

10.15.1991

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT

THIS ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT, dated as of May 20, 1999 (the "Agreement"), between **CASS COUNTY, MISSOURI** (the "County"), and **MEP PLEASANT HILL LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "Company");

WITNESSETH:

WHEREAS, the County is authorized by Chapter 100 R.S.Mo. and Article VI, Section 27(b) of the Missouri Constitution as amended (collectively, the "Act"), to acquire, construct and equip certain facilities for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for said projects, and to issue revenue bonds for the purpose of paying the cost of any such facilities;

WHEREAS, pursuant to the Act, the governing body of the County intends to pass and approve an Ordinance authorizing the County to issue its revenue bonds, in one or more series, in the aggregate principal amount of approximately \$275 million (the "Bonds"), for the purpose of acquiring, constructing and equipping a manufacturing facility in the County (the "Project"), and authorizing the County to lease the Project to the Company pursuant to a Lease Agreement to be entered into by and between the County and the Company at the time the Bonds are issued (the "Lease Agreement") between the County, as lessor, and the Company, as lessee;

WHEREAS, pursuant to the foregoing, the County desires to enter into this Agreement with the Company in consideration of the Company's desire to equip, construct and acquire the Project upon the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the County, and the Company hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. The following words and terms as used herein shall have the following meanings:

"Agreement" means this Economic Development Performance Agreement dated as of April 30, 1999 between the County and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

"Company" means MEP Pleasant Hill LLC, and its successors and assigns.

"Event of Default" means any Event of Default as described in Section 8.1 hereof.

"Project" means a project consisting of acquiring and constructing a gas fired combined cycle electric generating plant, including the site, rights-of-way, transmission capabilities for fuel, power and water, electric interconnection costs, and equipment, but excluding motor vehicles, office equipment and furniture, shop tools and equipment, and computers.

"Project Costs" means all costs and expenses of every nature paid after January 2, 1999, relating to the acquisition, construction and equipping of the Project (which for the purposes of this definition includes the Project Site, the Project Improvements and the Project Equipment), provided, however, costs and expenses relating to architectural and engineering services related to the Project constitute Project Costs within the meaning of this definition regardless of the date such costs were paid to the extent such costs are properly capitalizable in accordance with generally accepted accounting principles.

"Project Equipment" means all of the personal property located on the Project Site except as expressly provided herein.

"Project Improvements" means all improvements to the Project Site described in Exhibit A attached hereto and by this reference made a part hereof.

"Project Site" means all of the real estate described in Exhibit A attached hereto and by this reference made a part hereof.

"Targeted Amount of Total Investment" means an amount equal to \$240 million.

ARTICLE II

REPRESENTATIONS

Section 2.1. County's Representations. The County hereby represents as follows:

(a) The Project will significantly benefit the County and the State of Missouri by:
(i) stimulating economic development in the County and the State through the retention of a Project that was considering locating outside of the State of Missouri; (ii) the creation of construction and the creation of permanent jobs; and (iii) increasing local and state tax revenues.

(b) The Project would not proceed without the assistance provided by the County.

Section 2.2. Company's Representations.

(a) The Project will significantly benefit the County and the State of Missouri by:
(i) stimulating economic development in the County and the State through the retention of a Project that was considering locating outside of the State of Missouri; (ii) the creation of construction and the creation of permanent jobs; and (iii) increasing local and state tax revenues.

(b) The Project would not proceed without the assistance provided by the County.

ARTICLE III

ACQUISITION OF THE PROJECT SITE

Section 3.1. Acquisition of the Project Site. The Company shall proceed with reasonable dispatch to acquire the Project Site. The Company reasonably expects to complete such acquisition not later than June 30, 1999 and subsequently convey the Project Site to the County. If for any reason the Project Site has not been acquired by the Company on or before December 31, 1999, this Agreement shall terminate and be of no further force and effect. The Company shall notify the Presiding Commissioner upon completion of acquisition of the Project Site.

ARTICLE IV

ISSUANCE OF CHAPTER 100 BONDS

Section 4.1. Company To Make Application for the Issuance of the Bonds. The Company shall submit to the County any necessary information requiring the issuance of the Bonds.

