

THE ONLY WARRANTY CONCERNING THE SERVICES IS SET FORTH IN PARAGRAPH 15(a). ALL OTHER WARRANTIES CONCERNING THE SERVICES OR ANY LABOR, PARTS OR MATERIALS PROVIDED IN CONNECTION THEREWITH, EXPRESS OR IMPLIED, ARE EXCLUDED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM COURSE OF DEALING, USAGE OF TRADE, DESCRIPTION OR SAMPLE.

Dispute Resolution

Each Party shall, from time to time, designate a senior officer (a "Dispute Representative") who shall have the authority to represent such Party and resolve and settle any dispute arising under or in connection with this Agreement or the Services performed hereunder. The Parties hereto agree to attempt to resolve all such disputes equitably and in a good faith manner (unless, in the reasonable judgment of the affected Party, the immediate pursuit of judicial equitable relief is necessary to prevent or mitigate a risk of irreparable harm or damage).

Page 1: [13] Deleted

John W. Griggs

9/25/2003 1:21 PM

Insurance Services  
Consulting Fees  
Legal Services  
Management Services  
Accounting Services  
Tax Services  
Information Technology  
Other Overhead

Page 3: [14] Deleted

John W. Griggs

9/25/2003 1:21 PM

System Planning. Utilize data provided by the SCADA system and other information and develop a "work plan" each year to project needed transmission, substation and distribution system improvements, including analyzing historical loading data and projecting the load on the System.

Protective Device Coordination. Coordinate protective relays to limit the size of outages and to remove the fault from the System before equipment is damaged and review the device coordination in the substations and distribution system and make changes necessary to optimize the System protection.

Mobile Substation. Installing and removing mobile substations to serve the load on a substation so substation equipment can be de-energized and maintained without subjecting customers to outages

Load Level Tests. Transmission right of way periodically needs to be maintained. The maintenance to be done will be dependent on the condition of the right of way and agreements with the landowner. CRE personal will determine the need for work on the right of way, select a contractor to clear the right of way, and work with the landowner to accomplish the work in a satisfactory manner.

Coordination of Right of Way with Land Owner. Performing maintenance services required for transmission rights of way pursuant to agreements with the landowner.

Infrared Inspection. Performing annual inspections using an Infrared camera to determine "hot" spots that need maintenance.

Substation Equipment Upgrades. Determining needed upgrades to substation equipment, including upgrading protective relays, changing out regulators to units with higher load capability and coordinating with outside contractors, as necessary to perform needed upgrade work

Design of Major System Additions. Providing design and construction services with respect to substation and transmission line facilities and, if applicable, managing outside subcontracts.

Maintenance of Vehicles. Providing operation and maintenance services with respect to vehicles used in the operation and maintenance of the System.

Section Break (Next Page)

EXHIBIT B

INITIAL ANNUAL BUDGET

[To be attached]

**GRIGGS & ADLER, P.C.**

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**GRIGGS & ADLER**  
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WASHINGTON, D.C. 20005-6705  
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February 6, 2004

Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
Office of the Secretary  
Room 1A East  
888 First Street, N.E.  
Washington, D.C. 20426

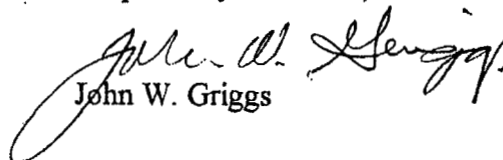
Re: NewCorp Resources Electric Cooperative, Inc., FERC Docket Nos. TS04-\_\_\_\_-  
000

Dear Ms. Salas:

Enclosed for filing on behalf of NewCorp Resources Electric Cooperative, Inc. ("NewCorp") are the original and fifteen (15) copies of NewCorp's Request for Exemption from the Requirements of Part 358 of the Commission's Regulations. An electronic copy of this filing is also enclosed. Please stamp the two extra copies of this filing to indicate receipt and return them to the messenger delivering this filing.

Thank you for your attention to this matter.

Respectfully submitted,

  
John W. Griggs

Enclosure  
cc: Cap Rock Energy Corporation

002010 352

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

NewCorp Resources Electric Cooperative, Inc.        )        Docket No. TS04-\_\_\_\_\_-000

**REQUEST FOR EXEMPTION FROM THE REQUIREMENTS OF PART 358 OF THE  
REGULATIONS ESTABLISHING STANDARDS OF CONDUCT FOR TRANSMISSION**

Pursuant to Section 358.1(d) of Part 358 of the of the Regulations of the Federal Energy Regulatory Commission ("FERC" or "Commission") establishing Standards of Conduct For Transmission, 18 C.F.R. §358.1(d), NewCorp Resources Electric Cooperative, Inc. ("NewCorp") submits this request for an order of the Commission granting NewCorp an exemption from all or some of the requirements of Part 358.

**A.     Background**

1.     Identifying information regarding the petitioner

NewCorp maintains its corporate offices at 500 West Wall Street, Midland, TX 79701.

The persons responsible for this request are:

Lee D. Atkins, Secretary  
NewCorp Resources Electric Cooperative, Inc.  
500 West Wall, Suite 400  
Midland, Texas 79701  
Phone: 432-684-0305  
Fax: 432-684-0333  
latkins@caprockenergy.com

John W. Griggs  
Griggs & Adler, P.C.  
12110 Sunset Hills Road  
Suite 450  
Reston, VA 20190  
Phone: 703-715-3016  
Fax: 703-716-2865  
griggslaw@aol.com

002011

NewCorp is an electric cooperative with a single member, Cap Rock Energy Corporation

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("CRE"). CRE is NewCorp's sole customer. CRE serves retail customers in rural counties in the Permian Basin area of West Texas, which is outside of the area controlled by the Electric Reliability Council of Texas ("ERCOT"). NewCorp operates a looped system consisting of 305.9 miles of 138 kV transmission lines and including 16 substations. CRE owns the retail distribution system which is served from NewCorp's 16 substations. The NewCorp transmission system is interconnected to Southwestern Public Service Company ("SPS") at NewCorp's Jones and Vealmoor substations, and NewCorp presently obtains its full requirements to serve CRE from SPS. NewCorp and SPS have recently made filings for approval of plans to consolidate NewCorp's ownership of the transmission facilities controlled by NewCorp and to change the wholesale service provided to CRE from bundled, full-requirements to transmission-only service. See NewCorp Resources Electric Cooperative, Inc., Docket Nos. EC03-42-000, ES03-116-000, and ER03-1116-000; Southwestern Public Service Co., Docket Nos. EC03-135-000 and ER03-1321-000. These proposed changes have been accepted for filing by FERC, but implementation of the changes awaits action by the Public Utilities Commission of Texas ("PUCT") that is required in order to implement the ownership restructuring.

2. Order No. 2004

On November 25, 2003, the Commission promulgated its final rule establishing Standards of Conduct for Transmission, 105 FERC ¶61,248 (2003). Under Section 358.4(e)(1), each Transmission Provider is required to file with the Commission a plan or schedule for implementing the standards of conduct within 60 days of the publication of the rule in the Federal Register. According to the Guidance for implementation procedures issued by FERC on January 16, 2004, 106 FERC ¶61,017, compliance filings are due on February 9, 2004. Section 358.1(d) provides that a Transmission Provider may file a request for an exemption from all or some of the requirements of regulation for good cause. NewCorp submits that it is not entirely

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clear that NewCorp would be subject to Part 358. In order to remove any ambiguity in that regard, NewCorp submits this request for exemption and states that good cause exists for granting it an exemption. Alternatively, NewCorp respectfully requests the Commission to clarify that the regulation does not apply to NewCorp.

**B. Good Cause Exists to Grant NewCorp an Exemption**

**1. Part 358 Technically Does Not Apply to NewCorp**

Under Section 358.1(b), the Standards of Conduct apply to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce. The regulation requires, inter alia, complete separation between the personnel and functions of a Transmission Provider, and the personnel and functions of an Energy Affiliate. NewCorp meets the definition of a Transmission Provider spelled out in Section 358.3(a). NewCorp also has an Energy Affiliate, CRE, which is engaged in providing retail service and is state-regulated. However, a blanket exemption is granted by Section 358.3(5)(v), which states that “An Energy Affiliate does not include:\*\*\* (v) A state-regulated local distribution company that does not make off-system sales.” This exemption on its face applies to NewCorp because CRE is a state-regulated distribution company.

The one caveat in applying the blanket exemption to NewCorp is the issue of off-system sales. Part 358 does not define this term. In addressing this section of the Rule, the Commission focused on off-system sales by a natural gas company:

An off-system sale would include a situation in which the affiliated LDC had contractually committed for more gas than it needed to serve its on-system customers and sold that gas off its system, e.g., at a hub or on the spot market.

