute over whether Power Agency has the right to use the Santee Cooper resource in the manner it proposes. Power Agency submits that it has this right,

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16/ North Carolina Eastern Municipal Power Agency v. FERC, D.C. Cir. No. 89-1205, petition for review filed March 23, 1989.

and that the matters in dispute relate solely to the terms and conditions governing the proposed use. Because FERC failed to resolve the dispute that CP&L raises as to Power Agency's rights under the 1981 PCA, however, it is clear that these issues, as well as the "terms and conditions" issues, must be resolved.

Therefore, in the instant proceeding, Power Agency submits for arbitration the issues of contract interpretation that have been raised by CP&L under the 1981 PCA. These matters are addressed in Part III of this Notice. In Part IV.A of this Notice, Power Agency conditionally submits the question of whether disputes over the terms and conditions governing its use of the Santee Cooper resource may be submitted directly to FERC for determination. Finally, in Part IV.B of this Notice, Power Agency addresses the matters that it believes constitute disagreements over the terms and conditions governing its proposed use of the Santee Cooper resource. Power Agency conditionally submits these disagreements over terms and conditions for resolution by the Arbitrator in the event it is determined that these matters are also subject to arbitration.

Power Agency submits that, if CP&L disagrees with Power Agency's classification of a particular issue as one of contract interpretation or one of "terms and conditions," or if CP&L believes there are additional issues relating to Power Agency's proposed use of the Santee Cooper resource (or similar resources that Power Agency might acquire in the future), it is incumbent upon CP&L to state fully its position on each such issue in its

Answering Statement. Only if CP&L does so can the parties be assured that all relevant issues are before the Arbitrator. Permitting CP&L to continue raising successive new "issues" concerning Power Agency's rights under the 1981 PCA (as it has done heretofore) would have the effect of further postponing any use by Power Agency of the Santee Cooper resource, to the continued economic detriment and competitive disadvantage of Power Agency and its Participants.

D. Power Agency's Proposed Use of the Santee Cooper Resource

Since its inception, Power Agency has sought ways to provide the most economical and reliable supplies of power to its Participants. In pursuit of that goal, Power Agency has entered into arrangements for the purchase of capacity and energy from Santee Cooper on terms that would provide significant economic benefits if those arrangements were fully integrated with Power Agency's existing power supply resources.

Simply put, Power Agency seeks to fully integrate its new Santee Cooper resource into its overall power supply mix in an economically efficient manner, consistent with sound and established utility practices. Under Power Agency's proposed arrangement with Santee Cooper, significantly greater amounts of energy would be available to Power Agency from Santee Cooper than would be necessary solely to reduce Supplemental Energy purchases from CP&L. First, Power Agency will have the right to call for deliveries of energy up to the level of the firm capacity being

purchased at any time -- including, of course, those many hours when it is not needed to substitute for purchases of Supplemental Energy. Second, Power Agency will have the right to request and receive additional energy, above the level of firm capacity, on a non-firm basis (i.e., on an "as, if, and when-available" basis). In this regard, Power Agency's arrangements with Santee Cooper are very similar, in both form and substance, to interchange arrangements CP&L itself has with Santee Cooper and other utilities in the region.

Power Agency's proposed use of its new Santee Cooper resource, as provided for in the proposed 1988A PCA, may be summarized as follows.

1. Reduction of Supplemental Capacity Purchases. Power Agency intends that its purchase of firm capacity from Santee Cooper would reduce its purchases of Supplemental Capacity from CP&L. There apparently is no dispute between Power Agency and CP&L over Power Agency's right to receive such capacity credit for the Santee Cooper resource. 17/

2. Integration of Energy Resources. Power Agency seeks to use energy available to it from Santee Cooper in a manner that most effectively combines this resource with the energy available

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17/ As noted in Part IV.B below, however, CP&L has, in negotiations with Power Agency, stated that such capacity credit is contingent on the manner in which the Santee Cooper resource is scheduled on an hour-by-hour basis. Power Agency disagrees with CP&L on this matter, but views this as a dispute over the terms and conditions of the 1988A PCA rather than a dispute under the 1981 PCA.

from Power Agency's other resources, including resources purchased by Power Agency from CP&L. That is, Power Agency seeks to obtain the benefits of the synergism that is available from a full integration of the Santee Cooper resource into Power Agency's existing power supply framework. The manner in which energy available from such resource could be integrated into Power Agency's existing power supply includes the following uses.

(a) Reduction of Supplemental Energy purchases. Energy from Santee Cooper first would be used to reduce or displace energy that Power Agency otherwise would purchase from CP&L as "Supplemental Energy" under the 1981 PCA. Power Agency has proposed that the amount of Supplemental Energy so displaced would reflect Power Agency's planned use of the firm Santee Cooper capacity as a peaking resource (as opposed to a base-load resource like a nuclear plant, for example). It is anticipated that Power Agency's Supplemental Energy requirement would be reduced principally during "peak load" hours rather than around the clock. Power Agency is prepared to demonstrate that this matching of the Supplemental Energy reduction and the firm capacity reduction is reasonable, although there appears to be no significant dispute with CP&L over Power Agency's proposed reduction of Supplemental Energy purchases from CP&L. CP&L does dispute Power Agency's rights to use energy from Santee Cooper to displace energy from other sources available to Power Agency, however.

(b) Substitution for Joint Unit energy. As noted above, under its arrangement with Santee Cooper significantly greater amounts of energy would be available to Power Agency from Santee Cooper than would be necessary solely to reduce Supplemental Energy purchases from CP&L. Power Agency's position is that it has the right to use a portion of the additional energy available to it from Santee Cooper to displace energy that Power Agency otherwise would receive from its ownership shares in the Joint Units. There are a number of hours during which energy available from Santee Cooper is expected to be less costly than Joint Unit energy. Power Agency would reduce or displace such other sources of energy in a manner, and in the order, dictated by usual standards of economic utility operations -- in any hour, the most expensive source of energy would be displaced first, the next most expensive source of energy would be displaced second, and so on. CP&L's position is that Power Agency must take the Joint Unit energy (and forego the Santee Cooper energy) even when that is an uneconomic course of action.

(c) Substitution for backstand energy services from CP&L. Power Agency's position is that it also has the right to use a portion of the additional energy available to it from Santee Cooper to substitute for the backstand energy services provided by CP&L under the 1981 PCA. 18/ There are many hours in

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18/ "Backstand" energy services comprise energy provided by CP&L to replace output that would otherwise be available from the Joint Units, but which is not available in any hour due to equipment outage or other causes. In the 1981 PCA, these

[FOOTNOTE CONTINUED ON NEXT PAGE]

which energy that Power Agency could obtain from Santee Cooper is expected to be considerably less costly than some of the backstand energy services sold by CP&L. CP&L's position is that Power Agency must take the more costly energy and forego the cheaper alternative energy. Power Agency maintains that there is no valid reason to prevent it from substituting the most economic energy available in any hour, assuming there are no transmission limitations. 19/

(d) Economy energy exchanges. As part of the proposed 1988A PCA, Power Agency also has offered to make additional Santee Cooper energy available to CP&L on a conventional economy exchange basis whereby CP&L and Power Agency would share equally in any savings that CP&L might experience by utilizing such energy. Similarly, Power Agency's proposed 1988A PCA would offer CP&L the opportunity to provide less expensive economy

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[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
services include "Reserve Energy," "Deficiency Energy," and additional energy from "Unused Supplemental Capacity." CP&L also provides energy (referred to in the 1981 PCA as "Replacement Energy") to replace Joint Unit output that is not available because such output has been reduced for economic dispatching reasons. "Replacement Energy" service is not of the type that is generally considered a "backstand" service in the electric utility industry. However, there are some similarities among these services, and, so, for ease of reference, Power Agency's references in this Notice to "backstand energy" include reference to Replacement Energy services.

19/ The only apparent explanation for CP&L's position is that CP&L wishes to maintain its sales of backstand energy, some of which is sold by CP&L at a substantial profit. That CP&L might deem itself entitled to such profits does not alter the fact that the 1981 PCA does not preclude Power Agency's use of alternative energy resources.

interchange to Power Agency on a split-the-savings basis, in lieu of Power Agency's taking energy from Santee Cooper.

E. CP&L's Objection to Power Agency's Proposed Use of the Santee Cooper Resource

As noted above, CP&L has claimed that the 1981 PCA denies Power Agency the right to make use of the Santee Cooper resource in the manner that Power Agency proposes. The issues relating to Power Agency's rights are distinct from disagreements relating to the terms and conditions governing any permitted use; the issues in the former category go directly to the existence and scope of Power Agency's rights to develop and use alternative power resources, and to the impact of the 1981 PCA on those rights.

CP&L's position on the existence and scope of Power Agency's rights appears to be as follows. CP&L contends that, under the 1981 PCA, only "New Resources" may be used to serve Power Agency's normal loads -- i.e., loads which comprise Power Agency's "Hourly Resource Demand." 20/ CP&L concedes that the firm capacity to be purchased from Santee Cooper will meet the requirements of a New Resource. CP&L argues, however, that the non-firm energy that might be available to Power Agency from the

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20/ "Hourly Resource Demand" is the term used in the 1981 PCA to refer generally to the collective load of Power Agency's Participants. See Section 1.40 of the 1981 PCA. Certain types of loads are excluded from Hourly Resource Demand because they are of a type that would not be included by CP&L in its system planning, or because they are located outside CP&L's geographical service area. See Sections 4.1(A) and 6.1(A) of the 1981 PCA.

Santee Cooper resource is not a part of that New Resource, and does not qualify on its own as a "New Resource." Therefore, CP&L claims, the 1981 PCA prohibits Power Agency from using this energy to meet any portion of the energy requirements associated with Power Agency's Hourly Resource Demand. 21/

CP&L also contends that, under the 1981 PCA, the energy associated with the firm capacity of a New Resource can only be used by Power Agency for a very limited purpose: to reduce Power Agency's purchases of Supplemental Energy. CP&L's position is that the 1981 PCA prohibits Power Agency from using this energy for other economic purposes, such as reducing its purchases of "backstand" energy from CP&L or its use of more costly Joint Unit energy.

CP&L also claims that Power Agency's rights are further limited by the provisions of the 1981 PCA relating to Power Agency's notice for a New Resource. 22/ CP&L contends that, in

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21/ In CP&L's view, the corollary to its position that non-firm energy is not part of a New Resource is that non-firm energy can only be used to serve energy requirements associated with the loads that are excluded from Hourly Resource Demand. Power Agency does not currently contemplate serving any such loads, however, so even the limited use that CP&L would permit for the non-firm Santee Cooper energy is of no practical value to Power Agency.

22/ See Sections 6.1(D) and 6.1(E) of the 1981 PCA. Sections 6.1(D) and 6.1(E) of the 1981 PCA are generally parallel. They both govern the integration of New Resources into the Power Agency-CP&L power supply arrangement; they differ in substance only with respect to the considerations involving "backstand" arrangements and the treatment of resources having "intermittent" or "limited" usability. Power Agency believes that its Santee Cooper resource falls under Section 6.1(E) of the 1981 PCA.

any such notice, Power Agency is required to state the term and amount of firm capacity it will obtain from the New Resource, and that Power Agency will be irrevocably bound by the provisions of its notice for the entire term of use of that New Resource. CP&L argues that the 1981 PCA prohibits Power Agency from changing the term or amount of firm capacity once the New Resource notice has been given.

Finally, CP&L takes the position that it is not required by the 1981 PCA to begin negotiations with Power Agency for the terms and conditions of an agreement governing the use of a New Resource until after Power Agency has provided a binding and irrevocable notice for that resource. Even though it is self-evident that the terms and conditions of such an agreement could greatly affect the economic usefulness of a resource -- and even though the 1981 PCA does not require the giving of an irrevocable notice as a precondition to negotiations -- CP&L nevertheless contends that it is not required to begin negotiations until Power Agency has committed itself irrevocably in the notice. According to CP&L, this sequence is required -- and any other sequence is prohibited -- by the 1981 PCA.

Power Agency's position, in brief, is that the various prohibitions claimed by CP&L are simply not present in the 1981 PCA. The 1981 PCA recognizes Power Agency's basic right to develop and use alternative power supply resources, and to integrate those resources into its existing power supply framework. Power Agency's position on the issues of contract

interpretation raised by CP&L is set forth more fully in Part III of this Notice.

PART III:

ISSUES SUBMITTED FOR DECISION BY THE ARBITRATOR

In this section of the Notice, Power Agency describes the issues that CP&L contends arise under the 1981 PCA, and hereby submits these issues for decision by the Arbitrator in accordance with FERC's order dismissing Power Agency's complaint.

A. Issue 1 -- Permitted Uses of New Resources Under the 1981 PCA

The essential disagreement between Power Agency and CP&L relates to the uses which Power Agency is permitted to make of "New Resources," and other alternative power resources, under the 1981 PCA. Both "New Resources" and other resources are sources of power which Power Agency may obtain (through purchase or construction) to substitute for services it would otherwise purchase from CP&L or for output which it would otherwise receive from its ownership interests in the Joint Units.

CP&L's position is that the 1981 PCA imposes severe restrictions on Power Agency's rights, and that the 1981 PCA prohibits Power Agency from using New Resources and other resources in the manner proposed by Power Agency. The most fundamental point of dispute arises from CP&L's contention that Power Agency may serve a portion of the energy requirements associated with its Hourly Resource Demand only through the development of New Resources that are also intended by Power Agency to reduce its obligation to purchase Supplemental Capacity from CP&L. According to CP&L, Power Agency is prohibited by the

1981 PCA from using other resources to serve any portion of the energy requirements associated with Hourly Resource Demand, and Power Agency can only use such resources to serve energy requirements that are excluded from Hourly Resource Demand. CP&L's interpretation thus severely curtails Power Agency's ability to use economic energy resources to replace more costly energy services provided by CP&L, or even to substitute for energy from Power Agency's ownership interests in the Joint Units, during hours in which the alternative resource is cheaper.

With specific reference to the Santee Cooper resource, CP&L concedes that the firm capacity that Power Agency will purchase from Santee Cooper satisfies the contractual definition of a New Resource, and that Power Agency may reduce its Supplemental Capacity purchases with this resource. CP&L contends, however, that energy from a New Resource may be used for one purpose and one purpose only -- to substitute for purchases of Supplemental Energy. Power Agency disputes that contention because even the most cursory review of the 1981 PCA shows this limitation to be one of CP&L's own invention. Further, this limitation would greatly reduce the value of the energy that Power Agency can obtain from its own resources, to the economic detriment of Power Agency and its Participants. There is no contractual or other basis for limiting the uses to which Power Agency may put the energy output of the Santee Cooper resource or any other New Resource.

Power Agency also rejects CP&L's contention that the additional energy that can be made available by Santee Cooper above the level of the energy associated with the firm capacity component is not a part of the New Resource, and that it cannot be used to meet any portion of the energy requirements associated with Hourly Resource Demand. In the course of this proceeding, Power Agency will demonstrate that CP&L's position is based on faulty reasoning and is inconsistent with the purposes and intent of the 1981 PCA. First, although the Santee Cooper resource would make available to Power Agency a set of rate schedules for inter-utility exchange services (e.g., Firm Capacity, Short Term Power, and Economy Energy), this fact does not justify CP&L's approach of tearing the resource into several parts and treating each part as a separate resource which must independently satisfy the requirements of a New Resource. The Santee Cooper resource consists of a single inter-utility exchange resource, not unlike the interchange resources that CP&L and other utility companies use to increase the economy and reliability of their own service. The fact that this resource includes a set of services provided under various pricing schedules does not destroy the unitary nature of the resource itself.