Section 4.2. County to Adopt Resolution of Intent to Issue the Bonds. Following a review by the County's staff of the information and representations made by the Company to the County in connection with the Project and this Agreement, the Governing Body of the County shall consider the proposed Bond issue. The Governing Body shall consider a Resolution of Intent to issue the Bonds.

Section 4.3. Issuance By the County of the Bonds. As described herein, the County agrees to issue one or more series of Bonds under the Act for the purposes of paying the costs of the Project. The number of series, principal amounts and date of issuance of the Bonds shall be determined by the Company and County jointly. In connection with the issuance of the Bonds the County shall acquire title to the Project. By virtue of the County's holding of title to the Project it is the County's and the Company's expectation that the Project shall be exempt from real and personal property taxes under Missouri law, except as otherwise specifically described herein. Notwithstanding the foregoing, the parties acknowledge that the County's obligations under this section and the other provisions of this Agreement are conditioned expressly upon the Company first obtaining necessary zoning approval for the Project.

The documents authorizing such Bonds shall be prepared by Gilmore & Bell, P.C.

Section 4.4. Costs and Expenses of the County. All costs and expenses incurred by the County in connection with this Agreement, the adoption of the Resolution of Intent and the issuance of the Bonds (including the fees of the County's financial advisor, Piper Jaffray) shall be paid by the Company; provided, however, the fees and expenses of Gilmore & Bell, P.C., as Bond Counsel to the County, the bond trustee, and the County's financial advisor shall be paid from Bond proceeds.

Section 4.5. Costs and Expenses of the Company. All costs and expenses incurred by the Company in connection with this Agreement, the adoption of the Resolution of Intent and the issuance of the Bonds shall be paid by the Company; provided, any such fees and expenses may, at the Company's election, be paid from Bond proceeds.

ARTICLE V

PROPERTY TAX EXEMPTION AND PAYMENT IN LIEU OF TAXES

Section 5.1. Property Tax Exemption. So long as the County owns title to the Project, the Project is expected to be exempt from ad valorem taxes on real and personal property. The first year of the exemption period shall begin on January 1 of the year following which Bonds are issued. Notwithstanding any other provision of this Agreement to the contrary, the last year of such exemption period shall be 2026 unless Project construction and/or commercial operation as a combined cycle generating plant is delayed beyond January 1, 2002, in which case the Stated Expiration Date described in Article IX below shall be extended by a period of time equal to the cumulative delays. The Company covenants and agrees that, during each year the Project is exempt from ad valorem taxes by reason thereof, the Company will make a payment in lieu of taxes to the County in the amounts set forth in Sections 5.2, 5.3 and 5.5 of this Agreement.

Section 5.2. No Abatement on Appraised Value of Project Site. The County and the Company hereby agree that the appraised value of the Project Site as agricultural property for county tax purposes as of January 1, 1999 was approximately \$ 1259800. In addition to the payments provided in Section 5.3 the Company hereby agrees to make a payment to the County on or before each December 31, commencing December 31, 1999, in the amount equal to \$ 11604.

Section 5.3. Payments In Lieu of Taxes. In lieu of any payments of ad valorem taxes on the Project, the Company hereby agrees to make a payment to the County on or before each June 30, commencing June 30, 1999, in an amount equal to the annual fixed payment in accordance with the following schedule (herein the "PILOT"):

Tax Year	Projected Calendar Year	Annual Fixed Payments
1-3	1999-2001 (Construction Period)	\$0
4	2002 (Operations Year 1)	\$0
5-8	2003-2006 (Operations Yrs 2-5)	\$200,000
9-13	2007-2011 (Operations Yrs 6-10)	\$800,000
14-18	2012-2016 (Operations Yrs 11-15)	\$1,300,000
19-28	2017-2026 (Operations Yrs 16-25)	\$1,320,000

The PILOT shall be included as additional payments under the Lease and shall rank first in priority as to right of payment thereunder. Failure to make a scheduled PILOT, after passage of any grace period provided therein, shall be an event of default under the Lease.

