

AGENCY AGREEMENT BETWEEN
THE ELECTRIC PLANT BOARD OF THE CITY OF BENHAM, KENTUCKY
d/b/a BENHAM POWER BOARD
AND
KENTUCKY MUNICIPAL ENERGY AGENCY
FOR PROCUREMENT OF BENHAM TRANSMISSION SERVICES

This **AGENCY AGREEMENT FOR PROCUREMENT OF BENHAM TRANSMISSION SERVICES** ("Agreement") is entered into this _____ day of _____, 2017, by and between the Electric Plant Board of the City of Benham, Kentucky, a municipal electric utility in the Commonwealth of Kentucky ("Benham"), and the Kentucky Municipal Energy Agency, an interlocal agency organized and existing under the laws of the Commonwealth of Kentucky (the "Agency"), also hereafter referred to individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, Benham is a member of the Agency; and

WHEREAS, Benham currently purchases its power supply from American Municipal Power, Inc., a non-profit Ohio corporation (Benham's "Power Supply Provider"), and

WHEREAS, to obtain delivery of its power supply, Benham needs Network Integration Transmission Service and related services under the Open Access Transmission Tariff of Kentucky Utilities Company and Louisville Gas and Electric Company ("KU/LG&E"), and relies on transmission and related services from other transmission service providers to reach the KU/LG&E transmission grid ("Benham Transmission Services"); and

WHEREAS, Benham desires to terminate its current arrangements for Benham Transmission Services effective at 24:00 hours on April 30, 2017, and instead rely upon the Agency to procure Benham Transmission Services for it; and

WHEREAS, Benham desires that the Agency be and act as Benham's agent for the procurement of Benham Transmission Services for service beginning May 1, 2017, and the Agency is willing to serve as Benham's agent for such purposes in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1.0 APPOINTMENT OF THE AGENCY AS AGENT: Benham hereby agrees that the Agency shall serve as Benham's agent in the procurement of Benham Transmission Services in accordance with the provisions in this Agreement, and the Agency hereby agrees to serve as Benham's agent for such purposes.

2.0 EFFECTIVE DATE, TERM AND TERMINATION

- 2.1 This Agreement shall become effective upon execution by both Parties.
- 2.2 This Agreement may be terminated as of the beginning of any calendar month (a) by Benham by providing at least three (3) months' advance notice of termination in writing, or (b) by the Agency by providing at least twelve (12) months' advance notice of termination in writing, or (c) by mutual agreement of the Parties. Absent agreement of the Parties to the contrary, termination of this Agreement shall not terminate any transactions hereunder that may then be underway; rather, such transactions shall be completed and settled as though this Agreement were still in effect.
- 2.3 All obligations incurred pursuant to this Agreement prior to its termination shall be preserved until satisfied.
- 2.4 In connection with termination of this Agreement, the Parties shall cooperate to provide a smooth transition and uninterrupted transmission service to Benham as Benham or its new agent assumes responsibility for procuring Benham Transmission Services.

3.0 SERVICES TO BE PROVIDED

- 3.1 As Benham's agent, the Agency shall procure Benham Transmission Services necessary to deliver Benham's electric power supply to Benham's delivery point(s). The costs of transmission studies required to procure Benham Transmission Services shall be shared proportionately among all Agency members, including Benham, for whose transmission service the studies are required. Costs incurred for an individual Agency member or subset of members shall be borne solely by that member or subset of members. The daily and hourly scheduling of transmission service to Benham shall be the responsibility of Benham's Power Supply Provider and shall be coordinated with the Agency to achieve any available and mutually beneficial efficiency and cost advantages for Benham and other Agency members.
- 3.2 For all Benham Transmission Services for which the Agency is the transmission customer of the transmission service provider, the Agency shall be responsible for paying the rates and charges for such services to the transmission service provider. Benham shall reimburse the Agency for the Agency's cost of Benham Transmission Services in accordance with Section 4 of this Agreement.
- 3.3 Benham and the Agency shall share and exchange information as needed to facilitate the efficient and cost-effective procurement of Benham Transmission Services and to support Benham's timely arrangements for delivery of its electric power supply.

- 3.4 The Agency shall maintain and make available to Benham accounting records identifying all costs incurred by the Agency in procuring Benham Transmission Services pursuant to this Agreement.

4.0 BILLING AND PAYMENT

- 4.1 The Agency shall prepare and deliver assessments and invoices to Benham to recover Benham's share of the Agency's costs in procuring Benham Transmission Services consistent with the Agency's standard billing practices for its members. The Agency agrees that there shall be no pattern of adverse distinction and no pattern of undue discrimination in carrying out its obligations under this Agreement relating to Benham as compared to other Agency members. The Agency shall prepare and deliver to Benham monthly invoices for reimbursement of monthly transmission service rates and charges paid by the Agency to transmission service providers for Benham Transmission Services. The Agency shall invoice Benham for Benham's proportionate share of transmission study costs and the pass-through of transmission service rates and charges incurred by the Agency for Benham Transmission Services at the actual costs incurred by the Agency with no adder or mark-up. Agency assessments to Benham for Benham's share of Agency administrative costs shall be in accordance with the Agency's allocation of applicable categories of Agency costs among its members, as adopted from time to time by the Agency's Board of Directors. To the extent the Agency uses financing to fund a portion of costs for working capital and other purposes related to Benham Transmission Services, debt service on such financing will be included in the allocation of Agency administrative costs to Benham. Like any other Agency member, Benham shall have the right to review and audit the assessment of Agency administrative costs to assure itself that the costs are reasonable and that the allocation of costs is non-discriminatory as among Agency members, including Benham. Through its representative on the Agency's Board of Directors, Benham shall be entitled to raise any concerns about the level or allocation of administrative costs before the Agency's Board of Directors. If Benham believes that the assessment to Benham of Agency administrative costs does not comply with the standards set forth in this Agreement, Benham may seek resolution of the issue through any mutually agreeable dispute resolution process or in any court of law with jurisdiction over the parties and subject matter.
- 4.2 Benham's payments to the Agency shall be due in accordance with the Agency's standard timetable for assessments and invoices to other Agency members for whom the Agency obtains transmission services. Unless that timetable provides otherwise, Benham shall pay monthly Agency invoices for reimbursement of transmission rates and charges from transmission service providers by electronic transfer to a bank account designated from time to time by the Agency within 15 days of receipt of the bill; provided, however, that if said 15th day is a Saturday, Sunday or legal holiday in the Commonwealth of Kentucky, the next following business day shall be the day on which such payment shall be due. Notwithstanding the foregoing provision regarding the Agency's standard payment timetable, in no event shall Benham's payments be due in less than 15 days after receipt of the bill.