Second, CP&L contends that a firm resource can never have non-firm elements. Based on that contention, CP&L argues that the Santee Cooper arrangement, as proposed by Power Agency, is not a firm power supply because it includes certain non-firm interchange services, and therefore it does not qualify as a New

Resource. CP&L's position is unsupported and contrary to standards prevailing in the electric utility industry. As Power Agency will demonstrate in this proceeding, several types of generating units have variable output availability and costs, and yet (like the Santee Cooper arrangement) constitute a single firm resource. The firm capacity of the Santee Cooper resource includes backstand from Santee Cooper. Indeed, under the proposed arrangement with Santee Cooper, Power Agency would be accorded the same priority of service as all other firm customers on Santee Cooper's system, up to the level of the firm capacity purchased by Power Agency. Therefore, to the extent that Power Agency intends to reduce its Supplemental Capacity purchases from CP&L through its use of the Santee Cooper resource, the resource is firm, and the Santee Cooper resource meets both tests for qualification as a "New Resource" that are set forth in Section 6.1(C)(1). 23/

Even if the non-firm interchange energy component of the Santee Cooper resource were deemed not to qualify as part of a

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23/ That section provides that a resource qualifies as a "New Resource" as long as backstand is provided "sufficient to meet the intended use of such resource in providing Power Agency with a firm power supply" (Section 6.1(C)(1)(a)), and as long as the sum of "the firm capacity of such resource" and Power Agency's other firm capacity resources (including Retained Capacity) does not exceed Power Agency's projected Annual Peak Resource Demand in any year following the addition of the resource (Section 6.1(C)(1)(b)). Power Agency will show that the Santee Cooper resource includes backstand from Santee Cooper sufficient to make it as firm as Santee Cooper's service to its other firm customers. CP&L has not asserted that the addition of the Santee Cooper firm capacity will cause Power Agency's total capacity to exceed its projected Annual Peak Resource Demand.

"New Resource," this does not mean that it may not be used to serve a portion of Power Agency's energy requirements associated with Hourly Resource Demand. As Power Agency will demonstrate in this proceeding, the negotiators of the 1981 PCA understood and agreed that Power Agency would be free to use the energy output of facilities that were not intended by Power Agency to reduce its purchases of Supplemental Capacity from CP&L. The 1981 PCA contains no prohibitions against the use of such energy.

Power Agency's position on this issue is consonant with the purpose underlying the "New Resource" provisions contained in Article 6 of the 1981 PCA. The rationale behind Article 6 was to preserve Power Agency's freedom to supplant services from CP&L where it would be to Power Agency's economic benefit, while at the same time mitigating certain of the effects of a decline in Power Agency's Supplemental Capacity purchases occasioned by the development of a New Resource. Such a decline in Supplemental Capacity purchases could result in shifting to CP&L's other customers the fixed costs of generating capacity that was built to serve Power Agency's Supplemental Capacity requirements but that Power Agency has determined not to use. The eight-year notice requirement was intended to mitigate certain of the effects of a sudden loss of Supplemental Capacity sales (and associated revenues) resulting from the development of a New Resource, and to afford CP&L an opportunity to adjust its system planning to recognize Power Agency's intent to reduce its Supplemental Capacity purchases through the use of that resource.

The same considerations have no relevance to a planned reduction in Power Agency's energy purchases from CP&L. Because the energy rate charged to Power Agency recovers only variable costs, reductions in energy usage do not pose a similar risk of shifting fixed costs to CP&L's other customers. Therefore, there was and is no need to restrict Power Agency's ability to replace energy services from CP&L in the same manner that its ability to bring on new capacity resources is limited. The limitations applicable to capacity resources simply do not apply to resources (or elements of a resource) that Power Agency would use only to serve a portion of the energy requirements associated with its Hourly Resource Demand (as contrasted with resources that are intended to displace Supplemental Capacity purchases).

The 1981 PCA does not limit Power Agency's right to use alternative energy resources to serve a portion of the energy requirements associated with its Hourly Resource Demand. In fact, the 1981 PCA establishes a flexible framework whereby each resource of Power Agency may be incorporated into its existing power supply arrangement with CP&L in a reasonable and efficient manner. To be more specific, the "after-the-fact" energy accounting established in the 1981 PCA describes the manner in which energy available from Power Agency's Retained Capacity in the Joint Units, backstand energy, and energy available from Supplemental Capacity will be applied against Power Agency's energy requirements in calculating monthly charges for energy services. See Articles 7 and 8 of the 1981 PCA. The 1981 PCA

makes no express provision for incorporating in the "after-the-fact" energy accounting the energy received from a resource that qualifies as a New Resource; yet, it was certainly contemplated that Power Agency would be permitted to use the energy, as well as the capacity, of resources which satisfy the notice and backstand requirements to be a New Resource. The 1981 PCA contemplates that appropriate modifications to that agreement would be made to accommodate energy from alternative resources in the overall power supply framework, and that the vehicle for accomplishing such modifications would be a power coordination agreement of the type referred to in Sections 6.1(D)(1) and 6.1(E), or an interconnection agreement of the type referred to in Section 6.1(C)(3), of the 1981 PCA. 24/

In claiming that the 1981 PCA prohibits Power Agency's proposed use of the Santee Cooper resource, CP&L disregards this practical, future-looking side of the 1981 PCA. CP&L's position -- that Power Agency may not reduce its purchases from CP&L in any way not expressly permitted by the 1981 PCA -- would force Power Agency to forego reasonable power supply

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24/ On three recent occasions, CP&L and Power Agency have entered into agreements relating to New Resources which, consistent with the flexible framework of the 1981 PCA, have had the effect of modifying the capacity and energy accounting under the 1981 PCA. These New Resources and the associated agreements are the Santee Cooper firm capacity resource for the 1987-1993 period (the "1987A PCA"); the diesel New Resource installed by the Town of Edenton, North Carolina in July, 1988 (the "1988B PCA"); and the diesel New Resource installed by the City of Elizabeth City, North Carolina also in July, 1988 (the "1988C PCA").

alternatives, to the significant economic detriment and competitive disadvantage of Power Agency and its Participants. The more reasonable view of the parties' contractual relationship -- and that which is consistent with the framework of the 1981 PCA and the prior conduct of the parties in interpreting that framework -- is that Power Agency may utilize alternative resources in any reasonable and economic manner that is not expressly prohibited by the 1981 PCA, so long as appropriate terms and conditions are established for use of the resource (either by negotiation or through determination by a third party). Because the 1981 PCA does not expressly prohibit use of the Santee Cooper resource in the manner proposed by Power Agency, that use is permitted.

B. Issue 2 -- Power Agency's Notice With Respect to a New Resource

The second issue arising under the 1981 PCA involves the notice that Power Agency is required to give CP&L with respect to Power Agency's intent to bring on a New Resource, the firm capacity of which is to be declared by Power Agency to reduce its purchases of Supplemental Capacity from CP&L. CP&L's position is that Power Agency must provide an irrevocable and binding notice that specifies the firm capacity of the New Resource and the period during which the New Resource will be available. Neither the firm capacity nor the term of use is subject to change by Power Agency, according to CP&L. CP&L's position, in addition, is that any change in the firm capacity or

in the term of use of a New Resource itself constitutes a New Resource, requiring that a new and separate notice be given and that a new power coordination agreement for the purported New Resource be negotiated. CP&L's position in untenable and, as will be discussed more fully in connection with Issue 3 below, CP&L's position hamstrings Power Agency in its effort to meaningfully plan and develop new and economical sources of power for its Participants.

CP&L's position appears to rely on the assumption that the "written notice" required by Section 6.1(D) and 6.1(E) is the same notice as that contemplated by Sections 6.1(D)(1) and 6.1(E)(1), which is intended to satisfy Power Agency's obligation to notify CP&L of its intention to "bring on" a New Resource. Power Agency's position on this issue is that the notices contemplated by Sections 6.1(D) and 6.1(E), on the one hand, and those contemplated by Sections 6.1(D)(1) and 6.1(E)(1), on the other hand, are separate and distinct. The notice required by Sections 6.1(D)(1) and 6.1(E)(1) is a simple, informational notice, the sole purpose of which is to trigger the parties' obligations to negotiate a power coordination agreement for the New Resource that Power Agency has "noticed" it intends to bring on. Section 6.1(E)(1) states (emphasis added):

> Power Agency shall notify CP&L of its intention to bring on such a New Resource and CP&L and Power Agency shall promptly undertake negotiations for a power coordination agreement to reflect the terms and conditions applicable to that New Resource.

* * *

> Either party may make appropriate application to FERC for determination of such terms and conditions for interconnection at any time that it appears to such party that negotiations will not produce such an agreement.

It is thus clear that the parties intended that only one power coordination agreement need be negotiated (or ordered by FERC) for each New Resource planned by Power Agency.

The notice required by Sections 6.1(D) and 6.1(E), however, is separate and distinct from the above notification, and the purpose of this latter, more detailed notice is to notify CP&L of Power Agency's planned reduction of Supplemental Capacity purchases with the New Resource. The purpose of this detailed notice is to provide information to CP&L that it can factor into its generation expansion plans. 25/

Sections 6.1(D) and 6.1(E) require that Power Agency give written notice to CP&L not later than December 31 of the calendar year eight years prior to any calendar year in which

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25/ As discussed above, this prior notice requirement affords CP&L protection against certain of the effects of a decline in Power Agency's purchases of Supplemental Capacity resulting from its development of a New Resource. Such a decline could result in fixed costs being shifted to CP&L's other customers for capacity planned by CP&L to meet Power Agency's Supplemental Capacity requirements. The detailed notice was intended to afford CP&L sufficient information and lead-time to factor into its system planning a decision by Power Agency to use a New Resource to reduce its Supplemental Capacity purchases, and thereby to mitigate or avoid any such shifting of cost responsibility. During the notice period, these costs will continue to be borne by Power Agency through its payments for Supplemental Capacity.

Power Agency plans to meet a portion of its Hourly Resource Demand and reduce its purchases of Supplemental Capacity with a New Resource. 26/ Power Agency is obligated to provide subsequent eight-year notices to CP&L only with regard to future amounts of capacity from such New Resource that Power Agency intends to "declare" for the purpose of reducing Supplemental Capacity. The 1981 PCA simply does not obligate Power Agency, as CP&L maintains, to re-enter negotiations with CP&L (or, possibly, to apply to FERC) each time Power Agency notifies CP&L that it plans to revise the amounts of capacity from an existing New Resource that Power Agency intends to declare for reducing Supplemental Capacity purchases in subsequent years.

The unequivocal language of Sections 6.1(D) and 6.1(E) clearly supports Power Agency's position. The 1981 PCA requires only that Power Agency state in its written notice the "expected" capacity of the New Resource and the period of time that the New Resource is "expected to be available." Not only does the foregoing language clearly describe the extent of Power Agency's obligation to give CP&L notice of its intention to reduce Supplemental Capacity purchases, it also refutes any suggestion that Power Agency would be bound irrevocably by the provisions of the notice.

26/ Under certain circumstances, Power Agency may reduce its Supplemental Capacity payment obligations on less than eight years notice to a limited extent. See Section 6.1(D)(2)(a) of the 1981 PCA.

Moreover, Section 6.1(E) of the 1981 PCA states in pertinent part the following:

> ... if Power Agency plans to meet a portion of its Hourly Resource Demand during any hour of any calendar year ... with a New Resource ..., Power Agency may reduce the amount of Supplemental Capacity to be taken by giving written notice to CP&L not later than December 31 of the calendar year eight (8) years prior to the calendar year to which the notice applies.

The above language clearly indicates that the notice referred to need only be given if Power Agency intends to meet a portion of its Hourly Resource Demand and to reduce its Supplemental Capacity purchases from CP&L. That is, Power Agency need not give this detailed notice to CP&L if it intends to meet a portion of its Hourly Resource Demand with a New Resource but does not intend to reduce its purchases of Supplemental Capacity. The foregoing language also clearly contemplates a "rolling" notice mechanism -- i.e., one in which Power Agency may undertake each year a re-evaluation of its future need for capacity from a New Resource, and notify CP&L of its expected utilization of each such resource during the calendar year eight years hence. 27/

27/ A "rolling" notice period would permit Power Agency to periodically re-evaluate its capacity needs in light of load growth, load management and resource performance and availability. It would also permit Power Agency to obtain the benefits of the economies of scale in electrical generating equipment, by installing a larger resource than is immediately useable for reducing Supplemental Capacity purchases, and "growing into" that resource over time through the provision of revised annual ("rolling") notices of the level of use of the resource eight years hence.

Power Agency's position on this issue is that the period of time required to be covered by a notice should not be a longer period than is reasonable in light of the circumstances and CP&L's planning requirements. The "rolling" notice provisions of the 1981 PCA afford CP&L ample opportunity to accommodate Power Agency's actions in its system planning. In fact, in today's circumstances in which CP&L is planning to install short lead-time generating units and to make purchases from other utilities to meet its requirements, far shorter notice requirements would actually be more reasonable. In any case, the notices that Power Agency would provide pursuant to the 1988A PCA would fully satisfy the requirements of the 1981 PCA with regard to changes in the term of use or firm capacity of the proposed Santee Cooper resource. There is no contractual or logical basis for forcing Power Agency to state irrevocably in its original notice the term of the firm capacity of a proposed New Resource, or in binding Power Agency irrevocably to the provisions of its original notice. The only explanation for such an interpretation is to provide support for CP&L's contention that any change from such original notice requires negotiations for a new power coordination agreement, affording CP&L multiple bites at the same apple.

C. Issue 3 -- Obligation to Negotiate Prior to Receiving Written Notice With Respect To a New Resource

The third issue arising under the 1981 PCA involves CP&L's position that it is not required to negotiate the terms and conditions that would govern Power Agency's use of an alternative resource until after Power Agency has given the written notice for that resource provided for in Section 6.1(E) of the 1981 PCA. In a letter dated December 18, 1987, CP&L Senior Vice President Charles D. Barham, Jr. set forth CP&L's position:

> In this matter, we want to follow the provisions of our existing agreement--the 1981 PCA. In the 1981 PCA, Section 6.1(E) states "Any notice hereunder shall state the expected dependable capacity of such New Resource, its source, the means proposed by Power Agency for the backstand of the New Resource, the period during which the New Resource is expected to be available to Power Agency, and the amount of capacity, in KW, which Power Agency intends to declare for the purpose of reducing Supplemental Capacity." After the notice is given, the 1981 PCA provides that the parties shall undertake negotiations for a power coordination agreement.
>
> If Power Agency wants to proceed with the New Resource, we think it should send CP&L a written notice for the years 1994, 1995, and 1996 by December 31, 1987, following the provisions of the 1981 PCA. The amounts of KW by years expected of the New Resource would not be subject to change once they are set by Power Agency. Other matters, those which are subject to negotiations, would be addressed in the power coordination agreement.

This letter makes evident CP&L's position that it has no obligation to negotiate concerning Power Agency's proposed use of an alternative resource until after Power Agency has provided a detailed written notice for that resource. The discussion of the notice provisions of the 1981 PCA set forth in connection with Issue 2, supra, clearly refutes any assertion by CP&L that its position concerning the duty to negotiate has contractual support. When CP&L's position is coupled with its claim that the content of Power Agency's notice must specify, irrevocably and inflexibly, the amount of firm capacity from a resource and the period over which a resource is to be available to Power Agency, the manner in which CP&L seeks to hamstring Power Agency becomes clear.

The terms and conditions of the power coordination agreement for a proposed resource are critical in determining the economic viability of that resource. These terms and conditions will define the manner in which the resource is integrated into Power Agency's existing power supply arrangement. The negotiations concerning such terms and conditions could affect the amount of firm capacity from the resource, or the term of availability of the resource, that Power Agency might find economically desirable. Yet, under CP&L's position, Power Agency would be required to state these determinations in its notice, and be irrevocably bound by them, before even beginning the negotiations with CP&L for the terms and conditions of the power coordination agreement. Clearly, under CP&L's interpretation,

Power Agency would expose itself to considerable risk each and every time it considered the use of an alternative power resource. It would first have to commit by contract to acquire the resource in order to be able to provide to CP&L the ever-binding and irrevocable notice of quantity, term, method of backstand, etc., and then it would establish through negotiation with CP&L the terms and conditions that may well determine whether the resource will be economically desirable. Since the terms applicable to Power Agency's acquisition of the resource will already have been set prior to the commencement of negotiations with CP&L, the economic benefits that Power Agency anticipates receiving from the resource will immediately be at risk in the negotiations with CP&L.