Order No. 2004, ¶44 (slip opinion at 18). The Commission emphasized that “...an LDC that engages in any off-system sales is an Energy Affiliate.” Id. (emphasis in original).

In fact, CRE does not sell energy or power “off” the CRE system and hence, in that

respect, does not make off-system sales. Through a rider in the SPS full requirements contract, NewCorp is entitled to a de minimis amount of energy above and beyond its full requirement load obligations. See Xcel Energy's filing in ER04-2-000. The purpose of the rider is to give NewCorp the opportunity to reduce its power cost by receiving market price for the additional energy. NewCorp has retained an independent marketer to market the energy. The energy does not enter NewCorp's system. The revenues from these additional sales have resulted in reducing NewCorp's costs by approximately \$3,000 per month. NewCorp does not believe this transaction is significant and requests whatever waivers are necessary to grant the relief requested herein.

At the present time, such sales are for the benefit of NewCorp because NewCorp is the wholesale purchaser of power from SPS. CRE does not make the sales, and therefore CRE does not run afoul of Section 358.3(5)(v) because of these sales. But NewCorp has proposed, and the Commission has approved,<sup>1</sup> switching its service to CRE from bundled all-requirements service under Tariff WP to transmission-only service under NewCorp's OATT, and with that change, the SPS contract will be transferred to CRE and the SPS opportunity sales will be for the benefit of CRE.<sup>2</sup> If these transactions are regarded as being "off-system sales" by CRE, then NewCorp would not be eligible for the blanket exemption established by Section 358.3(5)(v). In order to remove any possible ambiguity caused by the definition of off-system sales, NewCorp is seeking the exemption sought with this request, or in the alternative, clarification of Section 358.3(5)(v) so that it does not apply to CRE.

2. Application of the Regulation to NewCorp Would Cause Undue Hardship

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NewCorp is a small electric cooperative transmission entity wholly owned by CRE. CRE

<sup>1</sup> Letter Order issued on August 29, 2003 in NewCorp Resources Electric Cooperative, Inc., Docket No. ER03-1116-000.

<sup>2</sup> SPS was granted approval to switch its power sales from NewCorp to CRE by a letter order issued on October 20, 2003, in Southwestern Public Service Co., Docket No. ER03-1321-000.

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is NewCorp's sole customer. The officers of NewCorp also hold positions of responsibility with CRE. There currently is no separation of personnel between the two entities. Pursuant to a Master Operation, Maintenance, and Administrative Services Agreement, NewCorp utilizes personnel of CRE to service and maintain its facilities on a reimbursable basis. This Agreement was accepted for filing by FERC in the letter order issued on August 29, 2003, in NewCorp Resources Electric Cooperative, Inc., Docket No. ER03-1116-000. While Order No. 2004 only applies to operating personnel and not to service and maintenance personnel, Section 358.3(j); Order No. 2004, ¶106 (slip opinion at 39), at least some of the CRE personnel utilized by NewCorp under the Agreement are arguably operating personnel. If NewCorp were required at this point in time to entirely separate its operating personnel from CRE, it would have to recruit, hire, and train these personnel at great cost and expense. This would only serve to increase the cost of providing service to CRE, creating a hardship and unnecessary additional expense for CRE and its retail customers.

3. Granting the Requested Exemption Would Be Consistent with the Purpose and Intent of the Regulation

NewCorp has only one customer, CRE. NewCorp is in the process of converting its service for CRE from all-requirements service under Tariff WP to transmission-only service under its Open Access Transmission Tariff. NewCorp's proposal to change the way it serves CRE was accepted by FERC in the letter order issued in Docket No. ER03-1116-000. Implementation of the change in service has been delayed pending action by the PUCT on a related matter. NewCorp has on file with FERC its OATT, even though there are presently no transmission customers. When CRE is switched to the OATT tariff, CRE will be NewCorp's only transmission customer.

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Under these circumstances, the purpose and intent of Part 358 would not be advanced by requiring NewCorp to completely separate its personnel from those of CRE. The purpose and

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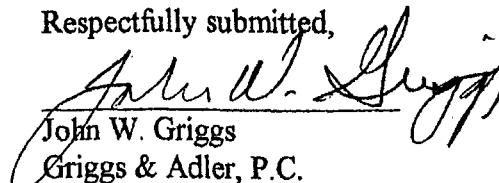
intent of Order No. 2004 are to prevent the market power exercised by a Transmission Provider from being transferred to, or used to benefit, the Transmission Provider's affiliated business, to the detriment of users of the transmission system that are not affiliated. Order No. 2004 at ¶¶9-10 (slip opinion at 6). NewCorp does not have an affiliated marketing business, and there are no other non-affiliated customers of NewCorp who could be adversely affected by any different or special treatment of CRE. Furthermore, by having its OATT on file, NewCorp holds open the option to all potential customers to provide transmission service on an open and non-discriminatory basis. This option has been available since 1996, and no potential transmission customers have requested transmission service.

4. NewCorp Was Previously Granted an Exemption under Order No. 889

In Order No. 2004, the Commission indicated that cooperatives and small utilities would be eligible for exemption, and that "the Commission will continue the exemptions and partial waivers for the entities that have previously received exemptions and partial waivers under Order No. 889 or Order No. 497." Order No. 2004 at ¶27 (slip opinion at 13). NewCorp in Docket No. OA96-26-000 was one of eleven utilities granted a waiver of the requirements of Order No. 889 (but not Order No. 888). Northern States Power Co., 76 FERC ¶61,250, at 62,296-97 (1996). See also, Black Creek Hydro, Inc. 77 FERC ¶61,232 (1996). Consistent with the waiver previously granted in Docket No. OA96-26-000, NewCorp should be granted an exemption from the requirements of Part 358.

February 6, 2004

Respectfully submitted,

  
John W. Griggs  
Griggs & Adler, P.C.

12110 Sunset Hills Road, Suite 450  
Reston, VA 20190  
(703)715-3016  
Counsel for NewCorp Resources Electric  
Cooperative, Inc.

002016

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

NewCorp Resources Electric Cooperative, Inc.)

Docket No. TS04-\_\_\_\_-000

**NOTICE OF FILING**

(February \_\_, 2004)

Take notice that on February \_\_, 2004, NewCorp Resources Electric Cooperative, Inc. (NewCorp) filed a request for exemption from the requirements of Order No. 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). All such motions or protests should be filed on or before \_\_\_\_\_. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Magalie R. Salas

Secretary

002017

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**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-24:** (Atkins, Schedule LDA-1, pages 1-4 of 5) Describe the nonrecourse financings Mr. Atkins refers to in LDA-1 and describe Mr. Atkins activities in arranging, negotiating, closing, managing, and funding each.

**RESPONSE:**

Nonrecourse financings are debt-related financings that are not supported by the credit of the parent corporation or project sponsor. Mr. Atkins prepared solicitations, analyzed bids, interviewed lenders, negotiated terms and documented transactions.

Prepared by: Lee D. Atkins

Sponsored by: Lee D. Atkins

**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-25:** (Atkins, Schedule LDA-1, page 3 of 5, Manager, European Financial Planning, 1974-1976) Describe the transfer pricing, repatriation of earnings, and income recognition Mr. Atkins refers to in LDA 1 and describe Mr. Atkins activities in managing, initiating, and improving each.

**RESPONSE:**

Mr. Atkins' job responsibilities included reviewing contract terms and conditions, negotiating prices, allocating costs and calculating percentage of work complete on large construction projects in order to book revenues.

Prepared by: Lee D. Atkins  
Sponsored by: Lee D. Atkins

**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-26:** (Atkins, Schedule LDA-1, page 4 of 5, Santa Rosa) Describe the very complex nonrecourse financing for the purchase of all of the geothermal power plants and leasehold assets in California from Freeport Mac Moran Mr. Atkins refers to in LDA 1 and describe Mr. Atkins activities in arranging, negotiating, closing, managing, and funding that financing.

**RESPONSE:**

Mr. Atkins' activities included negotiating terms and conditions in acquiring geothermal properties in northern California. These properties included three power plants and leased properties with geothermal wells. Mr. Atkins arranged financing with a consortium of banks and insurance companies.

Prepared by: Lee D. Atkins

Sponsored by: Lee D. Atkins

**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-27:** (Atkins, Schedule LDA-1, page 3 of 5) Describe the intercreditor document in place with Sweeny I lenders to fund the Sweeny II construction of project expansion Mr. Atkins refers to in LDA 1 and describe Mr. Atkins activities in arranging, negotiating, managing, closing, or funding that document.

**RESPONSE:**

Intercreditor documents consisted of loans, credit support and operating agreements between different banks that had separate collateral interests in two projects at the same project site. Mr. Atkins selected and negotiated the major terms and conditions with lenders and supervised the completion of loan documentation.