Amounts not paid by the due date shall be payable with interest accrued at the lesser of (a) the then current prime interest rate per annum of Citibank, N.A., or its successor, prorated by days from the due date to the date of payment; or (b) the maximum rate that is allowed by law.

5.0 METERING

- 5.1 Benham and the Agency shall coordinate to establish and maintain revenue-quality metering and associated equipment required at each Benham delivery point to measure and record the electric power and energy delivered and to communicate the real-time metering data to the Agency and Benham's Power Supply Provider on a continuous basis. Such metering equipment shall provide a continuous record of the integrated total demand of Benham at such delivery point(s) during each monthly billing period. Such records shall be available at all reasonable times to authorized agents of Benham. All metering equipment shall be maintained by the respective owner(s) thereof. In the event and to the extent the Agency incurs costs to provide metering and associated equipment or services for Benham (including administrative and financing costs, if any), Benham shall reimburse those costs to the Agency.
- 5.2 The Agency shall test and calibrate meters or cause meters to be tested and calibrated by comparison with accurate standards at intervals of not less than twelve (12) months. The Agency shall also perform or cause to be performed special meter tests at Benham's request. The cost of all tests shall be borne by the Agency except that if any special meter test performed at Benham's request shall disclose that the meters are recording accurately, Benham shall reimburse the Agency for the cost of such test. Meters registering within one percent (1%) of accuracy shall be deemed to be accurate. The readings for any meter that shall have been disclosed by test to be inaccurate shall be corrected in accordance with the applicable provisions of the Open Access Transmission Tariff under which transmission service is being provided. The Agency shall notify Benham or cause Benham to be notified in advance of the time of any meter test so that Benham's representative may be present at such meter test.

6.0 ASSIGNMENT, SUCCESSORS AND ASSIGNS

- 6.1 This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties to this Agreement; provided, however, that, neither this Agreement nor any interest herein shall be transferred or assigned by either Party except with the consent in writing of the other Party, which the Party may grant or deny in its sole discretion. The Party seeking to assign this Agreement must provide at least ninety (90) days' prior written notice to the other Party. No assignment or transfer of this Agreement shall relieve the Parties of any obligation hereunder.

7.0 LIABILITY AND INDEMNITY

- 7.1 Each Party shall indemnify and save the other Party and the directors, agents, officers, officials, and employees of the other Party, harmless from and against any liability, loss, damage, claims, costs, and expenses (including reasonable attorneys' fees and court costs through appeal) incurred or claimed on account of injury to persons (including death) or damage or destruction of property, occasioned by the act or omissions of the indemnifying Party or its directors, agents, officers, officials, and employees, except to the extent that such liability, loss, damage, claim, costs, or expense results from the gross negligence or willful misconduct of the indemnified Party; provided however, that each Party shall be solely responsible to its own employees for all claims or benefits due for injuries occurring in the course of their employment or arising out of any workers' compensation law (except for claims due to the negligence of the other Party), and each Party shall indemnify and save the other Party harmless from and against any liability, loss, damage, claims, costs, and expenses (including reasonable attorneys' fees and court costs through appeal) relating to its own employees. Except as otherwise provided in this Section 7.1 and except for loss, injury, damages or destruction that result from a breach or default of a Party's duty or obligation as set forth herein, the Parties shall each bear their own respective risk of loss for any loss, injury, damage or destruction to their respective property, facilities, equipment and for the replacement or repair of such property. To the fullest extent permitted by law, neither Party shall have liability to the other Party for any indirect, consequential, multiple or punitive damages including, but not limited to, loss of earnings or revenues.

8.0 APPLICABLE LAW

- 8.1 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

9.0 ENTIRE AGREEMENT

- 9.1 This Agreement supersedes all previous representations, understandings, negotiations, and agreements, either written or oral, between the Parties or their representatives with respect to the subject matter hereof and constitutes the entire agreement of the Parties with respect to the subject matter hereof.

10.0 COUNTERPARTS

- 10.1 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized official, officer, or representative and its seal to be hereto affixed, if required, effective as of the day, month and year first above written.

**THE ELECTRIC PLANT BOARD OF THE
CITY OF BENHAM, KENTUCKY**

By:_____

Title:_____

ATTEST:

Title:_____

(SEAL)

KENTUCKY MUNICIPAL ENERGY AGENCY

By:_____

Chairman

ATTEST:

Secretary

(SEAL)