That the negotiations with CP&L could determine the economic desirability of a resource is clear from the positions taken by CP&L in negotiations concerning the non-firm energy aspect of the Santee Cooper resource. During those negotiations, CP&L asserted a right to arrogate to itself a significant share of the economic savings that Power Agency would receive from the use of non-firm energy. If Power Agency had acceded to CP&L's demands, it would have substantially reduced the benefit to Power Agency of the non-firm energy. Such demands could eliminate the benefit of such a resource and lead Power Agency to decide against development or use of the resource. Of course, under CP&L's position, Power Agency would lack that option as a practical matter, because it would incur substantial economic

penalties under the 1981 PCA if a New Resource for which it has given notice is not available to Power Agency at the end of the notice period. 28/ Thus, if the negotiations with CP&L rendered the use of a proposed resource economically undesirable, Power Agency and its Participants would be forced to suffer the resulting penalties which, for any substantial resource, could easily number in the millions or tens of millions of dollars.

It is obvious that CP&L's position on its duty to negotiate, in combination with its position on the irrevocability of the notice to be given by Power Agency, puts Power Agency squarely between Scylla and Charybdis whenever it considers use of a proposed resource. CP&L's position on these matters can only be viewed as an attempt to place yet another obstacle between Power Agency and any alternative sources of power, even though the 1981 PCA entitles Power Agency to have access to such alternative sources. In erecting such obstacles, CP&L appears to be intent upon repudiating provisions of the 1981 PCA that contemplate the use by Power Agency of alternative power supply resources.

28/ See Section 6.1(F) of the 1981 PCA. In such an event, based on CP&L's position, CP&L would provide Supplemental Capacity at a charge dependent upon CP&L's reserve level at the pertinent point in time. However, the rate for energy provided by CP&L to offset the unavailability of the New Resource would be provided at CP&L's Deficiency Energy rate, which is based on the highest incremental cost source of energy on the CP&L system in any hour.

PART IV:

ISSUES CONDITIONALLY SUBMITTED FOR DETERMINATION BY THE ARBITRATOR

In this Section of the Notice, Power Agency describes issues that are conditionally submitted for determination by the Arbitrator.

A. Power Agency's Right to Apply to FERC for Determination of the Terms and Conditions Related to Power Agency's Use of an Alternative Resource

As noted above, FERC ruled in its December 22, 1988 and February 22, 1989 orders dismissing Power Agency's complaint that all issues raised by Power Agency in its complaint, including issues relating to the terms and conditions of necessary contracts with CP&L related to an alternative resource, are to be arbitrated in the first instance. FERC noted that Sections 6.1(C)(3) and 6.1(E) of the 1981 PCA provide for FERC resolution of issues relating to the terms and conditions of the necessary contract with CP&L, but ruled that the sweeping language of the arbitration clause, Section 22.2, controls over the more specific language of those sections. FERC also stated that the language of Section 22.2 requires that a dispute as to the applicability of the arbitration clause is itself a matter that must be arbitrated.

Power Agency has filed a petition for review of FERC's orders, because Power Agency believes that those orders vitiate the clear, unambiguous language of the 1981 PCA. That agreement

expressly provides that either Power Agency or CP&L may make application to FERC for determination of the terms and conditions of the agreement between them that is necessary to integrate alternative resources into Power Agency's existing power supply arrangement, if it becomes apparent to either party that their negotiations will not produce an agreement. In view of FERC's orders, however, Power Agency hereby conditionally submits for arbitration the question of whether the parties have a right to obtain, in the first instance, a FERC determination of the aforementioned terms and conditions. If it is determined on judicial review of FERC's orders that the terms and conditions of the requisite agreement are to be determined by FERC in the first instance, Power Agency would withdraw this question from the instant arbitration.

Power Agency's position on this matter is simple. The language of Sections 6.1(C)(3) and 6.1(E) of the 1981 PCA clearly provides for determination by FERC, in the first instance, of unresolved disputes relating to the terms and conditions of agreements between the parties relating to a New Resource or other alternative resource. It was for good reason that the negotiators of the 1981 PCA specifically provided for FERC determination of these matters. The negotiators recognized that disputes over the terms and conditions of a power coordination agreement for a resource were matters of the type that FERC routinely decides in the course of discharging its duties under

the Federal Power Act. 29/ The negotiators saw the wisdom in submitting these issues to a regulatory body that is familiar with such disputes and that has special expertise to decide them. Further, inasmuch as FERC would be required to review and approve the terms and conditions of a power coordination agreement in any event, there would have been little sense in requiring that such disputes first be submitted to arbitration.

Power Agency's position is that the language of Sections 6.1(C)(3) and 6.1(E) clearly states the intent and agreement of the negotiators on this matter. Moreover, as a matter of contract law, the very specific contractual language of Sections 6.1(C)(3) and 6.1(E) overrides the general provision for arbitration contained in Section 22.2. On these grounds, Power Agency submits that the parties are entitled to a determination by FERC, in the first instance, of unresolved disputes over the terms and conditions of agreements relating to a New Resource or other alternative resource.

B. Terms and Conditions of Requisite Agreement

Power Agency also conditionally submits for arbitration the question of the terms and conditions of the power coordination agreement with CP&L applicable to the Santee Cooper resource. Again, this question is submitted "conditionally" in

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29/ Services provided by CP&L to Power Agency under the 1981 PCA, including supplemental power, backstand and transmission services, are subject to FERC's continuing jurisdiction under the Federal Power Act. See Section 19.2 of the 1981 PCA.

the sense that, if FERC's orders are reversed on review, or if the Arbitrator agrees with Power Agency that such matters are determinable by FERC in the first instance (as requested in Part IV.A above), Power Agency would withdraw from this arbitration all questions concerning the terms and conditions of the required agreement with CP&L.

In the course of discussions with CP&L, a number of disagreements have surfaced with respect to the appropriate terms and conditions of the agreement necessary to facilitate the delivery of power from Santee Cooper and the integration of that power into Power Agency's existing power supply arrangements. Power Agency lists these disagreements briefly here. A fuller development of these matters will be provided in later submissions (e.g., testimony at hearings) if the Arbitrator is to decide the "terms and conditions" issues.

The issues relating to the terms and conditions of the requisite power coordination agreement which are hereby conditionally submitted by Power Agency are the following:

(1) Purchase and Pricing of Back-up Capacity from CP&L. Power Agency's position is that it should be deemed to have required back-up capacity from CP&L only to the extent that Santee Cooper power would not be available to be scheduled during hours when Power Agency's or CP&L's load exceeds their monthly peak demands less the amount of firm capacity purchased by Power Agency from Santee Cooper. Power

Agency's position is also that any such back-up capacity should be priced based upon the average capacity costs of CP&L's fossil-fired generating units. CP&L's position is that Power Agency should be deemed to require back-up capacity during any hour in which Santee Cooper power is not available as scheduled. CP&L also takes the position that such back-up capacity should be priced based upon CP&L's average annual capacity costs for all types of generating units.

(2) Adjustment of Firm Capacity of a Resource. CP&L asserts that the declared firm capacity of the Santee Cooper resource may not be modified during the life of that resource. Power Agency's position is that it is reasonable to permit it to adjust the declared firm capacity of the Santee Cooper resource, or any other alternative resource, with certain notice or to reflect a change in the amount of firm capacity available from the Santee Cooper or other resource. Such flexibility is present in the 1981 PCA with respect to the firm capacity of the Joint Units (see Section 12.2 of the 1981 PCA) and is consistent with the notice requirements of Article 6 of the 1981 PCA.

(3) Time of Power Deliveries for Capacity Credit. CP&L's position is that a credit against Power Agency's capacity requirements should be provided only if power from the Santee Cooper resource is actually scheduled and delivered

during the hour of the monthly peak demand on the combined CP&L-Power Agency system.

Power Agency's position is that there is no need to require that a power delivery have actually been scheduled by Power Agency during the peak demand hour in order for its purchases of (and payments to CP&L for) Supplemental Capacity to be reduced. Power Agency has proposed that CP&L would itself be permitted to call on the Santee Cooper firm capacity each hour to the extent it has not already been scheduled by Power Agency. If Power Agency has made Santee Cooper firm capacity available to the combined CP&L-Power Agency system at the time of the monthly peak demand, Power Agency has thereby met a portion of its obligation to provide or purchase its firm capacity requirements, and it should be entitled to a corresponding reduction in its Supplemental Capacity payment obligation.

(4) Scheduling. CP&L's position is that a daily schedule of hourly amounts of power from the Santee Cooper resource must be provided in the late afternoon of the previous day, and that the schedule may not be modified after it is provided to CP&L. Power Agency's position is that CP&L's scheduling concerns are satisfied if an initial daily schedule is provided on the previous day and that changes to the initial schedule are permitted subject to reasonable scheduling and dispatching procedures.

(5) After-the-Fact Classification of Energy Provided by the Santee Cooper Resource. Power Agency's position is that, on an ongoing basis during the month, available energy resources (including energy available from Santee Cooper) should be utilized on the basis of the most economic use of those resources. CP&L would then determine at the end of each month, on an after-the-fact basis, the sources of energy utilized by Power Agency and CP&L. Generally, energy from Santee Cooper (or economy energy, in lieu thereof) would first be deemed to have been used to displace Supplemental Energy associated with the Supplemental Capacity displaced by the firm capacity purchased by Power Agency from Santee Cooper. Then, energy from Santee Cooper would be deemed to displace energy (in order of decreasing cost) that otherwise would have been used by Power Agency (e.g., backstand energy or energy from the Joint Units). This method -- known as "after-the-fact energy accounting" -- is an accepted, common approach to interconnected (or "pooled") operations in the electric utility industry. In fact, energy services available to Power Agency under the 1981 PCA are actually classified by CP&L for billing purposes on an after-the-fact basis. The method proposed by Power Agency represents a modest expansion of the current method.

(6) Pricing of Economy Energy. Power Agency has proposed that economy energy purchases and sales be priced on the "split-

the-savings" method widely used in the electric industry. This method calls for the per-kilowatthour price of economy energy to be set halfway between the seller's incremental cost of generating additional energy, and the purchaser's decremental cost of generating less energy. CP&L's position, by contrast, is that it is entitled to a fixed profit for each kilowatthour of economy energy purchased or sold, or a fixed share of Power Agency's benefit from any transaction. CP&L's pricing proposal is directly at odds with industry practice.

(7) Transfer Capability Charge. CP&L takes the position that it is entitled to compensation, beyond that already provided in the 1981 PCA, for the effect on its transmission system's total transfer capability resulting from Power Agency's use of the Santee Cooper resource. Power Agency's position is that the 1981 PCA provides appropriate compensation to CP&L for the use of its transmission system facilities.

Power Agency believes that its position in connection with each of the foregoing terms and conditions is reasonable and equitable, and that the terms and conditions proposed by Power Agency are consistent with accepted practices and standards in the electric utility industry. Power Agency also believes that the foregoing list comprises a complete enumeration of the disagreements between Power Agency and CP&L concerning the terms

and conditions of the power coordination agreement necessary to integrate the Santee Cooper resource into Power Agency's existing power supply arrangement. Power Agency therefore requests that the Arbitrator issue a ruling, at an early stage of the proceeding, that these are the only disputes over the terms and conditions of the necessary agreement that need to be resolved in order for Power Agency's proposed use of the Santee Cooper resource to be implemented. Such a ruling would prevent CP&L from further delaying the implementation of the Santee Cooper resource by claiming, following the completion of this proceeding, that there are additional terms and conditions that must be resolved before the use of that resource can be implemented. If CP&L believes that there are terms and conditions in addition to those listed above that must be resolved prior to implementation of the Santee Cooper resource, it is incumbent upon CP&L to specify these additional items in its Answering Statement.

PART V:

ESTIMATE OF THE AMOUNT INVOLVED

Because of the nature of the dispute between Power Agency and CP&L, as described in the foregoing sections of this Notice, the amount involved is not susceptible to estimation by Power Agency.

PART VI:

RELIEF REQUESTED

Power Agency requests that the Arbitrator issue an order making the following findings:

(1) The Santee Cooper inter-utility exchange resource, including the non-firm energy service included therein, constitutes a "New Resource" under Article 6 of the 1981 PCA.

(2) Power Agency may use the energy associated with the firm capacity purchased from Santee Cooper, or a similar resource it might acquire in the future, to reduce its purchases of Supplemental Energy from CP&L, to reduce its purchases of backstand energy from CP&L, and/or to reduce the amount of energy it receives from its ownership interests in the Joint Units. Power Agency is entitled to use this energy in the manner which is of greatest economic benefit to Power Agency under the circumstances. The 1981 PCA does not prohibit Power Agency's proposed uses of the energy associated with the firm capacity purchased from Santee Cooper.

(3) Power Agency may use additional energy available from Santee Cooper (or from a similar resource it might acquire in the future), in excess of the energy associated with the firm capacity purchased from Santee

Cooper (or other similar resource), to reduce its purchases of Supplemental Energy from CP&L, to reduce its purchases of backstand energy from CP&L, and/or to reduce the amount of energy it receives from its ownership interests in the Joint Units. Power Agency is entitled to use this energy in the manner which is of greatest economic benefit to Power Agency under the circumstances. The 1981 PCA does not prohibit Power Agency's proposed uses of the additional energy available from Santee Cooper.

(4) Under the 1981 PCA, Power Agency has the right periodically to adjust the firm capacity and/or term of use of a New Resource by providing to CP&L a notice stating the amount of firm capacity to be utilized from that resource eight years hence (or a lesser number of years hence, consistent with the notice provisions of the 1981 PCA that permit a shorter notice under certain circumstances). The "rolling notice" mechanism described by Power Agency is permitted by the 1981 PCA.

(5) Under the 1981 PCA, CP&L may not refuse to negotiate with Power Agency the terms and conditions of a power coordination agreement applicable to a New Resource until after Power Agency has given the written notice described in Section 6.1(E) for that resource. That is, CP&L is obligated to negotiate the terms and conditions of the requisite agreement once Power Agency

has notified CP&L that it intends to bring on the New Resource.

(6) Under the 1981 PCA, all disputes relating to the terms and conditions of a power coordination agreement for the Santee Cooper resource (or a similar resource Power Agency might acquire in the future) are to be determined, in the first instance, by the Federal Energy Regulatory Commission. Under the 1981 PCA, such disputes are not subject to arbitration.

Power Agency also requests that the Arbitrator enter such additional findings as are necessary for implementation of the Santee Cooper arrangement, as proposed by Power Agency in the 1988A PCA, and as may be deemed by the Arbitrator to be appropriate.

In the event that the Arbitrator finds that the terms and conditions of the power coordination agreement with CP&L for the Santee Cooper resource are subject to arbitration, Power Agency requests that the Arbitrator find that Power Agency's position on each of the disputed terms and conditions, as stated in Part IV.B above and as reflected more specifically in the proposed 1988A PCA, is reasonable and equitable, and shall be included by the parties in the power coordination agreement that is necessary for Power Agency to integrate the Santee Cooper resource in its existing power supply arrangement.

PART VII:

ARBITRATORS ACCEPTABLE TO POWER AGENCY

Each of the following three persons is acceptable to Power Agency as Arbitrator of the matters hereby submitted for arbitration. Each of the persons listed below has agreed to serve, if requested.

Proposed Arbitrator	Fee Arrangement
Mr. Don S. Smith Keck, Mahin & Cate 1730 Pennsylvania Ave., N.W. Suite 350 Washington, D.C. 20006-4706	$250.00/hour, plus expenses
Mr. Matthew Holden, Jr. Dept. of Government and Foreign Affairs 232 Cabell Hall University of Virginia Charlottesville, VA 22901	$175.00/hour, plus expenses
Mr. John N. Nassikas 1131 Litton Lane McLean, VA 22101	$175.00/hour, plus expenses

Submitted this 4th day of May, 1989.