Prepared by: Lee D. Atkins

Sponsored by: Lee D. Atkins

**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-28:** (Atkins, Schedule LDA-1, page 1 of 5) Describe the export credit arrangements and EX/IM Bank financings Mr. Atkins refers to in LDA 1 and describe Mr. Atkins activities in arranging, negotiating, closing, managing, and funding each.

**RESPONSE:**

As the prime contractor, it was Mr. Atkins' responsibility to present the project and customer credit requirements to the Export/Import Bank of the United States. These presentations included economic benefits to the United States for supporting exports.

Prepared by: Lee D. Atkins

Sponsored by: Lee D. Atkins

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**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-29:** (Atkins, Schedule LDA-1, page 1 of 5) Describe the 100 percent leverage financing Mr. Atkins refers to in LDA 1 and describe Mr. Atkins activities in arranging, negotiating, closing, managing, and funding each.

**RESPONSE:**

The 100% leverage financing refers to monetizing project cash flows by issuing rule 144a bonds against a group of projects thereby refunding all equity funded in each separate project. Mr. Atkins' activities included soliciting lenders, preparing bond documents and selling the transaction.

Prepared by: Lee D. Atkins  
Sponsored by: Lee D. Atkins



**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-30:** (Atkins, Schedule LDA-1, page 1 of 5) Explain the statement that Mr. Atkins "sold equity/partnership interests in U.S. power plants for four times investment cost." describe Mr. Atkins activities in arranging, negotiating, closing, managing, and funding each.

**RESPONSE:**

See response to Pioneer RFI No. 1-19.

Prepared by: Lee D. Atkins

Sponsored by: Lee D. Atkins

**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-31:** (Atkins, Schedule LDA-1, page 2 of 5) Explain the statement that Mr. Atkins "renegotiated a FERC tariff resulting in the ability to raise \$50 million of asset backed financing." describe Mr. Atkins activities in arranging, negotiating, closing, managing, and funding each.

**RESPONSE:**

Through the unbundling of the FERC tariff NewCorp was able to obtain bids on a \$50 million financing.

Prepared by: Lee D. Atkins

Sponsored by: Lee D. Atkins

**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-32:** (Atkins, Schedule LDA-1, page 2 of 5, Calpine Corporation, San Jose, Ca, 1984-1992, Director of Finance) Explain the statements that Mr. Atkins negotiated the sale of equity positions to recapitalize the company and the statement that Mr. Atkins was financial advisor to client companies including CalEnergy and Mitsubishi. Describe Mr. Atkins activities in arranging, negotiating, closing, managing, and funding the sale of equity positions and Mr. Atkins activities as financial advisor to client companies.

**RESPONSE:**

Mr. Atkins sold limited partnership interests in various projects in order to refinance the general partners balance sheet. He also acted as financial advisor in soliciting lenders, selecting the lead bank, negotiating terms and conditions and documenting terms of the loan.

Prepared by: Lee D. Atkins  
Sponsored by: Lee D. Atkins

**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-33:** (Atkins, Schedule LDA-2) Describe the date of origin, creation, organizational structure, history, purpose, and management of Cap Rock Cooperative Finance Coop. Identify the assets, liabilities, officers, managers, and employees of Cap Rock Cooperative Finance Coop. Provide supporting documents.

**RESPONSE:**

Cap Rock Cooperative Finance Corporation ("CRCFC") is a Texas cooperative corporation. It was formed on May 9, 1995. Its directors are David W. Pruitt, Newell Tate, and Floyd Ritchey. Its officers are David W. Pruitt, President and Ulen North, Vice President, Secretary-Treasurer. CRCFC has no employees. CRCFC was formed for the purpose of becoming an associate member of National Rural Utilities Cooperative Finance Corporation ("CFC"). As an associate member, it could borrow money from CFC and loan such money to its members, who were anticipated at the time of its formation would be other company affiliates. The Company made one loan to NewCorp Resources Electric Cooperative, Inc. ("NCREC"). That loan remains in effect. That is the Company's only asset. Its only liability is the note obligation it has with CFC for its loan to NCREC.

At December 31, 2003:	Assets	\$6.0 Million
	Liabilities	\$5.8 Million

Prepared by: Ronald W. Lyon  
Sponsored by: Lee D. Atkins

**SOAH DOCKET NO. 473-04-3554  
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO  
PIONEER NATURAL RESOURCES, USA, INC.'S  
FIRST REQUESTS FOR INFORMATION**

**Pioneer 1-34:** (Atkins, Schedule LDA-2) Describe date of origin, creation, signatories, structure, history, purpose, and management of the "Note Receivable From NewCorp." Provide copies of the Note and all supporting documents.

**RESPONSE:**

NewCorp has two borrowings from CRCFC under the CFC Associate Member Program. The loans are:

- 1) TX703-A-9001 for \$3,127,566
- 2) TX703-A-9003 for \$5,896,985

Both loans have ten-year terms, have variable interest rates and gave level principal payments. The first loan was used to finance NewCorp's deferred charges associated with building the transmission system. The second loan was used to repay the John Hancock lease.

Please see attached documentation.

Prepared by: Lee D. Atkins  
Sponsored by: Lee D. Atkins

002028



NATIONAL  
RURAL  
UTILITIES  
COOPERATIVE  
FINANCE  
CORPORATION

July 13, 1995

Mr. John Parker  
NewCorp Resources, Inc.  
The Vaughn Building  
807 Brazos Street  
Suite 700  
Austin, Texas 78701

Dear Mr. Parker:

This letter will confirm that the National Rural Utilities Cooperative Finance Corporation ("CFC") will require a debt service coverage ("DSC") ratio of 1.20 for the proposed financing relating to NewCorp Resources, Inc. This ratio requirement was determined on the basis of the type of CFC member that is being utilized in connection with the financing.

Please feel free to call me if you have any questions.

Sincerely,

Katherine Buhl  
Senior Loan Analyst

KMB

002029

Woodland Park  
2201 Cooperative Way  
Hendrix, Virginia  
22071-3025  
Phone 703-709-6700

PIONEER 1-34  
Page 1 of 82

(FRI) 07.14.95 16:05/ST. 16:04/NO. 3561033872 P 2

FROM MILLER, BALIS & O'NEIL, PC

371

*Cap Rock Cooperative Finance Corporation*

*500 West Wall Street, Suite 400*

*Midland, Texas 79701*

August 8, 1995

Ms. Kathy Buhl  
Senior Loan Analyst  
National Rural Utilities Cooperative  
Finance Corporation  
Woodland Park  
2201 Cooperative Way  
Herndon, VA 22071-3025

RE: CRCFC/NCR and CRCFC/NWR Loan Applications

Dear Ms. Buhl:

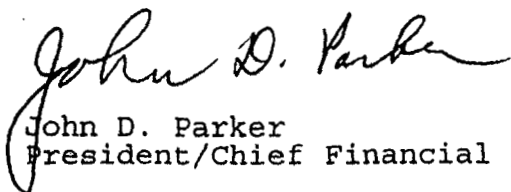
Attached is an updated version of the form that is similar to the Form 7A that Linda Graham and I worked up several months ago. Most of the balances are as of July 31, 1995. The other balances are as of June 30.

I have added a column to indicate the date of the approval by CFC for the guarantees provided by Cap Rock, as per your request. There are two spots that are blank as we are still trying to nail down the date of CFC's approval. The first one is for the loan to NWR by the First Interstate Bank of Texas. The amount of the guarantee on that loan is \$7 million. The other blank is on the original MetLife financing. I had hoped to find a copy of the approval in the closing book but no such luck. I did find a reference to a written approval from CFC in one of our attorney's letters'. That letter was dated September 8, 1993 so the CFC approval was probably dated right around that time period.

We will keep going through our files to find the dates for you. I thought in the meantime it would be good to get the numbers up to you as you had requested.

You should have received by fax yesterday a copy of the latest draft of our audited financial statements for both Cap Rock consolidated and New West Resources. If you have any questions on them please give me a call at your convenience.