Section 5.4. Obligation of County to Effect Tax Abatement. The County agrees to take all actions within its control to obtain and/or maintain in effect the exemption referred to in Section 5.1 above, including any filing required with any governmental authorities; provided, however, the County shall not be liable for any failure of State or any other governmental taxing authority to recognize the exemption provided herein. The County covenants that it will not voluntarily take any action that may cause or induce the levy or assessment of ad valorem taxes on the Project. In the event such a levy or assessment should

occur, the County shall, at the Company's request, fully cooperate with the Company in all reasonable ways to prevent and/or remove any such levy or assessment.

Section 5.5. Other Property Taxes In Connection with the Project. The County and the Company covenant and agree that the property tax abatement provided by this Agreement and the issuance of the Bonds shall only apply to the County's fee title interest in the Project. Any property taxes levied against the Company's interest in the Project by any taxing authority shall be solely the responsibility of the Company. In the event such a levy or assessment should occur, the County shall, at the Company's request, fully cooperate with the Company in all reasonable ways to prevent and/or challenge such levy or assessment.

Section 5.6. No Abatement or Special Assessments. The County and the Company hereby agree that there are no special assessments applicable to the Project Site. The County and the Company hereby agree that the property tax exemptions described in this Agreement shall not apply to special assessments by local governmental authorities which would otherwise be payable by the County as fee owner of the Project Site. The Company agrees to make payment to the County on or before December 31 in an amount equal to such special assessments.

Section 5.7. Evidence of Targeted Amount of Total Investment. The Company covenants that the Project will involve the expenditure of funds at least equal to the Targeted Amount of Total Investment. Beginning on the March 15th following the issuance of the Bonds and continuing on each March 15th thereafter until the Project is completed, the Company shall provide the County with a written certification of the actual amount of Bond proceeds expended for Project Costs accompanied by written evidence supporting such certification, in such reasonable detail as the County shall request.

Section 5.8. Sales Tax Exemption. The County will cooperate with the Company and will execute such documentation as may be required in obtaining any applicable sales tax exemption for materials, goods, and other personal property that may become part of the Project; provided however that the County makes no warranty or representation to the Company as to the availability of any such sales tax exemption.

Section 5.9. Credits for Certain Tax Payments; Early Termination. Nothing in this Agreement shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit hereunder to such extent it has made any payment due hereunder to the State. In the event that the Project becomes subject to property tax imposed by the State under any law or regulation assessing taxes upon utility property and apportioned on a state-wide basis, then the Company may elect to terminate this Agreement upon 30 days prior written notice to the County and the Company's obligation to make any further payments (including payments pursuant to Section 5.3) shall cease and be of no further effect.

ARTICLE VI

COVENANTS OF THE COMPANY

Section 6.1. Inspection. The Company agrees that the County and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least 48 hours advance notice and to the Company's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and the records of the Company which demonstrate compliance with this Agreement.

Section 6.2. Compliance with Laws. The Project will comply in all material respects with all applicable building and zoning, health, environmental and safety ordinances and laws and all other applicable laws, rules and regulations.

Section 6.3. Construction. The Project will be constructed, equipped and operated in a manner which is consistent with the description of the Project herein. In the event the Project is constructed in a manner which the County determines, in its reasonable discretion, is materially inconsistent with the description of the Project contained herein and in the presentation to the Governing Body of the County, the County reserves the right to declare an Event of Default in accordance with Section 10.1 hereof.

Section 6.4. Employment Certification. Beginning on the March 15th following the issuance of the Bonds and continuing on each March 15th thereafter for the term of this Agreement, the Company shall provide to the County a written certification regarding the total number of full-time employees employed at the Project including those employed by subcontractors of the Company.

ARTICLE VII

SALE AND ASSIGNMENT

Section 7.1 Assignment. The benefits granted by the County to the Company pursuant to this Agreement shall belong to the Company, and such benefits may be assigned (a) to any affiliate or entity in which the Company holds an equity interest provided that any such transferee assumes in writing all obligations of the Company hereunder or (b) with the consent of the County, not to be unreasonably withheld, any other transferee that assumes in writing all obligations of the Company hereunder.