NORTH CAROLINA EASTERN
MUNICIPAL POWER AGENCY

BY: James T. Bobo
James T. Bobo, General Manager

APPENDIX A
TO
NOTICE OF INTENTION TO ARBITRATE

1988A Power Coordination Agreement

Between

North Carolina Eastern Municipal Power Agency

and

Carolina Power & Light Company

Related To

Power Purchased from

South Carolina Public Service Authority

TABLE OF CONTENTS

1988A Power Coordination Agreement
Between
North Carolina Eastern Municipal Power Agency
and
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Related To
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1988A POWER COORDINATION AGREEMENT

BETWEEN

NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY

AND

CAROLINA POWER & LIGHT COMPANY

RELATED TO

POWER PURCHASED FROM

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

This Agreement, dated as of _____, 1988, is between NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY ("Power Agency"), a public body and body corporate and politic organized and existing under Chapter 159B of the General Statutes of North Carolina, known as the Joint Municipal Electric Power and Energy Act, with offices in Raleigh, North Carolina, and CAROLINA POWER & LIGHT COMPANY ("CP&L"), a corporation organized and existing under Chapter 55 of the General Statutes of North Carolina, known as the Business Corporation Act, with offices in Raleigh, North Carolina.

RECITALS

(A) CP&L is engaged in the business of generating, transmitting, and distributing electric power in portions of the states of North Carolina and South Carolina, and operates its own electric generation facilities.

(B) Power Agency is a joint agency organized by its member municipalities pursuant to Chapter 159B of the General Statutes of North

Carolina, known as the Joint Municipal Electric Power and Energy Act, to undertake to plan, finance, develop, own, and operate facilities for the generation, transmission, sale, and supply of electric power and energy.

(C) Pursuant to the Joint Municipal Electric Power and Energy Act, Power Agency has entered into Project Power Sales Agreements and Supplemental Power Sales Agreements with the Participants, whereby Power Agency, through ownership shares in certain generating facilities owned jointly with CP&L and through purchasing or constructing additional sources of bulk power supply, supplies All Requirements Bulk Power Supply (as defined in the Supplemental Power Sales Agreements between Power Agency and the Participants) to those Participants.

(D) Power Agency and CP&L have entered into a Power Coordination Agreement dated as of July 30, 1981, as amended ("1981 PCA") providing for certain power services and other matters.

(E) The 1981 PCA provides for the addition and use of "New Resources" by Power Agency to meet a portion of Power Agency's load and to reduce Power Agency's capacity and energy purchases from CP&L under certain circumstances.

(F) The South Carolina Public Service Authority (the "Authority") is an agency of the State of South Carolina, created by Act No. 887 of the Acts of South Carolina for 1934, and Acts supplemental and amendatory thereof, which authorizes the Authority to construct and acquire flood control, drainage, navigation, and reclamation works on the Cooper River, the Santee River, and the Congaree River in the State of South Carolina, and to produce, distribute, and sell electric power and energy.

(G) Power Agency and the Authority have entered into an Agreement for Contract Power, dated as of October 7, 1987, which provides for the Authority to sell and deliver and Power Agency to purchase, receive, or cause to be received on its behalf, and pay for, certain amounts of electric power and energy during the period December 1987 through calendar year 1993.

(H) Power Agency and CP&L have entered into a "Power Coordination Agreement for Contract Power from New Resources Period 1987-1993," dated as of October 13, 1987, for the provision of certain services related to Power Agency's purchase of such power and energy.

(I) Power Agency and the Authority have also entered into the _____, dated as of _____, 1988 (hereinafter, the "Power Agency-Authority Contract"), providing for the Authority to provide certain interconnection and power supply services, including but not limited to, providing for the Authority to sell and deliver and Power Agency to purchase, receive, or cause to be received on its behalf, and pay for, certain amounts of electric power and energy ("Resource Power").

(J) Power Agency desires to utilize power and energy available to Power Agency pursuant to the Power Agency-Authority Contract to meet a portion of Power Agency's load and to reduce purchases of electric power and energy from CP&L under the 1981 PCA.

(K) Pursuant to the provisions of Section 6.1(E) of the 1981 PCA, Power Agency has provided CP&L with written notice, dated as of December 31, 1987, for the years 1994 through 1996 as to the amounts of firm capacity (hereinafter, "Firm Resource Capacity") to be purchased from the Authority and the related expected reduction in Supplemental Capacity purchases from CP&L.

(L) Power Agency desires to establish the terms and conditions for provision by Power Agency and CP&L to the other party of certain services related to Power Agency's purchase of Resource Power from the Authority as contemplated by the applicable provisions of the 1981 PCA.

Now, therefore, in consideration of the foregoing and the mutual covenants and promises made herein, Power Agency and CP&L hereby agree as follows:

ARTICLE 1

DEFINITIONS

The following terms shall have the meanings set forth below. All capitalized terms not defined in this Agreement shall be given the meanings assigned to them by the 1981 PCA.

1.1 1981 PCA

The Power Coordination Agreement entered into between CP&L and Power Agency, dated as of July 30, 1981, as amended.

1.2 1987A PCA

The Power Coordination Agreement entered into between CP&L and Power Agency, dated as of October 13, 1987, establishing the terms and conditions for provision by each party to the other of certain services related to Power Agency's purchase of Contract Power and related energy from the Authority during the period 1987 through 1993 pursuant to the Agreement for Contract Power, dated as of October 7, 1987, between Power Agency and the Authority, which provides for the availability and delivery of Contract Power and related energy to CP&L for the period 1987 through 1993.

1.3 1988B PCA

The Power Coordination Agreement entered into between CP&L and Power Agency, dated as of March 29, 1988, establishing the terms and conditions for provision related to the use as a New Resource of Power Agency's purchase of capacity and energy from the diesel generating project being undertaken by the Town of Edenton, North Carolina.

1.4 1988C PCA

The Power Coordination Agreement entered into between CP&L and Power Agency, dated as of March 29, 1988, establishing the terms and conditions for provision related to the use as a New Resource of Power Agency's purchase of capacity and energy from the diesel generating project being undertaken by the City of Elizabeth City, North Carolina.

1.5 The Authority

The South Carolina Public Service Authority, an agency of the State of South Carolina, created by Act No. 887 of the Acts of South Carolina for 1934, and Acts supplemental and amendatory thereof.

1.6 Commencement Date

The initial date of availability for delivery of Resource Power to CP&L, determined in accordance with Article 8.

1.7 Contract Year

Contract Year shall mean the twelve (12) month period commencing 12:01 a.m., local time, on January 1 of each year during the term of this Agreement and ending midnight local time on the next following December 31; provided, however, that the first Contract Year shall begin at 12:01 a.m., local time, on the day this Agreement becomes effective pursuant to Article 7, and provided further, however, that the last Contract Year shall end at midnight, local time, on the date of termination of this Agreement as provided in Article 7.

1.8 Dispatch Records

Dispatch Records shall mean the records (including, but not limited to, voice recordings) and logs reflecting dispatch transactions.

1.9 Economy Energy A

The economy energy sold by CP&L to Power Agency pursuant to Section 4.5.

1.10 Economy Energy B

The economy energy sold by Power Agency to CP&L pursuant to Section 4.6.

1.11 Excess Resource Energy

The energy from the Resource described in Section 4.7.

1.12 FERC

The Federal Energy Regulatory Commission or its successor.

1.13 Firm Resource Capacity

The amount of Resource Power determined pursuant to Section 2.4 and the amount of Resource Power that shall reduce Supplemental Capacity purchases under the 1981 PCA pursuant to Section 5.2.

1.14 Force Majeure

The events or circumstances described in Section 9.4.

1.15 Minimum Energy Requirement

The energy required from the Resource pursuant to Section 4.1.

1.16 Operating Representatives

The individuals appointed by Power Agency, the Authority and CP&L pursuant to Section 3.3.

1.17 Points of Receipt

The several points of interconnection between CP&L's transmission system and the transmission system of others at which Resource Power is to be made available and delivered pursuant to Section 2.2.

1.18 Power Agency-Authority Contract

The _____, dated as of _____, 1988, between Power Agency and the Authority, which provides for the availability and delivery of Resource Power to CP&L, as that contract may be amended and supplemented from time to time.

1.19 Primary Points of Receipt

The primary Points of Receipt described in Section 2.3(B).

1.20 Prudent Utility Practice

Prudent Utility Practice at a particular time means any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts (including but not limited to the then current practices, methods and acts engaged in or approved by a significant portion of the electric utility industry) known at the time the decision was made, would have been expected to

accomplish the desired result at a reasonable cost consistent with reliability and safety. 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 number of possible practices, methods, or acts.

1.21 The Resource

Power Agency's arrangement for the purchase of electric power and energy from the South Carolina Public Service Authority pursuant to the Power Agency-Authority Contract, as described in Section 2.1.

1.22 Resource Backup Capacity

The capacity supplied to Power Agency in accordance with Section 4.3.

1.23 Resource Backup Energy

Energy supplied to Power Agency in accordance with Section 4.4.

1.24 Resource Energy

The energy associated with the Resource pursuant to Section 4.2.

1.25 Resource Power

Electric power and energy from the Resource, as described in Section 2.1.

ARTICLE 2

DESCRIPTION OF RESOURCE POWER AND INTERCONNECTION OF SYSTEMS

2.1 Description of the Power Agency-Authority Resource and Resource Power

(A) The arrangement for the sale of electric power and energy to Power Agency from the Authority pursuant to the Power Agency-Authority Contract shall be considered to be a "New Resource" under the provisions of the 1981 PCA, as such term is defined therein. Hereinafter, such arrangement shall be referred to as the "Resource."

(B) Power Agency shall arrange for the electric power and energy that is to be made available to Power Agency from the Resource (collectively, "Resource Power") to be alternating current, three-phase, unregulated electric service at a nominal frequency of sixty (60) Hertz.

2.2 Receipt, Delivery and Integration of Resource Power

(A) Beginning on the Commencement Date determined pursuant to Article 8 of this Agreement, CP&L shall, subject to the provisions of this Agreement, receive for Power Agency's account the Resource Power made available for delivery to CP&L at the Points of Receipt. Such Points of Receipt shall be the several points of interconnection between CP&L's transmission system and the transmission system of the Authority and the points of interconnection between CP&L's transmission system and the transmission systems of third parties with which CP&L is interconnected.

(B) Resource Power delivered to and received by CP&L for Power Agency's account shall be deemed to be (i) delivered by CP&L to Power Agency's Delivery Points to meet Power Agency's load and/or (ii) purchased by CP&L from Power Agency and used by CP&L, both in the manner hereinafter provided.

2.3 Interconnection and Transmission Services

(A) Power Agency shall have the sole responsibility for making the Resource Power available for delivery to CP&L at the Points of Receipt, which responsibility may be met through arrangements with the Authority. Power Agency shall be responsible for all costs associated with making the Resource Power available for delivery to CP&L. All charges to Power Agency by CP&L related to the Resource Power shall be determined in accordance with the terms of this Agreement.

(B) CP&L shall have the sole responsibility for receiving the Resource Power at the Points of Receipt and for ensuring that the capability of CP&L's facilities is adequate at all times for such receipt, up to the level of Firm Resource Capacity, at the Primary Points of Receipt. Such Primary Points of Receipt shall include the several points of interconnection between CP&L's transmission system and the transmission system of the Authority. In no event shall CP&L be required to ensure that the capability of CP&L's facilities is adequate (i) to receive Resource Power in amounts exceeding the level of Firm Resource Capacity or (ii) to receive Resource Power at points other than the Primary Points of Receipt; provided, however, that CP&L shall make available and use such excess capability if and to the extent available, whether at Primary Points of Receipt or other Points of Receipt, to receive Resource Power made available for delivery to CP&L by Power Agency or by others on Power Agency's or the Authority's behalf.

(C) CP&L's providing of transmission and delivery services to Power Agency as provided for in Section 2.2 and Section 2.3(B) shall be pursuant to and governed by the applicable provisions of the 1981 PCA, which fully compensates CP&L for all transmission and delivery services necessary to deliver power and energy from all resource utilized by Power Agency in meeting its Hourly Resource Demand. Correspondingly, there shall be no separate or additional charges to Power Agency for such services under this Agreement.

2.4 Firm Resource Capacity

(A) Except as otherwise provided in this Agreement, the Firm Resource Capacity for the Contract Years 1994 through 1999 for purposes of this Agreement shall be as follows:

Contract Year	Firm Resource Capacity (kilowatts)
1994	100,000
1995	100,000
1996	100,000
1997	100,000
1998	50,000
1999	50,000

(B) Except as otherwise provided in this Agreement, the Firm Resource Capacity in Contract Years other than the Contract Years 1994 through 1999 shall be zero for purposes of this Agreement.

(C) The Firm Resource Capacity for any Contract Year, beginning with the Contract Year 1994 and thereafter, may be increased or decreased by Power Agency subject only to the requirements of Sections 6.1(D), 6.1(D)(2)(a), or 6.1(E) of the 1981 PCA providing for written notice of a New Resource to CP&L. Moreover, the Firm Resource Capacity for any Contract Year may be increased by Power Agency to replace an amount of firm capacity of another New Resource for such Contract Year for which the written notice requirements of Sections 6.1(D

6.1(D)(2)(a), or 6.1(E) of the 1981 PCA have been complied with or for which an allowed reduction in Supplemental Capacity has been agreed to by CP&L and Power Agency pursuant to any other power coordination agreement with CP&L.

(D) If and to the extent that the availability of Resource Power is, during any Contract Year, reduced below the level of the then current Firm Resource Capacity for reasons other than CP&L's inability or refusal to receive such Resource Power, and such reduced availability is expected to continue for a period of twelve (12) months or longer, the Firm Resource Capacity shall be reduced accordingly. Such reduced Firm Resource Capacity shall be used until the availability of the Resource Power is restored or is otherwise increased to a higher level, in which event the Firm Resource Capacity shall be increased accordingly, but to no greater level than that Firm Resource Capacity determined pursuant to Sections 2.4(A), 2.4(B), and 2.4(C).

2.5 Spinning Reserve Requirements

Power Agency shall be responsible for supplying a share of the spinning reserve requirement of the interconnected systems serving the Virginia-Carolinas Sub Region of the Southeastern Reliability Council of the North American Electric Reliability Council appropriately allocable to Resource Power up to the level of the Firm Resource Capacity. Power Agency may discharge its responsibility to provide such spinning reserve share by requiring the Authority to provide such spinning reserve share pursuant to the Power Agency-Authority Contract.

ARTICLE 3

SCHEDULING AND MEASUREMENT OF RESOURCE POWER

3.1 Responsibilities of the Parties

(A) Deliveries of Resource Power to CP&L for Power Agency's account, and CP&L's receipt of such Resource Power, shall be made in accordance with hourly schedules established in the manner hereinafter provided.

(B) (1) Subject to the provisions of paragraph 3.1(C) below, Power Agency shall have the sole responsibility for scheduling deliveries of Resource Power.

(2) To assist CP&L in its commitment of generating resources, Power Agency, or its designated representative, shall, no later than 5:00 p.m. on each day, provide CP&L, or its designated representative, a preliminary schedule of hourly deliveries of Resource Power for the following calendar day ("Preliminary Daily Schedules"). Changes from a Preliminary Daily Schedule may be made by Power Agency at any time during a day, subject to reasonable dispatching procedures and with as much a notice as is reasonably practical.

(3) To assist Power Agency in the commitment of the Resource, CP&L shall provide to Power Agency, or its designated representative, information concerning the load on the Combined System and status of the operation of the Joint Units and CP&L's other resources as may reasonably be required by Power Agency, or its designated representative.

(C) The form and means (i) by which Preliminary Daily Schedules are made and changed and (ii) by which CP&L shall provide the information described in Section 3.1(B), shall be established, and changed from time to time, as reasonably required by Power Agency or CP&L.

(D) CP&L may request, at any time, that Power Agency schedule a minimum hourly delivery of Resource Power up to the level of the Firm Resource Capacity for an upcoming hour or hours. CP&L shall make each such request as far in advance of the hour or hours to which such request applies as is practical in accordance with Prudent Utility Practice. Power Agency shall accommodate such request by scheduling for delivery to CP&L in such hour no less Resource Power than the amount requested by CP&L, if to do so would not cause Power Agency or the Authority to deviate from reasonable dispatching and operating practices consistent with Prudent Utility Practice.

(E) To the extent reasonably necessary to facilitate the delivery and receipt of Resource Power hereunder, Power Agency and CP&L shall cooperate with each other and with third parties, including, but not limited to, the Authority. Power Agency shall provide in the Power Agency-Authority Contract that the Authority shall cooperate with CP&L to facilitate the delivery and receipt of Resource Power under this Agreement.