Sincerely,

  
John D. Parker  
President/Chief Financial Officer

Attachment

002030

CREC - Distribution System Only  
Report of Loans, Investments & Guarantees  
as of July 31, 1995

LOANS (unsecured & secured notes, including demands):

Beneficiary	Purpose	Amount	Outstanding	Available
New West Resources, Inc.	Natural gas, Midland building, operations	\$5,250,000	\$4,897,141	\$352,859

INVESTMENTS (including long-term Accounts Receivable due from affiliates):

Entity	Purpose	Amount
New West Resources, Inc.	Operations, stock	\$338,058 (1)
NewCorp Resources, Inc.	Power supply deferred charges, rate case preparation expense, stock	2,975,416 (1)
OTP, Inc.	Operations, stock	21,189 (1)
Capstar Communications	Operations, stock	287,378 (1)
HFC, Inc.	Stock	1,000
		<u>\$3,623,041</u>

GUARANTEES:

Institute/ Beneficiary	Purpose	Loan Amount	Guarantee	Outstanding	Date of CFC Guarantee Approval
FIBTex/NWR	Purchase of gas & pipeline properties	\$8,290,717 (2)	\$7,000,000	\$7,186,881	
WNB/NWR	Bridge financing for merger of gas properties	3,000,000	3,000,000	3,000,000	March 13, 1995
Enron Capital & Trade Resources /NWR	Bridge financing for merger of gas properties	500,000	500,000	500,000	July 20, 1995
MetLife/OTP&NCR	10 year financing for transmission facilities - original \$36 million	36,000,000	36,000,000	34,241,085	
MetLife/OTP&NCR	10 year financing for transmission facilities - follow-up \$12.8 million	12,865,655	12,865,655	12,713,013	Pending
		<u>\$60,656,372</u>	<u>\$59,365,655</u>	<u>\$57,640,979</u>	

Certified: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature Title

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Note (1): Amounts as of June 30, 1995 - July 1995 books not closed yet.

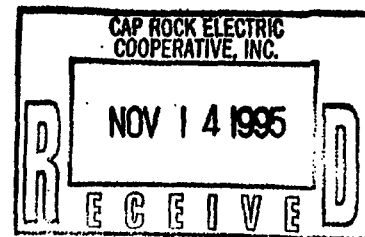
Note (2): Loan amount includes letter of credit for \$600,000 that is available but has not been drawn against.





NATIONAL  
RURAL  
UTILITIES  
COOPERATIVE  
FINANCE  
CORPORATION

November 7, 1995



Mr. John Parker  
President and Chief Financial Officer  
Cap Rock Cooperative Finance Corporation  
500 West Wall Street, Suite 400  
Midland, Texas 79701

Dear Mr. Parker:

Re: Associate Member Long-Term Loan # Texas 703-A-9001

CFC has completed processing and has approved your cooperative's application for a 10 year long-term loan in the amount of \$3,127,566 including \$156,378 for the purchase of loan capital term certificates (LCTC's). This loan has been approved in connection with the refinancing of a demand note between Cap Rock Electric Cooperative, Inc. And NewCorp Resources, Inc.

In accordance with CFC's policy concerning Associate Member loans, non-interest bearing LCTC's must be purchased with each advance of funds, as part of the advance or with general funds, in an amount equal to 5% of the advance. We have included funds in the loan for the purchase of the LCTC's if Cap Rock Cooperative Finance Corporation wishes to utilize the funds for that purpose. If not utilized for the LCTC purchase, that portion of the loan will be rescinded.

The terms and conditions associated with this loan will be reflected in the CFC Loan Agreement. The CFC loan and security documents, including the Guarantee Agreement to be executed by Cap Rock Electric Cooperative, Inc. will be prepared and sent to you after the approval of the related transaction by the Federal Energy Regulatory Commission.

We are pleased to serve your cooperative and appreciate your interest in CFC. If you have any questions regarding this loan or any of CFC's other financial products and services, please feel free to call me at (800) 424-2954.

Sincerely,

Katherine Buhl  
Senior Loan Analyst

KMB

Woodland Park  
2201 Cooperative Way  
Herndon, Virginia  
22071-3025  
Phone: 703-709-6700

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*Cap Rock Cooperative Finance Corporation*

*500 West Wall, Suite 400*

*Midland, Texas 79701*

December 20, 1995

Ms. Kathy Buhl  
Senior Loan Analyst  
National Rural Utilities Cooperative  
Finance Corporation  
Woodland Park  
2201 Cooperative Way  
Herndon, VA 22071-3025

RE: CRCFC/NCR Associate Member Loan # Texas 703-A-9001 Proceeds Disbursement

Dear Ms. Buhl:

Today you should receive by Federal Express from Wayne Mathis a set of the loan documents that we propose to use between Cap Rock Cooperative Finance Corporation ("CRCFC") and NewCorp Resources, Inc. ("NCR"). I think Wayne has done a very good job on those for us and we are ready to use them. Once you have reviewed them, please contact me in Midland or Ronnie Lyon at 903-868-1528 if you have any questions or comments.

When the documents meet with your approval, we would like to go ahead and fund the loan in the initial amount of \$2,971,188.00 exclusive of the CTC amount. In order to save on a lot of hassle and wire transfer fees, the proceeds should be applied to the Cap Rock Electric Cooperative, Inc. ("Cap Rock") line of credit \$10-49-107-R-5100.

The reason for this treatment is as follows. The loan proceeds are being used to repay a demand note from Cap Rock to NCR. The note was issued in return for the transfer of certain power supply related deferred charges from Cap Rock to NCR.

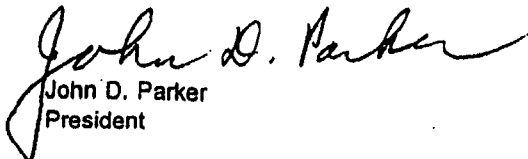
Also, the CTC should be issued and sent to CRCFC. I believe the amount of the CTC will be \$156,378.00.

The interest rate used on the note should be the Associate Member 5% CTC loan rate. As I understand it, that rate is set at 6.20% for the month of December.

Please let us know when the transaction has been completed. I will be out of the office from December 22 until January 2, but I will be checking in. If I am not around, just let Peggy Röhner in my accounting department know.

Thanks for all your help on this transaction. I hope you have a great Christmas with your cat and whoever else you spend the holidays with.

Sincerely,

  
John D. Parker  
President

JDP:sah

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McGOWEN & LYON, P.C.

ATTORNEYS AT LAW  
711 N. TRAVIS STREET  
SHERMAN, TEXAS 75090-4950

(903) 868-1528  
FAX (903) 893-1734

JERRY McGOWEN  
RONNIE LYON  
LAWRENCE A. PHILLIPS

December 15, 1995

General Counsel  
National Rural Utilities  
Cooperative Finance Corporation  
Woodland Park  
2201 Cooperative Way  
Herndon, Virginia 22071

Re: Cap Rock Cooperative Finance Corporation  
TX 703-A-9001

Dear Sir:

I am counsel for Cap Rock Cooperative Finance Corporation, organized under the laws of the State of Texas ("Borrower"), and render this opinion to you in connection with the loan of \$3,127,566.00 provided for in the loan agreement and security agreement ("CFC Loan Agreement"), dated as of December 12, 1995, made by and between the Borrower and National Rural Utilities Cooperative Finance Corporation ("CFC").

I have examined such corporate records and proceedings of the Borrower, and such other documents as I have deemed necessary as a basis for the opinions hereinafter expressed.

I have also examined the following documents as executed and delivered: (1) the CFC Loan Agreement, (2) the Promissory Note ("CFC Note"), dated December 12, 1995, in the principal amount of \$3,127,566.00, payable to the order of CFC, and (3) the UCC Financing Statement executed and filed by the Borrower (the "Financing Statement" together with the CFC Loan Agreement and the Note are hereinafter referred to collectively where appropriate as the "Loan Documents").

I have also examined, or caused to be examined by competent and trustworthy persons, the records and files of all offices in which there might be recorded, filed or indexed evidence of the Borrower's title, and any liens of any nature whatsoever affecting the title, to any real or personal property of the Borrower other than easements or rights of way relating to the property of the Borrower.

I have supervised, examined, or caused to be examined by competent and trustworthy persons, the recordation of the Financing Statement in Midland County, Texas and in the Office of the Secretary of State in the State of Texas.

Based upon the foregoing, I am of the opinion that:

(i) the Borrower is a duly organized, validly existing corporation and in good standing under the laws of the jurisdiction of its organization, and the Borrower has full corporate power (1) to execute and deliver the Note, the Loan Agreement and the Financing Statement; (2) to perform all acts required to be done by it under the Loan Documents; and (3) to own, operate and maintain its properties and operate its business as conducted at the date of this Opinion;

(ii) to the extent reasonably required for the maintenance and operation of its properties and business taken as a whole, the Borrower has complied with all requirements of the laws of all states in which it operates or does business and holds all certificates, licenses, consents or approvals of governmental authorities required to be obtained on or prior to the date of this Opinion to enable it to engage in the business then transacted by it;

(iii) the CFC Notes, the CFC Loan Agreement, and the Financing Statement have been duly authorized, executed and delivered by the Borrower and constitute the valid and binding obligations of the Borrower, enforceable against the Borrower, in accordance with their respective terms provided, however, that enforceability may be limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights and that the enforcement thereof may be limited by laws with respect to or affecting the remedies provided for in said agreement or instrument; provided further, however, that such laws do not in my opinion make inadequate the remedies afforded thereby for the realization of the benefits provided for in such agreement or instrument;

(iv) the execution and performance by the Borrower of the CFC Notes, the Loan Agreement and the Financing Statement, and the transactions contemplated thereby will not violate any provision of law, the articles of incorporation, or bylaws of the Borrower, or result in the breach of, or constitute a default under, any agreement, indenture or other instrument to which the Borrower is a party, or by which it may be bound, known to counsel;

(v) the Financing Statement has been duly recorded and filed, in such manner and to such extent to constitute a validly recorded and filed lien upon the personal property of the Borrower therein

December 15, 1995

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described, subject and subordinate only to liens and encumbrances, if any, permitted by the CFC Loan Agreement;

(vi) no authorization from any regulatory body is required in connection with the execution and delivery of the CFC Note and the CFC Loan Agreement;

(vii) I know of no litigation pending or threatened against or affecting the Borrower or its property which, in my opinion, would have a material adverse effect upon the business, operations or financial condition of the Borrower.