Section 7.2 Purchase. The Company will have the option to purchase the Project at or after payment in full of the Bonds for a price of one hundred dollars (\$100.00).

ARTICLE VIII

DEFAULT AND REMEDIES

Section 8.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an Event of Default hereunder:

(a) the Company shall fail to perform any of its obligations hereunder for (i) a period of 60 days (or such longer period as the County and the Company may agree in writing) following written notice to the Company from the County of such failure which notice shall include a specific description of the Company's failure hereunder), or (ii) if such failure is not subject to cure within such 60 days, Company shall have failed to initiate action to cure such default and shall pursue such action diligently; or

(b) the Company shall breach any covenant contained herein or any representation of the Company contained herein shall prove to be materially false or erroneous.

Section 8.2. Remedies on Default. Upon an Event of Default hereunder this Agreement may be terminated by written notice to the Company from the County. Upon such termination the Company shall make a payment in lieu of tax to the County equal to the pro rata amount of taxes that would be due for the remaining portion of the year assuming the Project was placed on the tax rolls effective on the date of termination through December 31.

Upon any termination of this Agreement the Company agrees to pay interest and penalties on all amounts due hereunder to the same extent as if such payments were taxes under Missouri law.

Section 8.3. Payments on Defaulted Amounts. Any amounts due hereunder which are not paid when due shall bear interest at the interest rate imposed by Missouri law on overdue ad valorem taxes from the date such payment was first due. In addition, amounts payable hereunder in lieu of ad valorem taxes which are not paid when due shall be subject to penalties imposed by Missouri law on overdue ad valorem taxes.

Section 8.4. Failure of the County to Perform its Obligations. In the event the County shall fail to perform any of its obligations hereunder for (i) a period of 60 days (or such longer period as the Company and the County may agree in writing) following written notice to the County from the Company of such failure which notice shall include a specific description of the County's failure hereunder, or (ii) if such failure is not subject to cure within such 60 days, the County shall have failed to initiate action to cure such default and shall pursue such action diligently; the Company may declare that the County is in default under this Agreement and may pursue any legal remedy available to it to enforce this Agreement.

ARTICLE IX

TERM OF AGREEMENT

This Agreement shall become effective upon execution, and subject to earlier termination pursuant to the provisions of this Agreement (including particularly the following paragraph and Article X hereof), shall have an initial term commencing as of the date of this Agreement and terminating on December 31, 2026 (the "Stated Expiration Date"). The Stated Expiration Date shall automatically be extended in the event that Project construction and/or commercial operation as a combined cycle generating plant is delayed beyond January 1, 2002 in which case the Stated Expiration Date shall be extended by a period equal to the cumulative delays. This Agreement shall automatically terminate prior to the Stated Expiration Date in the event (i) the initial series of Bonds are not issued by December 31, 1999, or (ii) once issued, the Bonds (or any bonds issued to refund the Bonds or another series of bonds issued to refund the Bonds) are no longer outstanding.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 10.1. Severability. If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 10.2. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 10.3. Execution in Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 10.4. Waiver. The County and the Company acknowledge and agree that the amounts payable hereunder shall constitute payments due the County under the Lease Agreement executed in connection with the Bonds. The Company shall not be entitled to any extension of payment of such amounts as a result of a filing by or against the Company in any bankruptcy court.

Section 10.5. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the County and the Company with respect to the subject matter hereof.

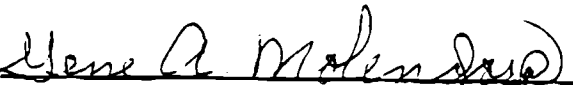
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

COUNTY OF CASS, MISSOURI


(SEAL)

ATTEST

By: 
Gary L. Mallory, County Clerk

By: 
Gene A. Molendorp, Presiding Commissioner

By: 
Brian A. Milla, Associate Commissioner

By: 
Jon H. Seabaugh, Associate Commissioner

MEP PLEASANT HILL, LLC

By: 

Name: V.J. Hogan

Title: President