3.2 Measurement of Amounts of Resource Power

(A) The amounts of Resource Power delivered to and received by CP&L shall be determined from the Dispatch Records that reflect the final schedules, in megawatts, of the amounts of such Resource Power scheduled to be delivered to the Points of Receipt; provided, however, that the Operating Representatives shall attempt, in good faith, to resolve any material differences between the Dispatch Records of Power Agency, CP&L, and the Authority. Power Agency shall require in the Power Agency-Authority Contract that the Authority shall (i) maintain such Dispatch Records in at least sufficient detail to determine the hourly amounts of Resource Power, in megawatt-hours, finally scheduled to be delivered to the Points of Receipt during the term of this Agreement and (ii)

attempt, in good faith, to resolve any differences between the Dispatch Records of Power Agency, CP&L, and the Authority.

(B) If, and to the extent that, the Resource Power actually delivered to and received by CP&L in an hour differs from the amount finally scheduled to be delivered to CP&L in such hour for reasons other than the unavailability of such Resource Energy, such difference shall be deemed to be inadvertent interchange and shall be accounted for under the applicable interconnection agreement between CP&L and the Authority. Such inadvertent interchange shall not affect the amount of Resource Power deemed to have been delivered for purposes of this Agreement.

3.3 Operating Representatives

Power Agency and CP&L shall each designate in writing the individual who will serve as its Operating Representative under this Agreement. Power Agency shall require in the Power Agency-Authority Contract that the Authority shall designate in writing, with a copy to CP&L and Power Agency, the individual who shall serve as the Authority's Operating Representative under this Agreement. The Operating Representatives shall be responsible persons working with day-to-day operations of the respective electric systems and shall be familiar with the Dispatch Records of each respective system. The duties of such Operating Representatives shall be to attempt, in good faith, to (i) devise and recommend to the parties procedures for scheduling the delivery and receipt of the Resource Power in accordance with Prudent Utility Practice and (ii) resolve any differences between the Dispatch Records of Power Agency, CP&L, and the Authority pursuant to Section 3.2.

ARTICLE 4

INTERCHANGE SERVICES

4.1 Minimum Energy Requirement

The Minimum Energy Requirement for the Resource for each hour shall be the lesser of (i) the Firm Resource Capacity and (ii) the amount, if any, by which Power Agency's Hourly Resource Demand in such hour exceeds the sum, expressed in kW, of (a) Power Agency's entitlements to energy associated with Retained Capacity determined pursuant to Sections 7.1 and 7.2 of the 1981 PCA, or, if applicable, Section 7.3 of the 1981 PCA, (b) the Reserve Energy that otherwise would be purchased by Power Agency in such hour pursuant to the 1981 PCA but for the Resource, and (c) Power Agency's Supplemental Capacity for the current month, determined in accordance with Section 5.2 of this Agreement.

4.2 Resource Energy

The Resource Energy in each hour shall be the sum of (i) the amount of Resource Power actually delivered to CP&L for Power Agency's account in such hour, (ii) the amount of Resource Backup Energy purchased by Power Agency from CP&L in such hour, and (iii) the amount of Economy Energy A purchased by Power Agency from CP&L in such hour.

4.3 Resource Backup Capacity

(A) If, during any week, the amount of Resource Power available for delivery to CP&L for Power Agency's account is reduced below the Firm Resource Capacity during any hour in which (i) Power Agency's Hourly Resource Demand exceeds Power Agency's Monthly Peak Resource Demand for the current month less the Firm Resource Capacity or (ii) the Combined System demand exceeds the

Combined System Monthly Peak Demand for the current month less the Firm Resource Capacity, Power Agency shall be deemed to purchase Resource Backup Capacity from CP&L in an amount equal to the greatest such reduction in availability occurring during any such hour during such week.

(B) The price for such Resource Backup Capacity shall be an amount, stated on a dollars-per-kilowatt-per-week basis, calculated in accordance with Section 16.2 and Exhibit PCA-I-5 of the 1981 PCA; provided, however, that in determining such price, the Monthly Power Resources and Annual Production Demand Related Costs described on Exhibit PCA-I-6 of the 1981 PCA shall include only the total net plant capability and demand related costs directly attributable to or properly allocable to CP&L's fossil-fueled generating facilities.

(C) In each hour, Firm Resource Capacity shall be deemed "available" to the extent that such capacity could have been delivered to CP&L on Power Agency's behalf if scheduled by Power Agency, or requested by CP&L pursuant to Section 3.1(D), from any of the Authority's resources, including the Authority's arrangements for power supply with CP&L and other parties.

4.4 Resource Backup Energy

(A) If, and to the extent that, the sum of (i) the amount of Resource Power actually delivered to CP&L for Power Agency's account in an hour, whether scheduled by CP&L or otherwise, and (ii) the amount of Economy Energy A purchased by Power Agency from CP&L pursuant to Section 4.5 in such hour is less than the Minimum Energy Requirement for such hour, the difference shall be deemed to be Resource Backup Energy purchased by Power Agency from CP&L.

(B) The price per kWh of Resource Backup Energy in each hour shall be CP&L's incremental cost of providing such energy for such hour.

4.5 Economy Energy Purchases by Power Agency -- Economy Energy A

(A) Prior to the beginning of each hour, CP&L shall, upon a request by Power Agency, provide Power Agency with (i) an estimate of the availability of energy that could be supplied by CP&L to replace some portion of the energy that otherwise could be supplied by the Resource in such hour and (ii) an estimate of CP&L's incremental cost of supplying such energy. The availability and estimated incremental cost of such energy shall be estimated and determined in a manner consistent with the manner in which CP&L determines the availability and estimated incremental cost of generation for sales to other utilities on an "as-, if-, and when-available" basis. With Power Agency's request, Power Agency shall provide CP&L with a current estimate of Power Agency's decremental cost per kWh of Resource Power.

(B) Upon an election by Power Agency declared prior to the beginning of each hour, Power Agency shall purchase, and CP&L shall sell, Economy Energy A up to the maximum amount previously estimated by CP&L to be available. For the hour in which such a purchase of Economy Energy A has been so scheduled, such Economy Energy A shall be deemed sold to Power Agency by CP&L.

(C) The price per kWh for such Economy Energy A purchased by Power Agency in an hour shall be the greater of (i) the previously provided estimate of CP&L's incremental cost of supplying such energy for such hour and (ii) one-half of the sum of such estimated incremental cost and Power Agency's previously provided estimate of the decremental cost per kWh of the Resource Power for such hour.

4.6 Economy Energy Purchases by CP&L -- Economy Energy B

(A) To assist CP&L in scheduling its various generating resources and in determining whether or not to request minimum scheduled deliveries of Resource Power pursuant to Section 3.1(D), Power Agency shall, upon a request by CP&L, provide CP&L with (i) an estimate of the amount of energy that could be supplied by Power Agency from the Resource in ensuing hours covered by such request that Power Agency does not anticipate otherwise using in such hours and (ii) an estimate of Power Agency's incremental cost of supplying such Resource Power. With CP&L's request, CP&L shall provide an estimate of CP&L's decremental cost per kWh in such ensuing hours.

(B) If, and to the extent that, the total Resource Energy in an hour exceeds the amount of such Resource Energy used, or deemed to be used, to reduce or displace other of Power Agency's energy resources pursuant to Article 5, and if the incremental cost of such remaining amount of Resource Energy is less than CP&L's decremental energy cost in such hour, such remaining amount of Resource Energy shall be deemed to have be sold by Power Agency and purchased by CP&L as Economy Energy B.

(C) The price per kWh for such Economy Energy B purchased, or deemed to have been purchased, by CP&L in an hour shall be the greater of (i) Power Agency's incremental cost of providing such Resource Energy for such hour and (ii) one-half of the sum of such incremental cost and CP&L's decremental cost per kWh for such hour.

4.7 Excess Resource Energy

(A) If, and to the extent that, the Resource Energy in an hour exceeds the sum of (i) the amount of such Resource Energy used, or deemed to have been used, to reduce or displace other of Power Agency's resources pursuant to Article 5 and (ii) the amount of such Resource Energy sold, or deemed to have been sold, to CP&L pursuant to Section 4.6, such excess shall be deemed to have been sold by Power Agency and purchased by CP&L as Excess Resource Energy in such hour.

(B) (1) If the delivery of Resource Power in an hour shall have been scheduled pursuant to a request by CP&L in accordance with Section 3.1(D), the price for Excess Resource Energy, if any, sold to CP&L, or deemed to have been sold to CP&L, in such hour shall be equal to Power Agency's incremental cost of providing such Resource Energy.

(2) If the delivery of Resource Energy in an hour shall not have been scheduled pursuant to a request by CP&L in accordance with Section 3.1(D), the price for Excess Resource Energy, if any, sold to CP&L, or deemed to have been sold to CP&L, in such hour shall be equal to CP&L's decremental energy cost in such hour.

ARTICLE 5

EFFECT OF RESOURCE POWER ON PURCHASES UNDER THE 1981 PCA

5.1 Effects of Other Agreements

(A) Power Agency's Hourly Resource Demand shall continue to be measured pursuant to Article 4 of the 1981 PCA and shall not be reduced because of the availability or the use of Resource Power to meet Power Agency's load pursuant to this Agreement. Rather, the provisions of this Article 5 modify the rights and obligations of the parties provided for under the 1981 PCA to the extent necessary for determining which types of capacity and energy were used by Power Agency under the 1981 PCA and under this Agreement.

(B) For the purposes of applying this Article 5, the applicable provisions of the 1981 PCA shall be deemed to reflect the provisions of the 1987A PCA, the 1988B (Diesel) PCA, and the 1988C (Diesel) PCA which modify the effects of such provisions of the 1981 PCA, for such period of time as those other agreements are in effect.

5.2 Supplemental Capacity

The Supplemental Capacity that Power Agency would have purchased in each month pursuant to Section 6.1(B) of the 1981 PCA but for the provisions of this Agreement shall be reduced by the then current Firm Resource Capacity determined pursuant to Section 2.4 of this Agreement.

Furthermore, Power Agency's Monthly Peak Supplemental Demand determined pursuant to Exhibit PCA-I-28 of the 1981 PCA and Monthly Peak Supplemental Coincident Demand determined pursuant to Exhibit PCA-I-30 of the 1981 PCA, as both such quantities would have been determined for each month but for the

provisions of this Agreement, shall be reduced by subtracting therefrom the then current Firm Resource Capacity. In no event shall the application of the provisions of this section result in the net amounts of Supplemental Capacity, Monthly Peak Supplemental Demand or Monthly Peak Supplemental Coincident Demand determined under the 1981 PCA, being less than zero in any month.

In addition, CP&L's Monthly Peak Demand determined for each month pursuant to Section 1.11 of the 1981 PCA but for the provisions of this Agreement shall be reduced by subtracting therefrom the amount by which Power Agency's Monthly Peak Supplemental Coincident Demand is reduced in accordance with the foregoing paragraph for such month.

5.3 Supplemental Energy

(A) In each hour, the amount of Supplemental Energy that Power Agency would have purchased from CP&L in such hour pursuant to Section 8.3 of the 1981 PCA but for the provisions of this Agreement shall be reduced (to not less than zero) by the Resource Energy up to the Minimum Energy Requirement in such hour.

(B) In each hour, the amount of energy from Unused Supplemental Capacity that Power Agency would have purchased from CP&L in such hour pursuant to Section 8.2(C) of the 1981 PCA but for the provisions of this Agreement shall be reduced (to not less than zero) by the portion, if any, of the Resource Energy in such hour, up to the Minimum Energy Requirement in such hour, not used to reduce Supplemental Energy in such hour pursuant to Section 5.3(A).

5.4 Effect on Other Transactions Under the 1981 PCA

(A) To the extent that the Resource Energy in an hour exceeds the amount of such energy used to reduce Supplemental Energy and energy from Unused Supplemental Capacity in accordance with Section 5.3, the remaining Resource Energy shall be used, to the extent available, to reduce the amount of Deficiency Energy that otherwise would have been purchased by Power Agency pursuant to Section 8.2(D) of the 1981 PCA but for the provisions of this Agreement.

(B) In any hour to which Section 7.3 of the 1981 PCA is inapplicable, if and to the extent that any amount of Resource Energy remains after reducing, or having been deemed to reduce, Power Agency's purchases of Supplemental Energy, and energy from Unused Supplemental Capacity, and Deficiency Energy for such hour pursuant to Sections 5.3(A), 5.3(B), and 5.4(A), respectively, such remaining Resource Energy shall be deemed to have been used to displace or, in the case of purchases from CP&L, reduce energy from other of Power Agency's resources, if any, for which the incremental cost to Power Agency of energy therefrom exceeds the incremental cost of such remaining Resource Energy. Such other resources shall include Power Agency's remaining purchases from CP&L pursuant to the 1981 PCA, Power Agency's Actual Entitlements to Output from Joint Units that otherwise would have been used to meet Power Agency's Hourly Resource Demand in such hour pursuant to the 1981 PCA, and such additional resources as Power Agency may obtain and utilize pursuant to Article 6 of the 1981 PCA. Such displacements and/or reductions shall be made first to energy from such other resource having the highest incremental cost to Power Agency, second to energy from the resource having the next highest incremental cost to Power Agency, and so on, in descending order of incremental cost to Power Agency.

The amounts of energy, if any, from Power Agency's resources other than purchases from CP&L displaced in accordance with the preceding paragraph shall be deemed to be Surplus Energy to be sold to CP&L or others pursuant to Article 11 of the 1981 PCA, unless other provided in another agreement between Power Agency and CP&L.

ARTICLE 6

RATES, CHARGES, BILLINGS AND PAYMENTS

6.1 Monthly Billing

Within a reasonable time after the close of each calendar month, CP&L shall prepare a statement covering all amounts due from Power Agency to CP&L, and from CP&L to Power Agency, for all transactions pursuant to this Agreement during such calendar month. The parties shall cooperate to mutually determine the form of such statement. CP&L shall place such statement in the mail on the date of the statement. The amounts due from Power Agency and from CP&L shall be due when the statement is rendered and payable within fifteen (15) days of the date shown on the statement. Payment shall be delivered to the payee or to the account of the payee at a bank in Raleigh, North Carolina designated by the payee.

As soon as practicable after the end of each month, CP&L shall provide a record of hourly receipts, sales, and purchases of energy that occurred during such month under this Agreement. The parties shall mutually determine the manner in which such record shall be supplied.

The accounting and billing activities required for this Agreement shall be performed in conjunction with the accounting and billing activities required for the 1981 PCA. The costs of accounting and billing for this Agreement shall be charged as part of the costs of accounting and billing under the 1981 PCA pursuant to the provisions of Section 16.1 of the 1981 PCA and Exhibit PCA-I-64 of the 1981 PCA.

6.2 Computation of Monthly Capacity Charges

(A) Monthly charges for Resource Backup Capacity shall be based on: (i) the estimated weekly rate therefor calculated pursuant to Section 6.2(B) and (ii) the sum of the kilowatts of Resource Backup Capacity purchased by Power Agency for each calendar week of the month as determined in Section 4.3 of this Agreement.

(B) By December 1 of each year for which the amount of Firm Resource Capacity for the next year is not zero, CP&L shall provide to Power Agency estimates of the weekly rate in dollars per kW for Resource Backup Capacity. Except as otherwise provided in this Section 6.2(B), such estimated rate shall be applied by CP&L in the next calendar year following the December 1 estimate in computing charges to Power Agency for said service. CP&L shall inform Power Agency of the basis on which such rate was estimated.

Data, estimates, and methods used by CP&L in estimating the weekly rate for Resource Backup Capacity shall be, to the extent applicable, the same as used by CP&L in computing the estimated monthly rate for Reserve Capacity pursuant to Section 16.2(A) of the 1981 PCA. At any time that CP&L revises the monthly rate for Reserve Capacity pursuant to Section 16.2(A) of the 1981 PCA, CP&L shall also revise the weekly rate for Resource Backup Capacity accordingly. If CP&L uses the revised monthly rate for Reserve Capacity to bill Power Agency during the balance of the calendar year pursuant to Section 16.2(A) of the 1981 PCA, CP&L shall also use the revised weekly rate for Resource Backup Capacity to bill Power Agency therefor pursuant to this Agreement during the balance of that same calendar year.