(viii) The note, guaranty and loan agreements which have been executed by the Guarantor and Borrower are valid and effective under Texas law even though the corporate seal was not affixed thereto. A corporate seal is not necessary under Texas law in order for these documents to be valid.

Sincerely,

A handwritten signature in cursive script that reads "Ronnie Lyon".

Ronnie Lyon

RL:tp

## RESOLUTIONS AUTHORIZING BORROWING

"RESOLVED, that CAP ROCK COOPERATIVE FINANCE CORPORATION (the "Company") establish a loan with the National Rural Utilities Cooperative Finance Corporation ("CFC"), and that the Board of Directors hereby authorizes borrowing from CFC from time to time in amounts which shall not exceed the principal amount of \$3,127,566.00 due ten (10) years from the date of the Loan and Security Agreement between the Company and CFC ("Loan Agreement"), at the interest rate and with the security and subject to the other terms and conditions provided in the Loan Agreement and in the Note submitted to this meeting;

RESOLVED, that the proceeds of such borrowings shall be used by the Company solely as specified in said Loan Agreement and that five percent (5%) of each advance shall be used for the purchase of a Loan Capital Term Certificate if the Company does not pay for such purchase out of its general funds;

RESOLVED, that the President is hereby authorized to execute and deliver in the name of and on behalf of the Company, and the Secretary or Assistant Secretary is directed to affix the Company's seal to, as many counterparts as shall be deemed advisable of the Loan Agreement, financing statements, assignments and the Note, substantially in the form of said documents presented to this meeting;

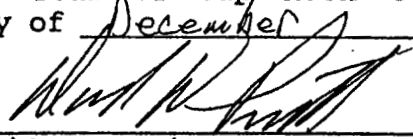
RESOLVED, that said officers be, and each of them hereby is, authorized and directed to execute and deliver in the name of and on behalf of the Company such other documents and to take such other actions as such person shall deem necessary or advisable to carry out the intent and purpose of the foregoing resolutions and the transactions contemplated by the Loan Agreement, financing statements, assignments and the Note;

RESOLVED, that John D. Parker is authorized on behalf of the Company to request and receive funds on account of the Note from time to time, to repay such funds in accordance with the Loan Agreement and Note, and is directed to deposit such funds in a bank account used for the general funds of the Company."

I, David W. Pruitt, do hereby certify that I am the secretary of Cap Rock Cooperative Finance Corporation, and that the above is a correct copy of the original resolution entered in the Minute Book of the Cooperative at the regular meeting of the Board of Directors of Cap Rock Cooperative Finance Corporation.

The foregoing resolution has not been amended, rescinded, or modified and is in full force and effect on the date hereof.

Witness by signature under seal of Cap Rock Cooperative Finance Corporation this 12th day of December, 1995.



David W. Pruitt, Secretary

(SEAL)

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**CERTIFICATE AS TO RESOLUTIONS OF  
BOARD OF DIRECTORS AND INCUMBENCY**

The undersigned, the Secretary of Cap Rock Cooperative Finance Corporation (the "Company"), a Texas corporation, hereby certifies that he is authorized to execute this Certificate on behalf of the Company and further certifies that:

- (a) The Company is duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and there is not pending or contemplated proceeding for the merger, consolidation, sale of assets or business or dissolution of the Company;
- (b) Attached hereto as Attachment 1 is a true, complete and correct copy of the resolutions of the Board of Directors of the Company adopted December 12, 1995;
- (c) Such action for the Company was duly, regularly and legally taken in accordance with law and the By-Laws of the Company; and said resolutions have not been modified, altered or rescinded and the same are still in full force and effect;
- (d) The following persons are duly qualified and acting officers or authorized representatives of the Company, duly elected or appointed to the offices or authorized to represent the Company in the capacities set forth opposite their respective names, and the signature appearing opposite the name of each person is the genuine signature:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
John D. Parker	President/CEO	<u>John D. Parker</u>
Sammie Buchanan	Vice-President	<u>Sammie Buchanan</u>
David W. Pruitt	Secretary/Treasurer	<u>David W. Pruitt</u>

IN WITNESS WHEREOF, I have executed this Certificate on behalf of the Company this 12th day of December, 1995.

David W. Pruitt  
David W. Pruitt, Secretary

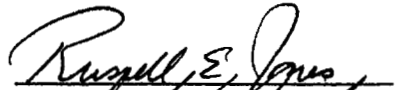
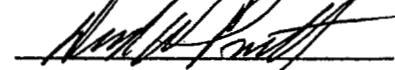
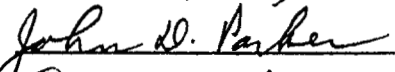
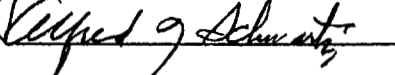
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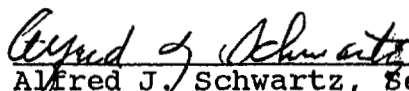
**GUARANTOR'S CERTIFICATE AS TO RESOLUTIONS  
OF BOARD OF DIRECTORS AND INCUMBENCY**

The undersigned, the Secretary of Cap Rock Electric Cooperative, Inc. (the "Guarantor"), a Texas corporation, hereby certifies that he is authorized to execute this Certificate on behalf of the Guarantor and further certifies that:

- (a) The Guarantor is duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and there is no pending or contemplated proceeding for the merger, consolidation, sale of assets or business or dissolution of the Guarantor;
- (b) Attached hereto as Attachment 1 is a true, complete and correct copy of the resolutions of the Board of Directors of the Guarantor adopted December 12, 1995;
- (c) Such action for the Guarantor was duly, regularly and legally taken in accordance with law and the By-Laws of the Guarantor; and said resolutions have not been modified, altered or rescinded and the same are still in full force and effect;
- (d) The following persons are duly qualified and acting officers or authorized representatives of the Guarantor, duly elected or appointed to the offices or authorized to represent the Guarantor in the capacities set forth opposite their respective names, and the signature appearing opposite the name of each person is the genuine signature:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Russell E. Jones	Chairman of the Board	
David W. Pruitt	President/CEO	
John D. Parker	Vice-President/CFO	
Alfred J. Schwartz	Secretary/Treasurer	

IN WITNESS WHEREOF, I have executed this Certificate on behalf of the Company this 12th day of December, 1995.

  
Alfred J. Schwartz, Secretary

CERTIFICATE OF GUARANTOR'S RESOLUTIONS

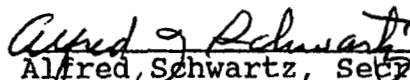
RESOLVED, that the Guarantor guarantee a loan in the aggregate principal amount of \$3,127,566.00 obtained by Cap Rock Cooperative Finance Corporation from National Rural Utilities Cooperative Finance Corporation ("CFC") upon terms and conditions set forth in the loan and security agreement presented to this meeting, bearing such interest as is provided in the note evidencing such loan, and providing for payment thereof within ten (10) years after the date of said agreement, and

RESOLVED, that Chairman of the Board of the Guarantor, Russell E. Jones, be and hereby is authorized and empowered to take in the name and on behalf of the Guarantor any and all action deemed necessary, convenient or desirable in connection with and for the purpose of effecting such guaranty, it being the express purpose of this resolution to confer upon said authorized person the full authority with respect to any and all matters in connection with said loan from CFC without the necessity of other or further action of the Board of Directors to the end that all persons may rely conclusively upon such action and upon this resolution, and any acts or things heretofore done or authorized to be done by said authorized person in connection with the loan be and they hereby are ratified, confirmed, approved and adopted.

I, Alfred Schwartz, do hereby certify that I am the secretary of Cap Rock Electric Cooperative, Inc., and that the above is a correct copy of the original resolution entered in the Minute Book of the Cooperative at the regular meeting of the Board of Directors of Cap Rock Electric Cooperative, Inc.

