

MARCH 30, 1994

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: (SPECIAL SESSION) CALLED FOR DISCUSSING RECOMMENDATIONS IN REGARD TO THE OMEGA JV5 CORPORATION-- AGREEMENT ENTERED INTO.

O R D E R

On this date, the County Commission met in Special Session at 10:30 A.M. to further discuss the recommendations that were received as a result of a meeting held on Monday, March 28, 1994 at the Washington Community Building in regard to the Omega JV5 Corporation's hydroelectric plant, pursuant to an Order appearing in Order Book 55, at Page 550 and bearing the date of March 28, 1994, at which time said Special Session was announced.

After discussion, the County Commission, upon a motion made by Jean Grapes, seconded by Steven A. Grimm and passed, authorized Holmes R. Shaver, in his official capacity as President and on behalf of the County Commission, to sign the Agreement by and between Ohio Municipal Electric Generation Agency Joint Venture 5 (OMEGA JV5), the County Commission of Wood County, the Wood County Board of Education, William C. Parrish, in his capacity as Assessor of Wood County and Michele Rusen, Prosecuting Attorney for Wood County. Said Agreement states that Omega JV5 Corporation agrees to, after receiving approval from FERC and the Ohio Power Siting Board, to build and utilize such route in construction and operation of the Belleville Hydro Project and to absorb all of the estimated \$2.5 billion additional capital costs related thereto. Omega JV5 agrees to pay directly to the County Commission an \$800,000.00 annual payment in lieu of taxes to be shared with the other tax receiving entities, in accordance with the West Virginia Code, as the Commission deems appropriate. Said payment shall be made on or before September 1, of each year, beginning in 1998. For the years 1994-1997 (construction period) payments shall be as

follows: \$50,000.00 within ten days of the issuance of building permit; \$125,000.00 on September 1, 1995; \$150,000.00 on September 1, 1996; and \$250,000.00 on September 1, 1997. Subject to provisions of Section Eleven, said Agreement shall expire on September 1, 2024, or at such time as Omega JV5 ceases commercial operation of the Belleville Hydro Project, whichever last occurs. Omega JV5 Corporation agrees to negotiate in good faith with the property owners in Wood County from whom it must acquire land, easements or rights of way for the Ohio Transmission Route prior to the instigation of any legal proceeding for condemnation. Said Agreement becomes null and void if any of the following occur: SB 357, as enacted by the WV Legislature in March 1994, or any similar legislation, becomes law; or Omega JV5 does not receive all necessary permits, certificates and the like from the FERC, Ohio Power Siting Board and other appropriate agencies regarding the Ohio Transmission Route; or the Project does not commence Commercial Operation; or prior to April 15, 1994, the Public Service Commission staff does not issue a "no jurisdiction" letter with regard to said Project; or prior to April 15, 1994, appropriate Wood County officials do not issue requested building permits for said Project; or this Agreement, or any of its terms, conditions, or provisions are held to be void, illegal or unenforceable. Omega JV5 agrees to consult with the County Commission respecting the implementation of the recreation facility plan required by the FERC license and the expenditures by Omega JV 5 of the funds to be spent in connection therewith.

In attendance at said Special Session, along with the County Commission was Mary R. Rader, Administrator; Michele Rusen, Prosecuting Attorney for Wood County; William C. Parrish, Assessor for Wood County; Dan Marshall, Attorney; Larry Godfrey, Wood County Board of Education; Kenneth L. Hegemann, Amp-Ohio President; John W. Bentine, Attorney; Richard B. Brady, Public Utility Consultants; Earl Johnson, from a labor union; Dan McPherson, Wood County

resident; and Christopher Fought, from Vienna.