(C) At the time CP&L provides Power Agency with a computation of charges for Reserve Capacity actually due and payable for the preceding calendar year pursuant to Section 16.2(B) of the 1981 PCA, CP&L shall also provide Power

Agency with a computation of the charges for Resource Backup Capacity actually due and payable under this Agreement for the preceding Contract Year. At any time that the monthly rate for Reserve Capacity is revised pursuant to Section 16.2(B) of the 1981 PCA as a result of a challenge by Power Agency of charges under the 1981 PCA or at any time charges for Resource Backup Capacity under this Agreement are revised pursuant to Section 6.8 as a result of a challenge by Power Agency of charges under this Agreement, CP&L shall provide Power Agency with a computation of the revised charges actually due and payable for Resource Backup Capacity for such Contract Year. In such event, CP&L shall credit or increase Power Agency's next monthly statement under this Agreement by an amount to correct the previous billing plus simple interest calculated at the Adjustment Interest Rate determined pursuant to Section 1.2 of the 1981 PCA. Such interest shall accrue from the date of payment of the statement on which the original adjustment was made by CP&L.

Actual data and methods used by CP&L in computing the weekly rate for Resource Backup Capacity shall be, to the extent applicable, the same as used by CP&L in computing the actual monthly rate for Reserve Capacity pursuant to Section 16.2(B) of the 1981 PCA.

6.3 Computation of Monthly Energy Rates and Charges

Monthly charges for energy provided as Resource Backup Energy, Economy Energy B, and Excess Resource Energy shall be based upon (i) the actual amount of such energy, in kWh, determined pursuant to Sections 4.4, 4.6, and 4.7, respectively, for each hour of the month and (ii) an estimated price per kWh for each such hour of the month. Where computing the appropriate estimated price per kWh requires CP&L's costs of energy per kWh, CP&L shall prepare such estimated cost per kWh. Where computing the appropriate estimated price per kWh

requires Power Agency's cost of energy per kWh, Power Agency shall supply CP&L with hourly estimates thereof. When the actual energy rates per kilowatt-hour become available to CP&L, CP&L shall recompute the charge for the month in question by using the actual data. A charge or credit based on such recomputation shall be reflected in the amount due and payable on the next bill rendered.

Monthly charges for energy provided as Economy Energy A shall be based upon (i) the actual amount of such energy, in kWh, determined pursuant to Section 4.5 for each hour of the month and (ii) an actual price per kWh determined based on the energy costs per kWh provided by the parties to each other pursuant to such Section 4.5.

6.4 Miscellaneous Charges

The monthly statement shall also include a charge for all reasonable expenses incurred by CP&L (i) in providing to Power Agency, or its designated representative, the information provided for by Section 3.1(B), (ii) in connection with the performance by CP&L's Operating Representative of his or her duties pursuant to Section 3.3, and (iii) for any other matter where this Agreement provides that Power Agency shall bear or be responsible for such costs. The statement shall also contain a credit or charge, as appropriate, for the costs of either party associated with that party's provision of access to books and records as provided for in Section 10.1. There shall be no duplication of charges under this Agreement or as between this and any other agreement between Power Agency and CP&L.

6.5 Payments

Bills are due when rendered and payable in full within fifteen (15) days of the date shown on such bill. This period shall be calculated as described in Section 10.7 hereof. Simple interest, calculated at the Late Payment Interest Rate, shall thereafter accrue each month or portion thereof, on the delinquent amount, including any previously unpaid late charge. For the purposes of this Agreement, the Late Payment Interest Rate shall be determined as provided in Section 1.48 and Exhibit PCA-X of the 1981 PCA.

6.6 Proration of Charges

(A) For any calendar month in which Power Agency purchases Resource Backup Capacity pursuant to Section 4.3 during a week that is not wholly within such calendar month, charges for such capacity for such week shall be prorated based on the ratio (i) the number of days in the week for which Power Agency purchases such capacity that are included in the calendar month, divided by (ii) the number seven (7). For this purpose, each calendar week shall be deemed to begin at 12:01 a.m. on Monday and shall extend through the following Sunday.

(B) For any month in which any termination of this Agreement determined pursuant to Section 7.1 occurs, the reduction in Supplemental Capacity, Monthly Peak Supplemental Demand, and Monthly Peak Supplemental Coincident Demand provided for in Section 5.2 shall be prorated based on the ratio (i) the number of days in the month prior to and including the day of such termination of this Agreement divided by (ii) the number of days in that calendar month.

In addition, for such month, determinations of the amount of Minimum Energy Requirement pursuant to Section 4.1 shall be performed (i) for the portion of each month preceding and including such day of termination, based on the amount of Supplemental Capacity that would have been purchased by Power

Agency from CP&L pursuant to Section 6.1(B) of the 1981 PCA as reduced by the Firm Resource Capacity pursuant to Section 5.2 of this Agreement and (ii) for the portion of the month after such termination, based on the amount of Supplemental Capacity that would have been purchased by Power Agency from CP&L pursuant to Section 6.1(B) of the 1981 PCA without reduction for Firm Resource Capacity pursuant to Section 5.2 of this Agreement.

6.7 Offsets

Payments due and payable by one party to the other party under this Agreement may be offset first against payments then due and payable to the first party by the second party under this Agreement and only then may any remaining amounts be offset against payments due under the 1981 PCA. Payments due and payable hereunder shall not be subject to any offset of any nature arising outside of this Agreement or outside of the 1981 PCA.

6.8 Billing Adjustments and Challenges

(A) CP&L shall supply Power Agency with the basis for establishing all estimated charges and the basis for all computations of actual charges at the time when such estimated or actual charges are made. Power Agency shall supply CP&L the basis for establishing all estimated charges per kilowatt-hour and the basis for all computations of actual charges per kilowatt-hour when such estimated or actual charges per kilowatt-hour are provided to CP&L.

(B) Charges billed to Power Agency may be challenged by Power Agency only if its objections, in writing, are received by CP&L no later than April 1 of the second year after the year in which the challenged bill was rendered to Power Agency. Notwithstanding the existence of any challenge or lack thereof, CP&L shall have the right to initiate correction of errors in any bill by giving

Power Agency notice thereof no later than April 1 of the second year after the year in which the bill is rendered.

Charges per kilowatt-hour provided to CP&L by Power Agency may be challenged by CP&L only if its objections, in writing, are received by Power Agency no later than April 1 of the second year after the year in which the challenged charge per kilowatt-hour was provided to CP&L. Notwithstanding the existence of any challenge or lack thereof, Power Agency shall have the right to initiate correction of errors in any bill by giving CP&L notice thereof no later than April 1 of the second year after the year in which the charge per kilowatt-hour was provided to CP&L.

The parties shall undertake to resolve challenges or corrections within a reasonable time and if the matter is unresolved for sixty (60) days after the challenge or correction is initiated, either party at any time following such sixty (60) days may inform the other party, in writing, that a formal dispute exists. Within sixty (60) days following such notice, the party giving notice shall initiate proceedings for resolving the dispute as provided in Section 10.6; if not so submitted within such sixty (60) days, the challenge or correction shall be conclusively terminated and without effect. In the event of such challenge or correction, the review of the challenge or corrected bill shall not be limited to the items challenged or corrected, but shall include any such other items which the party not initiating the challenge or correction chooses to raise and any such items shall also be subject to adjustment. No challenge, disagreement or dispute relating to the reasonableness or correctness of any such charge or fee shall permit Power Agency, or CP&L, to delay or withhold any payment due hereunder.

ARTICLE 7

TERM OF AGREEMENT

7.1 General Provisions

(A) This Agreement shall become effective upon the date ordered by FERC and, unless terminated earlier as herein provided, shall continue in effect until the earlier of the termination of (i) the 1981 PCA, or (ii) the Supplemental Capacity arrangement set forth in the 1981 PCA, in either case pursuant to Article 25 of the 1981 PCA.

(B) Power Agency may terminate this Agreement prior to the expiration date set forth in Section 7.1(A) by giving eight (8) years' prior written notice to CP&L.

(C) Power Agency shall have the right to replace the Firm Resource Capacity, or any part thereof, with capacity from a different New Resource. In such event, the eight (8) year notice provisions of Sections 6.1(D) and 6.1(E) of the 1981 PCA and the shorter notice provisions of Section 6.1(D)(2)(a) of the 1981 PCA shall not apply to the capacity of such New Resource to the extent that it replaces the Firm Resource Capacity provided for under this Agreement and, if such New Resource replaces the total Firm Resource Capacity provided for by Section 2.4(A) and for which the notice required by Section 2.4(C) has been given, Power Agency may terminate this Agreement prior to the expiration date hereof by giving written notice to CP&L ninety (90) days prior to the use of the capacity of such New Resource in lieu of the Firm Resource Capacity.

7.2 Effect of Early Termination of this Agreement

If Power Agency terminates this Agreement pursuant to Section 7.1(B), upon and after the effective date of such termination CP&L shall supply additional Supplemental Capacity as a resource to meet Power Agency's load in lieu of the amounts of Firm Resource Capacity provided for by Section 2.4 and associated energy in lieu of the amounts of Minimum Energy Requirement provided for by Section 4.1. The amounts of such Supplemental Capacity shall be determined and charges for such Supplemental Capacity shall be made under the 1981 PCA by not reflecting in the applicable provisions of the 1981 PCA the reductions in Power Agency's Supplemental Capacity, Monthly Peak Supplemental Demand, and Monthly Peak Supplemental Coincident Demand or the reduction in CP&L's Monthly Peak Demand provided for by Section 5.2 of this Agreement. The classification of energy from such Supplemental Capacity as Supplemental Energy or Unused Supplemental Energy shall be determined pursuant to Sections 8.2 and 8.3 of the 1981 PCA, without the modifications to the rights and obligations of the parties under those sections of the 1981 PCA provided for by Article 5 of this Agreement.

ARTICLE 8

COMMENCEMENT OF RESOURCE POWER

8.1 Commencement of Transactions

(A) The "Commencement Date" shall be the date on which transactions under this Agreement shall be initiated.

(B) Notwithstanding any other provisions of this Agreement to the contrary, prior to such Commencement Date, Power Agency shall not be obligated to make Resource Power available for delivery to CP&L, CP&L shall not be obligated to receive and deliver Resource Power on Power Agency's behalf, and neither party's obligations under this Agreement related to credits for, charges based on, and accounting for the amounts of Resource Power shall be effective.

8.2 Prior Notice of Commencement

Unless otherwise agreed to by the parties, Power Agency shall provide CP&L with not less than thirty (30) days' prior written notice as to the date (i) on which Power Agency plans to first make the Resource Power available to CP&L and, correspondingly, (ii) which Power Agency plans to be the Commencement Date.

8.3 The Actual Commencement Date

(A) The actual Commencement Date shall begin at 12:01 a.m. on the later of (i) the planned Commencement Date contained in Power Agency's notice to CP&L pursuant to Section 8.2, and (ii) a date ten (10) days after the effective date of this Agreement.

(B) Notwithstanding anything in this Agreement or in any other agreement between Power Agency and CP&L to the contrary, the actual Commencement Date provided for by Section Section 8.3(A) shall begin on 12:01 a.m. on the day determined pursuant to that section, irrespective of whether or not the day so determined is a Saturday, Sunday, or a legal holiday.

ARTICLE 9

LIABILITY AND SERVICE INTERRUPTIONS

9.1 Liability

(A) In providing the services called for by this Agreement, CP&L does not guarantee continuous service but shall use reasonable diligence at all times to provide an uninterrupted supply of electricity, and, having used reasonable diligence, shall not be liable to Power Agency for damages for failure of, or for interruptions or suspension of these services. CP&L shall use reasonable diligence to restore service which has failed, been interrupted or suspended and Power Agency shall cooperate with CP&L in so doing. In providing for the availability and delivery of Resource Power, Power Agency does not guarantee continuous service, but shall use reasonable diligence at all times to make provisions for an uninterrupted supply of electricity up to the level of the Firm Resource Capacity and, having used reasonable diligence, shall not be liable to CP&L for damages for failure of, or for interruptions or suspension of service, except as otherwise provided for in Sections 4.3 and 4.4 and this Section 9.1. Neither party shall be liable to the other party for any damage or loss resulting from the interruption, prevention, suspension, or failure of service caused by: (i) Force Majeure, as defined in Section 9.4 hereof or (ii) an emergency action due to an adverse condition or disturbance on a party's system (including all actions taken pursuant to Section 17.2 of the 1981 PCA) or on the Authority's system or on any other system directly or indirectly interconnected with a party's system, which requires automatic or manual interruption of the supply of electricity to some customers or areas in order to limit the extent of, or damage caused by, the adverse condition or disturbance, or to prevent damage to generation, transmission or transformation 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) CP&L shall not be liable to Power Agency for any change in price to Power Agency for power under this Agreement by reason of the suspension, interruption, interference, reduction or curtailment of any generating unit or transmission facilities on the Combined System caused by the negligent operation of the same by CP&L, its agents, servants, or employees. The foregoing, however, does not extend to liability imposed by law for willful or wanton misconduct or reckless action of CP&L, its agents, servants, or employees. Power Agency shall not be liable to CP&L for any change in price to CP&L for power under this Agreement by reason of the suspension, interruption, interference, reduction or curtailment of Resource Power or any generating unit or transmission facilities on the Authority's system, or the failure by Power Agency to enforce, or perform obligations under, any provision of the Power Agency-Authority Contract caused by negligent actions by Power Agency, its agents, servants, or employees. The foregoing, however, does not extend to liability imposed by law for willful or wanton misconduct or reckless action of Power Agency, its agents, servants, or employees.

9.2 Responsibility on Either Side of a Point of Connection

Neither party shall be responsible for the transmission, control, use or application of electric power provided under this Agreement on the other party's side of a Point of Connection therefor and shall not, in any event, be liable for damage or injury to any person or property whatsoever arising, accruing, or resulting from, in any manner, the receiving, transmission, control, use, application, or distribution by the other party of said electric power.

Where one party has facilities and equipment located on the premises of the other party, the party owning the premises shall permit no one but the other party's authorized representatives to have access to or handle those facilities and equipment. Each party shall indemnify, hold and save harmless the other party for any loss or damage to that other party's premises caused by or arising out of the negligence of the party owning the facilities and equipment, or its representatives, while on the premises of the other party. Each party shall indemnify, hold and save harmless the other party from and against any and all legal and other expenses, claims, costs, losses, suits or judgments for damages, injuries to or death of persons, or damage to or destruction of property, arising in any manner directly or indirectly by reason of acts of negligence of either party's authorized representative while on the premises of the other party under the right of access provided in this Section 9.2.

CP&L and Power Agency shall indemnify, hold and save each other harmless from any and all loss or damage sustained, and from any and all liability, including, but not limited to, any liability arising out of a claim for indemnification by a Participant under Section 12(e) of a Supplemental Power Sales Agreement, to any person or property incurred by one party (the indemnified party) by reason of any act or performance, or failure to act or perform, by the other party (the indemnifying party), its officers, agents, contractors, servants, or employees, where the indemnifying party is Power Agency, by a Participant, its officers, agents, contractors, servants, or employees, in constructing, maintaining or operating the indemnifying party's apparatus, appliances or property, or in the transmission, control or application, redistribution, delivery, or sale of said power and energy on the indemnifying party's side of said Point of Connection. Whenever any claim is made against either party, whether the indemnified party or the indemnifying party, the party

against whom the claim is made shall give notice to the other party within a reasonable time after the party against whom the claim is made becomes aware of any facts that could reasonably cause it to conclude that the claim is covered by this indemnification. Except as otherwise specifically provided in this Section 9.2, such indemnification shall hold harmless the indemnified party, its officers, agents, contractors, servants or employees, from and against any and all liablity and any and all losses, damages, injuries, costs and expenses, including expenses incurred by the indemnified party, its officers, agents, contractors, servants or employees, in connection with defending any claim or action, and including reasonable attorneys' fees incurred or suffered by the indemnified party, its officers, agents, contractors, servants or employees, by reason of the assertion of any such claim against it or its officers, agents, contractors, servants or employees. The indemnification provided for in this Section 9.2 shall not cover the following expenses: (i) the expense of investigating any claim prior to the time that notice is given to the other party that said claim is covered by this indemnification; (ii) compensation for time of employees of the indemnified party spent in defending any action; and (iii) attorneys' fees incurred by an indemnified party after an indemnifying party has assumed the defense of an action as provided in this Section 9.2. At any time, the indemnifying party may, at its option, assume on behalf of the indemnified party, its officers, agents, contractors, servants or employees, following written notification by the indemnified party of the existence of such a claim, the defense of any action at law or in equity which may be brought against the indemnified party, its officers, agents, contractors, servants or employees. The indemnifying party, regardless of whether it assumes the defense of any such action, will pay on behalf of the indemnified party, its officers, agents, contractors, servants or employees, the amount of any judgment that may

be entered against the indemnified party, its officers, agents, contractors, servants or employees in any such action.