The foregoing resolution has not been amended, rescinded, or modified and is in full force and effect on the date hereof.

Witness by signature under seal of Cap Rock Electric Cooperative, Inc. this 12th day of December, 1995.

  
Alfred Schwartz, Secretary

(SEAL)

McGOWEN & LYON, P.C.

ATTORNEYS AT LAW  
711 N. TRAVIS STREET  
SHERMAN, TEXAS 75090-4950

(903) 868-1528  
FAX (903) 893-1734

JERRY McGOWEN  
RONNIE LYON  
LAWRENCE A. PHILLIPS

December 15, 1995

General Counsel  
National Rural Utilities  
Cooperative Finance Corporation  
Woodland Park  
2201 Cooperative Way  
Herndon, Virginia 22071

Re: Cap Rock Cooperative Finance Corporation

Dear Sir:

I am counsel for Cap Rock Electric Cooperative, Inc. organized under the laws of the State of Texas ("Guarantor") and render this opinion to you in connection with the loan of \$3,127,566.00 provided for in the loan and security agreement ("CFC Loan Agreement"), dated as of December 12, 1995, made by and between Cap Rock Cooperative Finance Corporation ("Borrower") and National Rural Utilities Cooperative Finance Corporation ("CFC").

I have examined such corporate records and proceedings of the Guarantor, and such other documents as I have deemed necessary as a basis for the opinions hereinafter expressed.

I have also examined the following documents as executed and delivered: (1) the Guaranty ("Guaranty"), dated December 12, 1995, (2) the CFC Loan Agreement, and (3) the Promissory Note ("CFC Note"), dated the date of the CFC Loan Agreement, in the principal amount set forth hereinabove payable to the order of CFC.

Based upon the foregoing, I am of the opinion that:

(i) the Guarantor is a duly organized and validly existing corporation in good standing under the laws of the jurisdiction of its organization, and the Guarantor has full corporate power (1) to execute and deliver the Guaranty; (2) to perform all acts required to be done by it under the Guaranty; and (3) to own, operate and maintain its properties and operate its business as conducted at the date of this Opinion;

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December 15, 1995  
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(ii) to the extent reasonably required for the maintenance and operation of its properties and business taken as a whole, the Guarantor has complied with all requirements of the laws of all States in which it operates or does business and holds all certificates, licenses, consents or approvals of governmental authorities required to be obtained on or prior to the date of this Opinion to enable it to engage in the business then transacted by it;

(iii) the Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes the valid and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with its terms, provided that such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting the enforcement of creditor's rights in general; provided further, however, that in my opinion none of such laws makes the rights and remedies provided for in the Guaranty inadequate for enforcing the rights thereunder;

(iv) the execution and performance by the Guarantor of the Guaranty and the transactions contemplated thereby will not violate any provision of law, the articles of incorporation, or bylaws of the Guarantor, or result in the breach of, or constitute a default under, any agreement, indenture or other instrument to which the Guarantor is a party, or by which it may be bound, known to counsel;

(v) no authorization from any regulatory body is required in connection with the execution and delivery of the Guaranty;

(vi) I know of no litigation pending or threatened against or affecting the Guarantor or its property which, in my opinion, would have a material adverse effect upon the business, operations or financial condition of the Guarantor.

(vii) The note, guaranty and loan agreements which have been executed by the Guarantor and Borrower are valid and effective under Texas law even though the corporate seal was not affixed thereto. A corporate seal is not necessary under Texas law in order for these documents to be valid.

Sincerely,



Ronnie Lyon

RL:tp

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## G U A R A N T Y

For and in consideration of any and all loans, advances, acceptances, discounts and extensions of credit made by National Rural Utilities Cooperative Finance Corporation, a corporation organized and existing under the laws of the District of Columbia ("CFC"), to, for the account of, or on behalf of Cap Rock Cooperative Finance Corporation, ("Borrower"), and as an inducement for CFC to make future loans, advances, acceptances, discounts and extensions of credit to, for the account of or on behalf of the Borrower, the undersigned, a Texas corporation ("Guarantor"), hereby absolutely and unconditionally guarantees to CFC the punctual payment in full of the principal, interest and other sums due and to become due from the Borrower to CFC at any time and from time to time from the date hereof until the termination of the liability of the Guarantor hereunder as hereinafter provided, on account of any and all obligations, indebtedness and liability of the borrower to CFC, whether now existing or hereafter incurred, whether direct, indirect or contingent, whether otherwise guaranteed or secured, and whether on open account or evidenced by a note, draft, check or other instrument or document (all of which obligations, indebtedness and liability are hereinafter referred to as "Indebtedness").

The Guarantor expressly waives the following: notice of the incurring of Indebtedness by the Borrower; the acceptance of this Guaranty by CFC, presentment and demand for payment, protest, notice of protest and notice of dishonor or non-payment of any instrument evidencing Indebtedness of the Borrower; any right to require suit against the Borrower or any other party before enforcing this Guaranty; any right to have security applied before enforcing this Guaranty; and any right of subrogation to CFC's rights against the Borrower until the Borrower's Indebtedness is paid in full.

The Guarantor hereby consents and agrees that renewals and extensions of time of payment, surrender, release, exchange, substitution, dealing with or taking of additional collateral security, taking or release of other guarantees, abstaining from taking advantage of or realizing upon any collateral security or other guarantees and any and all other forbearance or indulgences granted by CFC to the Borrower or any other party may be made, granted and effected by CFC without notice to the Guarantor and without in any manner affecting its liability hereunder.

In the event that a petition in bankruptcy or for an arrangement or reorganization of the Borrower under the bankruptcy laws or for the appointment of a receiver for the Borrower or any of its property is filed by or against the Borrower, or if the Borrower shall make an assignment for the benefit of creditors or shall become insolvent, all Indebtedness of the Borrower shall, for the purpose of this Guaranty, be deemed at CFC's election to have become immediately due and payable.

The Guarantor further agrees to pay CFC any and all costs, expenses and reasonable attorneys' fees paid or incurred by CFC in collecting or endeavoring to collect the Indebtedness of the Borrower or in enforcing or endeavoring to enforce this Guaranty. All accounts, deposits, and property of the Guarantor with or in the hands of CFC shall be and stand pledged as collateral security for the Indebtedness of the Borrower, and CFC shall have the same right of setoff with respect to deposits and other credits of the Guarantor as it has with respect to deposits and other credits of the Borrower.

## G U A R A N T Y

For and in consideration of any and all loans, advances, acceptances, discounts and extensions of credit made by National Rural Utilities Cooperative Finance Corporation, a corporation organized and existing under the laws of the District of Columbia ("CFC"), to, for the account of, or on behalf of Cap Rock Cooperative Finance Corporation, ("Borrower"), and as an inducement for CFC to make future loans, advances, acceptances, discounts and extensions of credit to, for the account of or on behalf of the Borrower, the undersigned, a Texas corporation ("Guarantor"), hereby absolutely and unconditionally guarantees to CFC the punctual payment in full of the principal, interest and other sums due and to become due from the Borrower to CFC at any time and from time to time from the date hereof until the termination of the liability of the Guarantor hereunder as hereinafter provided, on account of any and all obligations, indebtedness and liability of the borrower to CFC, whether now existing or hereafter incurred, whether direct, indirect or contingent, whether otherwise guaranteed or secured, and whether on open account or evidenced by a note, draft, check or other instrument or document (all of which obligations, indebtedness and liability are hereinafter referred to as "Indebtedness").

The Guarantor expressly waives the following: notice of the incurring of Indebtedness by the Borrower; the acceptance of this Guaranty by CFC, presentment and demand for payment, protest, notice of protest and notice of dishonor or non-payment of any instrument evidencing Indebtedness of the Borrower; any right to require suit against the Borrower or any other party before enforcing this Guaranty; any right to have security applied before enforcing this Guaranty; and any right of subrogation to CFC's rights against the Borrower until the Borrower's Indebtedness is paid in full.

The Guarantor hereby consents and agrees that renewals and extensions of time of payment, surrender, release, exchange, substitution, dealing with or taking of additional collateral security, taking or release of other guarantees, abstaining from taking advantage of or realizing upon any collateral security or other guarantees and any and all other forbearance or indulgences granted by CFC to the Borrower or any other party may be made, granted and effected by CFC without notice to the Guarantor and without in any manner affecting its liability hereunder.

In the event that a petition in bankruptcy or for an arrangement or reorganization of the Borrower under the bankruptcy laws or for the appointment of a receiver for the Borrower or any of its property is filed by or against the Borrower, or if the Borrower shall make an assignment for the benefit of creditors or shall become insolvent, all Indebtedness of the Borrower shall, for the purpose of this Guaranty, be deemed at CFC's election to have become immediately due and payable.