Approved:

THE COUNTY COMMISSION OF WOOD COUNTY

Holmes R. Shaver, President

Jean Grapes, Commissioner

Steven A. Grimm, Commissioner

AGREEMENT

THIS AGREEMENT, made and entered into on the th30 day of March, 1994 by and among Ohio Municipal Electric Generation Agency Joint Venture 5 ("OMEGA JV5), the County Commission of Wood County ("COMMISSION"), the Wood County Board of Education ("BOARD"), William C. Parrish, in his capacity as Assessor of Wood County, West Virginia ("ASSESSOR") and Michele Rusen, in her capacity as Prosecuting Attorney of Wood County, West Virginia ("PROSECUTOR");

WHEREAS, OMEGA JV5 has received a license from FERC to plan, construct, operate and maintain a hydroelectric generation facility, and related facilities, at the Belleville Locks and Dam located and situated on the Ohio River substantially in Wood County, West Virginia, including approximately twelve (12) miles of associated 138 kv transmission line located in Wood County, West Virginia, and

WHEREAS, various disputes have arisen regarding the Belleville Hydro Project, including, but not limited to, building and other permits related thereto, the location of the associated transmission lines and the tax status of OMEGA JV5 property located in Wood County, West Virginia.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. DEFINITIONS. (A) Belleville Hydro Project means structures and facilities associated with hydroelectric production at the Belleville Locks and Dam and adjacent to the same, as required to be constructed by OMEGA JV5 by the U. S. Army Corps of Engineers and the FERC License, including the powerhouse and transformation and related facilities to connect the Belleville Hydro Project to the Ohio Transmission Route.

(B) Commercial Operation means the Belleville Hydro Project's hydroelectric generation facilities are put into an operational mode, after reasonable testing, and generating electric power for sale.

(C) FERC means the Federal Energy Regulatory Commission, or its successor agencies.

(D) FERC License means the license for FERC Project No. 6939 originally issued to Jackson, Ohio by the FERC on September 27, 1989, authorizing, among other things, the construction and operation of the Belleville Hydro Project, as such license has been or may be, from time to time, amended.

(E) Ohio Transmission Route means the route of a 138 KV transmission line which, beginning at the proposed Belleville Hydro Project, then proceeds north (upstream) in West Virginia adjacent to the Ohio River to a point on the south side of the first presently existing Monongahela Power Company electric power line Ohio river crossing, thence across the Ohio River and into Ohio, as the same is approved by the FERC.

(F) OMEGA JV5 shall mean Ohio Municipal Generation Agency Joint Venture 5, a joint venture of forty-two (42) Ohio municipalities, each of which own and operate municipal electric utility systems for the benefit of their respective citizens and taxpayers, organized pursuant to the laws and constitution of the State of Ohio under an agreement dated January 1, 1993.

(G) Signatory Parties means the parties and officers which have executed this Agreement as evidenced by the signature page hereto.

2. OMEGA JV5 agrees to proceed in good faith and with all deliberate speed with applications to the FERC and the Ohio Power Siting Board for approval of the Ohio Transmission Route and, after receiving such approvals, to build and utilize such route in conjunction with the construction and operation of the Belleville Hydro Project, and to absorb all of the estimated \$2.5 million additional capital costs related thereto.

3. OMEGA JV5 agrees to pay directly to the COMMISSION a \$800,000 annual payment in lieu of taxes to be shared with the other tax receiving entities (e.g. schools) ^{in accordance with the West Virginia Code} as the COMMISSION, in its sole discretion, deems appropriate. Said payment shall be made on or before September 1 of each year, beginning in 1998. For the years 1994, 1995, 1996 and 1997 (construction period), said payments shall be as follows:

AMS
WV
WV
J.H.
K.H.

- A. \$50,000 within ten (10) days of the issuance of the building permit(s) set forth in Section Eleven (E) hereof;
- B. \$125,000 on September 1, 1995; and
- C. \$150,000 on September 1, 1996; and
- D. \$250,000 on September 1, 1997.

4. At Wood County's request, OMEGA JV5 agrees to cooperate in the economic development of the portion of Wood County adjacent to the Project by the provision of transmission capacity to the area through the facilities comprising the Ohio Transmission Route, if legally and technically feasible.