9.3 Consequential Damages

In no event shall either party be liable to the other party for any indirect, special, incidental, or consequential loss or damages, with respect to any claim arising out of this Agreement, whether based upon contract, tort (including negligence), patent, trademark or servicemark, or otherwise. Power Agency shall indemnify and hold harmless CP&L from and against any claim or liability for such indirect, special, incidental, or consequential loss or damage arising out of this Agreement by customers of Power Agency or customers of its Participants. CP&L shall indemnify and hold harmless Power Agency from and against any claim or liability for indirect, special, incidental, or consequential loss or damage by customers of CP&L arising out of this Agreement, including, but not limited to, any claim or liability for indirect, special, incidental, or consequential loss or damage by customers of CP&L for which Power Agency incurs liability because of a claim for indemnification of such indirect, special, incidental, or consequential loss or damage by a Participant under Section 12(e) of a Supplemental Power Sales Agreement.

9.4 Force Majeure

The term "Force Majeure" as used herein shall mean any cause beyond the control of the party affected and which by reasonable efforts the party affected was unable to overcome, including, without limitation, the following: acts of God; fire, flood, landslide, lightning, earthquake, hurricane, volcanic eruption, tornado, storm, freeze, or drought; blight, famine, epidemic or quarantine; strike, lockout, or other labor difficulty; act or failure to act of

the other party (and such party so acting or failing to act shall not use its act or failure to act to excuse any other obligation which it has under this Agreement); act or failure to act of any regulatory agency or governmental authority, other than the Authority; changes in the work, or delays caused by public bidding requirements; theft; casualty; accident; equipment breakdown; failure or shortage of, or an inability to obtain from usual sources goods, labor, equipment, information or drawings, machinery, supplies, energy, fuel or materials; embargo; injunction; litigation or arbitration with suppliers or vendors; shortage of rolling stock; arrest; war; civil disturbance; explosion; acts of public enemies; sabotage; invasion; or breach of contract by any supplier, contractor, subcontractor, laborer or materialman. Either party rendered unable to fulfill any obligation under this Agreement by reason of Force Majeure, shall make reasonable efforts to remove such inability within a reasonable time.

G.S. 25-2-615 of the North Carolina General Statutes shall be inapplicable to this Agreement and neither party shall be excused from its obligations under this Agreement on the ground that performance as agreed has become commercially impractical.

9.5 Pumping for Fires

It is expressly understood and agreed that the parties do not hereby contract to furnish power for pumping water for extinguishing fires.

ARTICLE 10

MISCELLANEOUS

10.1 Access to Books and Records

(A) During normal business hours and subject to the conditions consistent with the conduct of CP&L and Power Agency of their regular business affairs and responsibilities, each party shall provide the other, or its authorized representatives, with access in a timely manner to those books, records, and other documents and, upon request, copies thereof, which set forth (i) matters, including cost and methods of cost allocation, applicable to the transactions described in this Agreement to the extent necessary to enable the other party to verify any costs or power measurement data or schedules which may be taken into account in determining any of the fees or charges specified in this Agreement, (ii) matters relating to the transactions and duties of the other party described in this Agreement, and (iii) matters relating to dealings in regard to this Agreement between the other party and any regulatory body or governmental agency. Such right of access shall not include any internal audit reports or documents prepared by the staff of the other party or by any other organization performing a staff function for the other party on a continuing basis or any books, records, and other documents subject to a valid claim of privilege by such other party. Each party shall maintain the confidentiality of any nonpublic information obtained through such access and shall not willfully disclose any such information except as required by law. Each party shall bear the costs of any copying, review, or audit of the books and records of the other party.

(B) During normal business hours and subject to the conditions consistent with the conduct of CP&L and Power Agency of their regular business affairs and responsibilities, CP&L shall provide Power Agency, on behalf of the Authority, or Power Agency's authorized representatives, with access in a timely manner to those books, records, and other documents and, upon request, copies thereof, which set forth matters applicable to the transactions described in this Agreement to the extent necessary to enable Power Agency and the Authority to verify any power measurement data or schedules which may be taken into account in determining any of the fees or charges specified in the Power Agency-Authority Contract. Such right of access shall not include any internal audit reports or documents prepared by the staff of CP&L or by any other organization performing a staff function for CP&L on a continuing basis or any books, records, and other documents subject to a valid claim of privilege by CP&L. The Power Agency-Authority Contract shall provide that, upon request of the Authority, Power Agency shall exercise such right to obtain access to and, if requested, review, perform audits of, or obtain copies of those books, records, or other documents of CP&L which set forth such matters and Power Agency shall have the right to supply such information to the Authority. In such event, the Authority shall be required to maintain the confidentiality of any nonpublic information obtained through such access and shall not disclose any such information except as required by law. Power Agency shall bear the costs of any copying, review, or audit of the books and records of CP&L requested by the Authority.

(C) In the Power Agency-Authority Contract, Power Agency shall provide that, during normal business hours and subject to the conditions consistent with the conduct of Power Agency and the Authority of their regular business affairs and responsibilities, the Authority shall provide Power Agency, on behalf of CP&L, or Power Agency's authorized representatives, with access in a timely manner to those books, records, and other documents and, upon request, copies thereof, which set forth matters, including costs and methods of cost allocation, applicable to the transactions described in this Agreement to the extent necessary to enable Power Agency and CP&L to verify any costs or power measurement data or schedules which may be taken into account in determining any of the fees or charges specified in this Agreement. Such right of access shall not include any internal audit reports or documents prepared by the staff of the Authority or by any other organization performing a staff function for the Authority on a continuing basis or any books, records, and other documents subject to a valid claim of privilege by the Authority. Upon request of CP&L, Power Agency shall exercise such right to obtain access to and, if requested, review, perform audits of, or obtain copies of those books, records, or other documents of the Authority which set forth such matters and the Power Agency-Authority Contract shall provide for Power Agency to supply such information to CP&L. In such event, CP&L shall maintain the confidentiality of any nonpublic information obtained through such access and shall not disclose any such information except as required by law. CP&L shall bear the costs of any copying, review, or audit of the books and records of the Authority requested by CP&L.

10.2 Amendment

This Agreement may be amended or supplemented by, and only by, a written instrument duly executed by each of the parties to this Agreement.

10.3 Applicable Law

This Agreement is made under and shall be governed by the law of the State of North Carolina. The parties acknowledge FERC's jurisdiction over this Agreement.

10.4 Assignment

This Agreement, or any part hereof, shall not be assigned except upon the prior written consent of the other party to this Agreement.

10.5 CP&L a Third Party Beneficiary to Power Agency-Authority Contract

Power Agency shall provide in the Power Agency-Authority Contract that CP&L is a third party beneficiary to the Authority's undertakings to: (i) cooperate with CP&L and Power Agency to facilitate the delivery and receipt of Resource Power, and (ii) maintain Dispatch Records and to attempt to resolve any differences in such Dispatch Records with Power Agency's and CP&L's Dispatch Records.

10.6 Challenges

Except for matters regarding Power Agency's responsibilities pursuant to Section 3.1(B), all actions, computations, and determinations called for by this Agreement are subject to challenge and dispute by any party not initially making such decision or taking such action. Each party shall promptly and diligently undertake to resolve any such disputes without undue delay. Any unresolved dispute shall be resolved before FERC, or, if the matter is not one over which FERC has jurisdiction, in a North Carolina court having jurisdiction.

10.7 Computation of Time

In computing any period of time prescribed or allowed under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included. Except as otherwise specifically provided herein, if the last day of the period so computed is a Saturday, a Sunday, or a legal holiday in North Carolina, then the period will run until the end of the next day which is not a Saturday, a Sunday, or a legal holiday in North Carolina.

10.8 Counterparts

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

10.9 Duplication of Charges

There shall be no duplication of charges in the computation of rates and charges under this Agreement and any other agreement between Power Agency and CP&L.

10.10 Effect on Other Agreements

Except to the extent that the rights or obligations of the parties have been modified by this Agreement, all provisions of other agreements between Power Agency and CP&L shall remain in full force and effect.

10.11 Entire Agreement

This Agreement shall constitute the entire understanding between the parties hereto regarding Resource Power, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein. The parties hereto have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representation or information provided to one party by any representative of the other party.

10.12 Further Documentation

From time to time after the execution of this Agreement, the parties hereto shall within their legal authority execute any other documents as may be necessary, helpful or appropriate to carry out the terms of this Agreement.

10.13 Headings Not to Affect Meaning

The descriptive headings of the various Articles and Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

10.14 No Delay

No disagreement or dispute of any kind between the parties to this Agreement or between any party and any other entity, concerning any matter including, without limitation, the amount of any payment due from said party or the correctness of any billing made to the party, shall permit the said party, or either of them, to delay or withhold any payment or the performance by any party of any other obligation pursuant to this Agreement. Each party shall promptly and diligently undertake to resolve such disagreement and dispute without undue delay.

10.15 No Partnership; Tax Matters

Notwithstanding any provision of this Agreement, the parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit, and, if it should appear that one or more changes to this Agreement would be required in order not to create an entity referred to above, the parties agree to negotiate promptly and in good faith with respect to such changes. Upon the request of a party, the other party agrees to take, in a timely manner, all voluntary action as may be necessary to be excluded from treatment as a partnership under the Internal Revenue Code of 1986, as amended. Upon the request of a party, the other party agrees to take, in a timely manner, all voluntary action as may be necessary to obtain a ruling from the Internal Revenue Service: (a) that no association taxable as a corporation has been created by this Agreement; and (b) that this Agreement would not cause the loss of the tax-exempt status of the bonds of Power Agency.

10.16 No Waiver

The failure of either party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every such provision.

10.17 Notice

Any notice, consent or other communication permitted or required by this Agreement shall be in writing and shall be deemed given when delivered by hand or (unless otherwise required by the terms of this Agreement) when deposited in the United States mail, first class postage prepaid, and if to CP&L addressed to:

Senior Vice President -- Legal, Planning and Regulatory
Carolina Power & Light Company
Post Office Box 1551
Raleigh, North Carolina 27602

and if to Power Agency, addressed to:

General Manager
North Carolina Eastern Municipal Power Agency
Post Office Box 29513
Raleigh, North Carolina 27626-0513

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

10.18 Operation of the Authority's System

Under no circumstances shall the operation under this Agreement, including the scheduling of or requesting Resource Power, require the Authority, in its judgment, to operate its system in an unsafe manner or in a manner which is inconsistent with Prudent Utility Practice; provided, however, that nothing contained in this Section 10.18 shall relieve either party of its obligations to the other party as provided in this Agreement.

10.19 References to Articles and Sections

Unless otherwise expressly indicated, all references herein to Articles and Sections are references to Articles and Sections of this Agreement.

10.20 Rounding of Kilowatts and Megawatts

Whenever the provisions of this Agreement require the use of kilowatts or kilowatt-hours, the actual kilowatt or kilowatt-hour figure involved shall be adjusted by rounding upward to the next full kilowatt or kilowatt-hour if the actual figure is .5 kilowatt or kilowatt-hour or higher, or downward to the last full kilowatt or kilowatt-hour if the actual figure is less than .5 kilowatt or kilowatt-hour.

Subject to reasonable dispatching procedures, whenever the provisions of this Agreement require the use of megawatts or megawatt-hours, generally, the actual megawatt or megawatt-hour figure involved shall be adjusted by rounding upward to the next full megawatt or megawatt-hour if the actual figure is .5 megawatt or megawatt-hour or higher, or downward to the last full megawatt or megawatt-hour if the actual figure is less than .5 megawatt or megawatt-hour.

10.21 Security of Information

The parties agree that any information provided under this Agreement shall not be willfully used in a manner which (a) would be in contravention of any applicable governmental regulations, or (b) would cause a party to violate any arrangement regarding confidentiality or proprietary rights which such party has with any third party.

10.22 Severability of Provisions

If FERC or any other governmental agency or court of competent jurisdiction holds that any provision of this Agreement is invalid, then the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect.

10.23 Singular to Include Plural and Plural to Include Singular

Throughout this Agreement, whenever any word in the singular number is used, it shall include the plural unless the context otherwise requires; and whenever the plural number is used, it shall include the singular unless the context requires otherwise.

10.24 Successors and Assigns

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

ARTICLE 11

SURVIVORSHIP

11.1 Survivorship of Obligations

The termination of this Agreement shall not discharge any party from any obligation it owes to the other party under this Agreement by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise, or the circumstances, events, or bases, which shall occur or arise, prior to such termination. It is the intent of the parties hereby that any such obligation owed (whether the same shall be known or unknown at the termination of this Agreement or whether the circumstances, events, or bases of the same shall be known or unknown at the termination of this Agreement) will survive the termination of this Agreement.

11.2 Survivorship of Provisions

The provisions of Sections 9.1 through 9.4, including, specifically, without limitation, the indemnification provisions thereof, shall remain operative and in full force and effect regardless of any termination or cancellation of this Agreement, except with respect to actions of the parties occurring after such termination or cancellation.

The provisions of Section 7.2 shall remain operative and in full force and effect through the termination date of this Agreement provided pursuant to Section 7.1(A), regardless of any earlier termination of this Agreement pursuant to Section 7.1(B).

IN WITNESS THEREOF, the parties have caused this Agreement to be signed and sealed as of the day and year first above written, by their duly authorized representatives.

Carolina Power & Light Company

_____
Chairman/President

ATTEST:

_____
Secretary

(SEAL)

North Carolina Eastern Municipal Power Agency

_____
Chairman

ATTEST:

_____
Secretary

(SEAL)

APPENDIX B
TO
NOTICE OF INTENTION TO ARBITRATE

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Martha O. Hesse, Chairman;
Charles G. Stalon, Charles A. Trabandt,
Elizabeth Anne Moler and Jerry J. Langdon.

North Carolina Eastern Municipal Power Agency	)	
v.	)	Docket No. EL88-27-000
Carolina Power & Light Company	)	

ORDER DISMISSING COMPLAINT
WITHOUT PREJUDICE

(Issued December 22, 1988)

Introduction

On June 7, 1988, North Carolina Eastern Municipal Power Agency (Power Agency) filed a complaint against Carolina Power & Light Company (CP&L) alleging that CP&L has refused to agree to reasonable terms for transmission service required by Power Agency in order to use power available to Power Agency from the South Carolina Public Service Authority (Santee Cooper) and to integrate that power into Power Agency's existing power supply arrangements with CP&L. Power Agency has submitted a proposed "Power Coordination Agreement" between Power Agency and CP&L and seeks to have the Commission impose that agreement on CP&L. Power Agency urges that the Commission set the matter for hearing on an expedited schedule so that the "Power Coordination Agreement" will be in effect in time for Power Agency to give Santee Cooper the notice required by Power Agency's applicable agreement with Santee Cooper.

Notice of Power Agency's complaint was published in the Federal Register, 1/ with comments due on or before July 20, 1988. On July 20, 1988, CP&L filed an answer to the complaint, and a motion to dismiss the complaint. In its answer, CP&L disputes the accuracy of Power Agency's statement of facts. Specifically, CP&L denies refusing to deal and states that Power Agency has not negotiated in good faith. CP&L believes that if Power Agency were to negotiate in good faith that an agreement or agreements could be reached which would enable Power Agency to give the required notice to Santee Cooper and to beneficially use the power available to it from Santee Cooper.

1/ 53 Fed. Reg. 24,127 (1988).