The Guarantor further agrees to pay CFC any and all costs, expenses and reasonable attorneys' fees paid or incurred by CFC in collecting or endeavoring to collect the Indebtedness of the Borrower or in enforcing or endeavoring to enforce this Guaranty. All accounts, deposits, and property of the Guarantor with or in the hands of CFC shall be and stand pledged as collateral security for the Indebtedness of the Borrower, and CFC shall have the same right of setoff with respect to deposits and other credits of the Guarantor as it has with respect to deposits and other credits of the Borrower.

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PROMISSORY NOTE

\$3,127,566.00

Date: December 12, 1995

CAP ROCK COOPERATIVE FINANCE CORPORATION, a Texas corporation (the "Borrower"), for value received, hereby promises to pay, without setoff, deduction, recoupment or counterclaim, to the order of NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION (the "Payee"), at its office in Herndon, Virginia or such other location as the Payee may designate to the Borrower, in lawful money of the United States, the principal sum of the aggregate unpaid principal amount of all Advances made by the Payee pursuant to that certain Loan and Security Agreement between the Borrower and the Payee, dated as of even date herewith and as it may be amended from time to time (the "Loan Agreement") and to pay interest on all amounts remaining unpaid hereunder from the date of each Advance in like money, at said office, at the rate and in amounts and on the dates as provided in the Loan Agreement together with any other amount payable under the Loan Agreement, except that if not sooner paid, any balance of the principal amount and interest accrued thereon shall be due and payable ten (10) years from the date hereof (such date herein called the "Maturity Date").

The principal hereof and accrued interest thereon and any other amount due under the Loan Agreement may be declared to be forthwith due and payable in the manner, upon the conditions, and with the effect provided in the Loan Agreement.

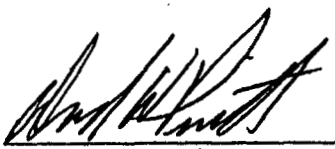
The Borrower waives demand, presentment for payment, notice of dishonor, protest, notice of protest and notice of non-payment of this Note and waives the defense of usury.

This Note is the Note referred to in, and has been executed and delivered pursuant to, the Loan Agreement.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed as of the date hereof.

(SEAL)

Attest:

  
Secretary

CAP ROCK COOPERATIVE FINANCE  
CORPORATION

By:



Title:

President

Loan No.: TX 703-A-9001

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## LOAN AND SECURITY AGREEMENT

LOAN AND SECURITY AGREEMENT ("Agreement") made as of December 12 1995 by and between CAP ROCK COOPERATIVE FINANCE CORPORATION, a Texas corporation ("Borrower"), and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION, a District of Columbia corporation ("CFC").

### RECITALS

WHEREAS, Borrower has requested CFC to make the Loan to Borrower described in Schedule 1 hereto; and

WHEREAS, CFC is willing to make the Loan upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Borrower and CFC do hereby agree as follows:

#### 1. CONSTRUCTION AND DEFINITION OF TERMS

All terms used herein which are defined by the Virginia Uniform Commercial Code shall have the same meanings assigned to them by the Virginia Uniform Commercial Code unless and to the extent varied by this Agreement. All accounting terms not specifically defined herein shall have the meanings assigned to them as determined by generally accepted accounting principles. In addition to the terms defined elsewhere in this Agreement, unless the context otherwise requires, when used herein, the following terms shall have the following meanings:

"Advance" or "Advances" shall mean advances by CFC to Borrower pursuant to the terms and conditions of this Agreement.

"Amortization Basis Date" shall mean the earlier of (a) two (2) years from the date hereof or (b) the date on which the CFC Commitment has been fully advanced.

"Business Day" shall mean any day that CFC is open for business.

"Certified" shall mean that the information, statement, schedule, report or other document required to be "Certified" shall contain a representation of a duly authorized officer of Borrower that such information, statement, schedule, report or other document is true and correct and complete.

"CFC Commitment" shall have the meaning as defined in Schedule 1 hereto.

"CFC Fixed Rate" shall mean such fixed rate as is then available for loans similarly classified pursuant to CFC's policies and procedures then in effect.

"CFC Fixed Rate Term" shall mean the specific period of time that a CFC Fixed Rate is in effect.



"CFC Variable Rate" shall mean the rates established by CFC for similarly classified variable interest rate associate member loan programs established by CFC from time to time.

"Closing" shall mean the first date on which funds are advanced to Borrower hereunder.

"Collateral" shall mean all of the Borrower's personal property of every kind, nature or description, tangible or intangible, including, but not limited to, the Borrower's right, title and interest in Equipment, Inventory and Receivables, all contract rights, general intangibles and instruments, and all proceeds, cash and non-cash, including insurance proceeds, and products of all of the foregoing and all books and records documenting, describing or in any way relating to any or all of the foregoing, whether in the possession of Borrower or any other person.

"Conversion Request" shall mean a request of the Borrower's President, General Manager or Board of Directors, in form and substance satisfactory to CFC, that requests an interest rate conversion.

"Debt Service Coverage Ratio" or "DSC" shall for any year mean (a) total net income or margins plus depreciation and interest on long-term debt for such year divided by (b) principal and interest on long-term debt payable in such year.

"Equipment" shall mean all right, title and interest of Borrower in and to equipment of every type and description, now owned and hereafter acquired and wherever located, including, without limitation, all machinery, vehicles, furniture, furnishings, tools, fixtures, property in, on or with which any of the foregoing may be stored or maintained, materials and supplies and any equipment described in any supplemental or separate schedule now or hereafter delivered by or on behalf of Borrower to CFC, together with all present and future parts, additions, accessories, attachments, accessions, replacement parts and substitutions in any form whatsoever.

"Event of Default" shall mean any of the events described in Section 8 hereof.

"Guarantor" shall mean that entity or entities set forth in Schedule 1 hereto.

"Inventory" shall mean all right, title and interest of Borrower in and to inventory of every type and description, now owned and hereafter acquired and wherever located, including, without limitation, raw materials, work in process, finished goods, goods returned or repossessed or stopped in transit, goods used for demonstration, promotion, marketing or similar purposes, property in or on which any of the foregoing may be stored or maintained and all materials and supplies usable or used or consumed in the course of Borrower's business, together with all present and future substitutions, parts, additions, accessories, attachments, accessions, replacement parts and additions thereto in any form whatsoever.

"Lien" shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set off, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction

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in the nature thereof and any secured transaction under the Uniform Commercial Code of any jurisdiction.

"Loan" shall mean the loan or loans by CFC to Borrower, pursuant to this Agreement and the Note, in an aggregate principal amount not to exceed the CFC Commitment.

"Loan Capital Term Certificate" or "LCTC" shall mean a subordinated certificate representing an investment in CFC purchased by the Borrower in connection with the Loan.

"Maturity Date" shall have the meaning as defined in the Note.

"Note" shall mean a promissory note executed by the Borrower in the form of Exhibit A hereto.

"Obligations" shall include the full and punctual performance of all present and future duties, covenants and responsibilities due to CFC by Borrower under this Agreement, the Note, the Other Agreements and otherwise, all present and future obligations of Borrower to CFC for the payment of money under this Agreement, the Note, the Other Agreements and otherwise, extending to all principal amounts, interest, late charges and all other charges and sums, as well as all costs and expenses payable by Borrower under this Agreement, the Note, the Other Agreements and otherwise, and any and all other present and future monetary liabilities of Borrower to CFC, whether direct or indirect, contingent or noncontingent, matured or unmatured, accrued or not accrued, related or unrelated to this Agreement, whether or not of the same character or class as Borrower's obligations under this Agreement and the Note, whether or not secured under any other document, instrument or statutory or common law provision, as well as all renewals, refinancings, consolidations, re-castings and extensions of any of the foregoing.

"Other Agreements" shall mean any and all promissory notes, security agreements, assignments, subordination agreements, pledge or hypothecation agreements, mortgages, deeds of trust, leases, contracts, guaranties, instruments and documents now and hereafter existing between CFC and Borrower, executed and/or delivered pursuant to this Agreement or guaranteeing, securing or in any other manner relating to any of the Obligations, including, without limitation, the instruments and documents referred to in Subsection 5.02 hereof.

"Payment Date" shall mean the last day of each of the months referred to in Schedule 1 hereto.

"Payment Notice" shall mean a notice furnished by CFC to Borrower that indicates the precise amount of each payment of principal and/or interest and the total amount of each payment.

"Permitted Liens" shall mean: (a) Liens of CFC; (b) Liens, if any, consented to by CFC in writing; (c) Liens for taxes, assessments or governmental charges not due and delinquent; and (d) mechanics' and similar liens not then delinquent.

"Person" shall include natural persons, corporations, associations, partnerships, joint ventures, trusts, governments and agencies and departments thereof, and every other entity of every kind.