5. The COMMISSION agrees to cooperate and to facilitate the Project and the Ohio Transmission Route, including issuing (or not requiring the issuance of) building and other certificates, permits and authorizations, and, as appropriate, filing statements of support at FERC for OMEGA JV5's application to modify the FERC License to abandon the licensed West Virginia transmission route

reimburse the COMMISSION for its reasonable legal fees and expenses incurred in connection with its cooperation as provided in this Section Five, provided such fees and expenses are approved in advance by OMEGA JV5 in writing.

6. Unless otherwise agreed by the Signatory Parties, OMEGA JV5 shall neither construct nor operate electric facilities or transmission lines in West Virginia, including, but not limited to, the licensed transmission route, the proposed alternate transmission route as presented in November 1993, or any other transmission route within the state of West Virginia, except the Belleville Hydro Project and the West Virginia portion of the Ohio Transmission Route.

7. The Signatory Parties agree that the property constituting the Belleville Hydro Project and that portion of the Ohio Transmission Route within the State of West Virginia is property belonging to cities and villages of Ohio and property used for public purposes as contemplated by W. V.a. Code 11-3-9.

8. Subject to the provisions of Section Eleven, this Agreement shall expire September 1, 2024, or at such time as OMEGA JV5 ceases commercial operation of the Belleville Hydro Project, whichever last occurs.

9. OMEGA JV5 agrees to negotiate in good faith with the property owners in Wood County from whom it must acquire land,

9. OMEGA JV5 agrees to negotiate in good faith with the property owners in Wood County from whom it must acquire land, easements or rights of way for the Ohio Transmission Route prior to the instigation of any legal proceeding for condemnation.

10. The amount payable by OMEGA JV5 to the COMMISSION shall be reduced by an amount equal to any payments made by OMEGA JV5 pursuant to West Virginia law as such law may be subsequently enacted or finally interpreted for West Virginia property tax, business and occupation tax or like taxes; however, under no circumstances shall OMEGA JV5 pay any combination of payments in lieu of taxes and taxes greater than the amount of taxes otherwise due and owing.

11. Unless the parties otherwise agree, this Agreement becomes null and void if any of the following occur:

A. SB 357, as enacted by the West Virginia Legislature in March 1994, or any similar legislation, becomes law; or

B. OMEGA JV5 does not receive all necessary permits, certificates and the like from the FERC, Ohio Power Siting Board and other appropriate agencies regarding the Ohio Transmission Route; or

C. The Belleville Hydro Project does not commence Commercial Operation or is cancelled; or

D. Prior to April 15, 1994, the P.S.C. Staff does not issue a "no jurisdiction" letter with regard to the Belleville Hydro Project and the Ohio Transmission Route; or

E. Prior to April 15, 1994, appropriate Wood County officials do not issue requested building permits for the Belleville Hydro Project; or

F. This Agreement, or any of its terms, conditions or provisions, are held to be void, illegal or unenforceable.

12. OMEGA JV5 agrees to consult with the COMMISSION respecting the implementation of the recreation facility plan required by the FERC License and the expenditures by OMEGA JV5 of the funds to be spent in connection therewith.

13. Should the Belleville Hydro Project achieve commercial operation but do so at a nominal rated capacity of less than 38 MW, the COMMISSION and OMEGA JV5 agree to renegotiate, in good faith, the annual payment in lieu of taxes required by this Agreement to reflect that change in the Project's economics.

14. This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of West Virginia.

IN WITNESS WHEREOF, the Signatory Parties have caused this Agreement to be executed by their proper officers, respectively, being thereunto duly authorized, effective this 30th day of March, 1994.

COUNTY COMMISSION OF WOOD COUNTY

By: *Edmund Staver*
Its: President

William C. Parrish
WILLIAM C. PARRISH, Assessor
Wood County, West Virginia

Michele Rusen
MICHELE RUSEN, Prosecutor
Wood County, West Virginia

OMEGA JV5

By: *Kenneth Staver* *Pres. Omega JV*
Its: *Agent*

WOOD COUNTY BOARD OF EDUCATION

By: *Larry Godfrey*
Its: President