CP&L notes that this dispute arises from a Power Coordination Agreement entered into in 1981 (1981 Agreement) and two related agreements. CP&L alleges that the relief requested by Power Agency is inconsistent with the 1981 Agreement.

CP&L also notes that Power Agency alleges in its complaint that the 1981 Agreement gives the Commission the authority to decide the issues raised by the complaint. CP&L responds that Power Agency has violated the 1981 Agreement by not submitting this dispute to arbitration prior to filing the instant complaint with the Commission. CP&L also contends that the relief requested is outside the scope of the Commission's authority, and cannot be granted by the Commission. Accordingly, CP&L asks the Commission to dismiss Power Agency's complaint.

On August 4, 1988, Power Agency filed an answer in opposition to CP&L's motion to dismiss. Power Agency contends that the arbitration clause does not apply to this dispute and that it made good faith efforts to negotiate and reasonably concluded that negotiations would be fruitless.

On October 18, 1988, Power Agency filed a letter noting that expedited action was necessary to ensure that Power Agency would not lose access to Santee Cooper. Accordingly, Power Agency requested prompt Commission action on its complaint.

Background

Power Agency's negotiations with Santee Cooper began in early 1986. After brief negotiations, an agreement in principle was reached which contemplated the sale of firm power by Santee Cooper to Power Agency through the year 2000. In October 1987, Power Agency reached an agreement with CP&L for the transmission of the firm power, referred to as "Contract Power" by the parties, purchased from Santee Cooper for the 1987-1993 period. Power Agency's purchases of firm power began on December 8, 1987, at a level of 23 MW until July 8, 1988, when the level was reduced to 15 MW through 1990. The level will be increased to 77 MW for 1991 through 1993.

In December 1987, Power Agency and Santee Cooper executed a letter agreement covering the period 1994 through 2000. 2/ The letter agreement sets forth a commitment for the sale by Santee Cooper to Power Agency of 100 MW of firm power (also referred to as "Contact Power") during the period 1994 through 1996, and contemplates that the purchases of firm power would continue for the years 1997 through 2000 at levels to be established.

2/ Exhibit A to the complaint.

In early 1988, Santee Cooper and Power Agency also agreed to implement a broad interchange arrangement which would include Power Agency making additional firm capacity purchases beginning in 1994 and Power Agency purchasing energy not tied to firm capacity.

According to the parties, CP&L and Power Agency tried to negotiate an agreement for the transmission of Power Agency's purchases from Santee Cooper for the period 1994 through 2000. CP&L wishes to negotiate separate agreements for the transmission of the firm and non-firm elements of Power Agency's purchase, while Power Agency wants one comprehensive agreement. CP&L also wishes to share to some extent in the cost savings Power Agency can obtain from the Santee Cooper purchase, while Power Agency refuses to share the savings. Power Agency contends that the disagreements between itself and CP&L are fundamental and that further negotiations are fruitless. Power Agency states that it was therefore compelled to file the instant complaint.

Discussion

Section 22.2 of the 1981 Agreement provides an agreed-upon procedure to resolve disputes. It states, in pertinent part:

> (A) Except as provided in Section 22.2(B) any unresolved dispute arising out of or relating to the matters set forth in this Agreement shall be settled by arbitration in accordance with the procedures set forth in this Article 22 . . . . In addition, disputes relating to the arbitration provisions of this Agreement, including, without limitation, disputes as to the applicability of such provisions to a particular dispute, shall be submitted for arbitration.
>
> (B) Any dispute arising out of or relating to Article 20 [Liability and Service Interruption] or 21 [Default] shall not be submitted to or determined by arbitration unless the parties agree to do so in writing.

Where a filing concerns a dispute that the parties have agreed to arbitrate and where arbitration will not prejudice any party and is not contrary to the public interest, we will generally give effect to the parties' intentions that such a

In early 1988, Santee Cooper and Power Agency also agreed to implement a broad interchange arrangement which would include Power Agency making additional firm capacity purchases beginning in 1994 and Power Agency purchasing energy not tied to firm capacity.

According to the parties, CP&L and Power Agency tried to negotiate an agreement for the transmission of Power Agency's purchases from Santee Cooper for the period 1994 through 2000. CP&L wishes to negotiate separate agreements for the transmission of the firm and non-firm elements of Power Agency's purchase, while Power Agency wants one comprehensive agreement. CP&L also wishes to share to some extent in the cost savings Power Agency can obtain from the Santee Cooper purchase, while Power Agency refuses to share the savings. Power Agency contends that the disagreements between itself and CP&L are fundamental and that further negotiations are fruitless. Power Agency states that it was therefore compelled to file the instant complaint.

Discussion

Section 22.2 of the 1981 Agreement provides an agreed-upon procedure to resolve disputes. It states, in pertinent part:

> (A) Except as provided in Section 22.2(B) any unresolved dispute arising out of or relating to the matters set forth in this Agreement shall be settled by arbitration in accordance with the procedures set forth in this Article 22 . . . . In addition, disputes relating to the arbitration provisions of this Agreement, including, without limitation, disputes as to the applicability of such provisions to a particular dispute, shall be submitted for arbitration.
>
> (B) Any dispute arising out of or relating to Article 20 [Liability and Service Interruption] or 21 [Default] shall not be submitted to or determined by arbitration unless the parties agree to do so in writing.

Where a filing concerns a dispute that the parties have agreed to arbitrate and where arbitration will not prejudice any party and is not contrary to the public interest, we will generally give effect to the parties' intentions that such a

we find the arbitration procedure contrary to the public interest.

Because the dispute has not yet been subject to arbitration as required by the 1981 Agreement, we find that Power Agency's complaint is premature and we will dismiss it without prejudice to refiling upon completion of arbitration. 4/

The Commission orders:

(A) The complaint filed by Power Agency in this docket on June 7, 1988, is hereby dismissed without prejudice to refiling after completion of arbitration.

(B) Docket No. EL88-27-000 is hereby terminated.

By the Commission.

(S E A L)

Lois D. Cashell

Lois D. Cashell,
Secretary.

4/ Because we are dismissing Power Agency's complaint without prejudice to refiling after completion of arbitration, we need not reach, at this time, the factual issues raised by the pleadings nor the issue of whether the Commission has the authority to impose on CP&L the agreement submitted by Power Agency.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Martha O. Hesse, Chairman;
Charles G. Stalon, Charles A. Trabandt,
Elizabeth Anne Moler and Jerry J. Langdon.

North Carolina Eastern Municipal Power Agency	)	
v.	)	Docket No. EL88-27-001
Carolina Power & Light Company	)	

ORDER DENYING MOTION FOR CLARIFICATION AND CONDITIONAL REQUEST FOR REHEARING

(Issued February 22, 1989)

Background

On June 7, 1988, the North Carolina Eastern Municipal Power Agency (Power Agency) filed a complaint against the Carolina Power & Light Company (CP&L). Power Agency alleged that CP&L had refused to agree to reasonable terms for transmission service required by Power Agency for South Carolina Public Service Authority (Santee Cooper) power and to integrate that power into Power Agency's existing power supply arrangements with CP&L. Along with the complaint, Power Agency submitted a proposed "Power Coordination Agreement" between Power Agency and CP&L which it asked the Commission to impose on CP&L.

CP&L answered the complaint and alleged that Power Agency had failed to negotiate in good faith and that good faith negotiation would result in an agreement which would enable Power Agency to beneficially use the Santee Cooper power. CP&L pointed out that the dispute arises from a Power Coordination Agreement entered into in 1981 (1981 Agreement) and two related agreements. While Power Agency alleged in its complaint that the 1981 Agreement gives the Commission authority to decide the issues raised by the complaint, CP&L contended that an arbitration clause contained in the 1981 Agreement was applicable and that Power Agency had violated the 1981 Agreement by not submitting the dispute to arbitration prior to filing the complaint with the Commission.

On December 22, 1988, the Commission issued an order which found that the dispute was subject to the arbitration clause and dismissed the complaint without prejudice to refiling upon completion of arbitration. 1/

On January 23, 1989, Power Agency filed a motion for clarification and a conditional request for rehearing of the Commission's December 22, 1988 order. Power Agency states that it is unclear from the Commission's order what issues the Commission believes must be arbitrated. Power Agency expresses concern that the Commission's order may be interpreted to require arbitration of issues as to which the Power Agency has an undisputed right to obtain relief from the Commission rather than in arbitration. Power Agency contends that only three issues are arbitrable: (1) whether the resources from Santee Cooper constitute a single "New Resource" under the 1981 Agreement; (2) whether the 1981 Agreement permits Power Agency to use energy from non-firm resources to meet hourly demand; and (3) whether Power Agency has provided proper notice to CP&L as required by the 1981 Agreement. Power Agency maintains that, in contrast, the terms and conditions of interconnection should be decided, in the first instance, by the Commission.. Power Agency asks that the Commission clarify its December 22, 1988 order to declare that the terms and conditions of interconnection are not arbitrable, or, in the alternative, to grant rehearing on whether issues other than the three delineated above are arbitrable.

Discussion

The question raised by Power Agency's motion for clarification is whether the Commission's December 22, 1988 order is unclear as to which issues are to be submitted to arbitration. For the reasons given below, we believe that the order is clear on its face and does not require further clarification.

In the December 22, 1988 order, the Commission dismissed Power Agency's complaint without prejudice to refiling upon completion of arbitration. In so doing, we expressly found that sections 6.1(C)(3) and 6.1(E) of the 1981 Agreement, which relate to the interconnection of new resources, were covered by and not exempted from the arbitration clause. Consequently, disputes arising from or relating to these provisions, i.e., to the interconnection of new resources, are covered by and not exempt from the arbitration clause. Moreover, we also found that even disputes as to applicability of the arbitration clause to any particular disputes were themselves subject to the arbitration clause, and thus are subject to arbitration. Power Agency responds that insofar as the dispute between CP&L and Power

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1/ North Carolina Eastern Municipal Power Agency v. Carolina Power & Light Company, 45 FERC ¶ 61,487 (1988).

Agency relates to terms and conditions for interconnection, sections 6.1(C)(3) and 6.1(E) remove the dispute from the arbitration clause. We believe, however, that the December 22, 1988 order was clear that even this dispute between Power Agency and CP&L was in the first instance subject to arbitration. We will therefore deny the motion for clarification.

The question presented by Power Agency's conditional request for rehearing is whether the Commission correctly found that the dispute as to the terms and conditions for interconnection of new resources is subject to the arbitration clause. Power Agency contends that the dispute, insofar as it concerns terms and conditions for interconnection, is not subject to arbitration. For the reasons given below, we disagree.

Section 6.1(C)(3) of the 1981 Agreement provides:

> If a resource to be provided by Power Agency is not a New Resource, CP&L and Power Agency shall undertake negotiations for an interconnection agreement concerning such resource. Either party may make appropriate application to FERC concerning such interconnection at any time such party concludes that such negotiations will not produce an agreement.

Section 6.1(E) of the 1981 Agreement provides:

> Power Agency shall notify CP&L of its intentions to bring on such a New Resource and CP&L and Power Agency shall promptly undertake negotiations for a power coordination agreement to reflect the terms and conditions applicable to that New Resource. The terms of such power coordination agreement shall also include provisions for the disposition by Power Agency to CP&L or others of (a) capacity and associated energy from such New Resource which is in excess of the capacity which Power Agency declares for purposes of reducing Supplemental Capacity and (b) capacity and associated energy from such New Resource which is in excess of the amounts for which Power Agency is actually credited in each month under this Agreement; provided, however, that the specific terms and conditions of this Agreement with respect to Surplus Energy, backstand and transmission service shall not apply to such excess capacity and associated energy unless CP&L so agrees in said power coordination agreement and CP&L shall not unreasonably withhold such agreement. Either party may make appropriate application to FERC for determination of such terms and conditions for

interconnection at any time it appears to such party that negotiations will not produce such an agreement.

Power Agency contends that these sections are in conflict with the arbitration clause, section 22.2 of the 1981 Agreement, and that the specific provisions of sections 6.1(C)(3) and 6.1(E) override the general provisions of the arbitration clause. Power Agency contends, moreover, that "the determination of appropriate terms and conditions of interconnection" is a matter distinctly within the Commission's special expertise and regulatory mandate. Power Agency concludes that it would be a waste of time and resources for the parties to arbitrate terms and conditions and, citing Duke Power Company v. FERC, 2/ contends that we should choose to decide the dispute in the first instance.

We agree with Power Agency that sections 6.1(C)(3) and 6.1(E) are at odds with section 22.2 of the 1981 Agreement which provides that any unresolved dispute "arising out of or relating to" the matters in the 1981 Agreement shall be settled by arbitration. We are therefore faced with the difficulty of reconciling the meaning of "appropriate application to FERC" (contained in section 6.1) with the meaning of disputes "arising out of or relating to" the matters in the 1981 Agreement (contained in section 22.2). The issue is complicated by the fact that the conflicting provisions do not refer to one another.

Having carefully reviewed these ambiguities again, and conceding that Power Authority's arguments are not without merit, we are still persuaded that the dispute between Power Agency and CP&L is subject to the arbitration clause of the 1981 Agreement. There is no doubt that this dispute between Power Agency and CP&L arises out of or relates to the 1981 Agreement. New resources and the terms and conditions governing interconnections for such new resources are addressed in the 1981 Agreement. Power Agency's complaint stated that the Commission's authority to impose its proposed "Power Coordination Agreement" arises from the 1981 Agreement. Power Agency even in the instant filing references Article 6 of the 1981 Agreement as the basis of its complaint and, more specifically, depends heavily upon sections 6.1(C)(3) and 6.1(E) of the 1981 Agreement. In addition, the arbitration clause, by its very terms, applies to all disputes with only two exceptions: Liability and Service Interruption, and Default. Neither of these exceptions is at issue here.

More importantly, the arbitration clause provides that, where there is a dispute as to the applicability of the

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2/ Duke Power Company v. FERC, No. 87-1781 (D.C. Cir. January 6, 1989).

arbitration clause, that dispute should itself be decided by arbitration:

> . . . In addition, disputes relating to the arbitration provisions of this Agreement, including, without limitation, disputes as to the applicability of such provisions to a particular dispute, shall be submitted for arbitration. . . . [emphasis added]

As we found in our December 22, 1988 order, a dispute exists at least as to the applicability of the arbitration clause. In a situation such as this, where it is at least arguable that the arbitration clause applies to this dispute, we believe the appropriate course is to send this matter to arbitration.

Moreover, there are sound reasons justifying submission of this dispute to arbitration; not only is submission of this dispute to arbitration not a waste of time, but as we stated in our December 22, 1988 order, citing Kansas Gas, "it may reduce the time and expense of protracted litigation." 3/ Thus Power Agency's reliance on Duke, supra, is misplaced. Duke involved a filed rate schedule containing an arbitration clause where the Commission held that the underlying disputed contract was clear and unambiguous, and therefore the assistance of an arbitrator was neither required nor necessary to interpret the rate schedules. Submission of the dispute in Duke to arbitration would have been a waste of time. In the case now before us, the assistance of an arbitrator may be helpful in discerning the rights and obligations of the parties and what terms and conditions may be reasonable; thus arbitration may prove to be useful in ultimately reducing the time and expense of litigation. 4/

Given our findings with respect to the arbitration clause, we will deny rehearing. We note, however, that upon conclusion of the arbitration process we will make an independent examination of any resulting rate filings and we will not be

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3/ Kansas Gas and Electric Company, 28 FERC ¶ 61,112 at 61,195 (1984).

4/ In its answer to the complaint, CP&L questioned the Commission's authority to impose on it Power Agency's proposed Power Coordination Agreement. The Commission stated that because it was dismissing the complaint, there was no need to address the issue of its authority. 45 FERC at 62,519 n.4. On rehearing, Power Agency urges that the Commission's authority to impose its proposed agreement is clear. Once again, we see no need to address that issue at this time.

constrained by any findings, conclusions or recommendations of the arbitrator should we determine they are not in accordance with the statutory standards of the Federal Power Act.

The Commission orders:

(A) Power Agency's motion for clarification is hereby denied.

(B) Power Agency's conditional request for rehearing is hereby denied.

By the Commission.

(S E A L)

Lois D. Cashell,
Secretary.