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"**Receivables**" shall mean all of Borrower's present and future accounts, contract rights, notes, instruments, documents, chattel paper, tax refunds and general intangibles, all present and future rights of Borrower to the payment of money due or to become due to Borrower for any reason whatsoever, whether arising out of the sale, lease or other disposition of goods or other property by Borrower or under any contract or agreement to render services of any kind or otherwise, whether or not such right to payment has been earned by performance, and howsoever such right to payment may be evidenced, whether by open account, instrument, note, draft, chattel paper or otherwise, together with all other rights which Borrower may at any time have, by law or agreement, against any account debtor or other obligor obligated to make such payment, all goods returned, repossessed, or stopped in transit the sale, lease or other disposition of which contributed to the creation of any Receivable, and all rights and Liens which Borrower may at any time have, by law or agreement, against any property of such account debtor or against any property of any such other obligor, and all present and future rights of Borrower with respect to all licenses, patent rights, copyrights, franchises, trade names and trademarks.

"**Voting Stock**" shall mean the shares of any class of capital stock of a corporation having ordinary voting power to elect the directors, officers or trustees thereof, including such shares that shall or might have voting power by reason of the occurrence of one or more conditions or contingencies.

## **2. LOAN**

**2.01 Advances.** CFC agrees to make, and the Borrower agrees to request Advances at the office of CFC in Herndon, Virginia or at such other place as may be designated by CFC, in an aggregate principal amount not to exceed the CFC Commitment.

**2.02 Note.** Borrower's obligation to repay Advances with interest shall be evidenced by the Note, to be duly executed and delivered by Borrower to CFC at or prior to Closing. Borrower shall give CFC written notice of the date on which each Advance is to be made.

**2.03 Payment Amortization and Interest Rate.** The Note shall be payable and bear interest as follows:

**A. Payments and Amortization.** The Borrower shall promptly pay on each Payment Date all amounts then owing. If not sooner paid, any amount due on account of the unpaid principal, interest accrued thereon or fees shall be due and payable on the Maturity Date. At least quarterly, CFC will furnish to the Borrower a Payment Notice. Such Payment Notice shall be sent to the Borrower at least ten (10) days before the next ensuing Payment Date.

Principal will be amortized in accordance with the method stated in Schedule 1 hereto.

No provision of this Agreement or the Note shall require the payment, or permit the collection, of interest in excess of the highest rate permitted by applicable law.

**B. Application of Payments.** Each payment shall be applied first to any charges then due on the Note, second to interest accrued on the principal amount to the due date of such payment on the Note (or, at the election of the holder of the Note, to the date of such payment if the same is not paid on its

due date); and the balance to the reduction of principal against the Note according to an amortization schedule provided to Borrower from CFC.

C. **Election of Interest Rate.** Prior to each Advance, the Borrower must select in writing one of the following interest rates: (i) a CFC Fixed Rate; or (ii) the CFC Variable Rate. In the event the Borrower does not select an interest rate in writing when a CFC Fixed Rate is subject to repricing, then Advances shall bear interest according to CFC's then available interest rate repricing policies.

Interest shall be computed for the actual number of days elapsed on the basis of a year of 365 days, until the first day of the complete calendar quarter following the Amortization Basis Date. Thereafter, if the Advance bears interest at a CFC Fixed Rate, interest shall be computed on the basis of a 30-day month and 360-day year. If the Advance bears interest at the CFC Variable Rate, interest shall be computed for the actual number of days elapsed on the basis of a year of 365 days.

(i) **Fixed Rate.** If the Borrower elects a fixed rate, the rate shall be a CFC Fixed Rate and such rate shall be in effect for a CFC Fixed Rate Term. During the CFC Fixed Rate Term, all Advances shall bear interest at the rate then in effect associated with such CFC Fixed Rate Term if it does not extend beyond the Maturity Date of such other fixed rate that corresponds to the amount of time remaining prior to the Maturity Date.

(a) **Repricing of a CFC Fixed Rate.** CFC shall provide the Borrower with at least 60 days prior written notice of the date on which a CFC Fixed Rate is no longer in effect. Pursuant to CFC's policies of general application for such repricing, the Borrower may choose any of the interest rate options then available for similarly classified borrowers repricing from a CFC Fixed Rate.

(ii) **CFC Variable Rate.** If the Borrower elects a CFC Variable Rate, such CFC Variable Rate shall apply until the Maturity Date of the Note unless the Borrower elects to convert to a CFC Fixed Rate pursuant to the terms hereof. In the event Borrower selects a CFC Variable Rate, such rate shall be applicable to the entire amount advanced or to be advanced.

#### 2.04 Conversion of Interest Rates.

(A) **CFC Variable Rate to a CFC Fixed Rate.** The Borrower may at any time request to convert from the CFC Variable Rate to the CFC Fixed Rate by submitting to CFC a Conversion Request. Each rate shall be equal to the rate of interest offered by CFC in effect on the date of the Conversion Request. The effective date of the new interest rate shall be a date determined by CFC pursuant to its policies of general application following receipt of the Conversion Request. Prior to the time when a CFC Fixed Rate is no longer applicable, the Borrower may select the CFC Variable Rate or a CFC Fixed Rate. The Borrower may not select a CFC Fixed Rate with a CFC Fixed Rate Term that extends beyond the Maturity Date.

(B) **CFC Fixed Rate to CFC Variable Rate.** The Borrower may at the discretion of CFC convert from a CFC Fixed Rate to the CFC Variable Rate, if the Borrower: (i) submits a Conversion Request requesting that the CFC Variable Rate apply to any outstanding loan balance on the Note and future Advances pursuant thereto; and (ii) pays to CFC promptly upon receipt of an invoice a conversion fee calculated pursuant to CFC's loan policies as established from time to time for similarly classified loans. The effective

date of the CFC Variable Rate shall be a date determined by CFC pursuant to its policies of general application following receipt of the Conversion Request.

(C) **CFC Fixed Rate to Another CFC Fixed Rate.** At the discretion of CFC, the Borrower may at its option at any time convert any amount outstanding on the Note from a CFC Fixed Rate to another CFC Fixed Rate if the Borrower (i) submits a Conversion Request requesting that a CFC Fixed Rate apply to any outstanding loan balance on the Note and (ii) pays to CFC promptly upon receipt of an invoice any applicable conversion fee calculated pursuant to CFC's long-term loan policies as established from time to time for similarly classified long-term loans. The effective date of the new interest rate shall be a date determined by CFC pursuant to its policies of general application following receipt of the Conversion Request.

**2.05 Prepayment.** The Borrower may at any time, on not less than 30 days' written notice to CFC, prepay the Note, in whole or in part, together with the interest accrued to the date of prepayment and any prepayment premium that CFC may from time to time prescribe.

**2.06 Maturity.** All amounts outstanding under this Agreement and the Note if not sooner paid, shall be finally due and payable on the Maturity Date.

**2.07 Loan Capital Term Certificate.** The Borrower shall purchase a LCTC in the amount of five percent (5%) of each Advance hereunder at the time of and with funds from such Advance or from such other source as CFC may approve.

### **3. SECURITY**

**3.01 Security Interest.** As security for the payment and performance of all of the Obligations, Borrower hereby assigns, pledges and grants to CFC a continuing security interest in the Collateral. CFC's security interest shall continually exist until all Obligations have been paid in full. If required by CFC at any time, Borrower shall make notations, satisfactory to CFC, on its books and records disclosing the existence of CFC's security interest in the Collateral. Borrower agrees that, with respect to the Collateral which is subject to Article 9 of the Uniform Commercial Code, CFC shall have, but shall not be limited to, all the rights and remedies of a secured party under the Uniform Commercial Code. CFC shall have no liability or duty, either before or after the occurrence of an Event of Default hereunder, on account of loss of or damage to, or to collect or enforce any of its rights against, the Collateral, or to preserve any rights against account debtors or other parties with prior interests in the Collateral.

**3.02 Covenants and Representations Concerning Collateral.** With respect to all of the Collateral, Borrower covenants, warrants and represents that:

(a) No financing statement covering any of the Collateral is on file in any public office or land or financing records except for financing statements in favor of CFC.

(b) Borrower is the legal and beneficial owner of all of the Collateral, free and clear of all Liens, except for Permitted Liens.

(c) The security interest granted CFC hereunder shall constitute a first and only Lien upon the Collateral, except for Permitted Liens, and Borrower will not, except in the ordinary course of business, transfer, discount, sell

or assign any interest in the Collateral nor permit any other Lien to be created or remain thereon except for Permitted Liens.

(d) At all reasonable times during normal business hours CFC and its agents and designees may enter Borrower's premises and inspect the Collateral and all books and records of Borrower (in whatever form) relating to the Collateral or to the finances and operations of Borrower's business.

(e) The chief executive office, the principal place of business and the place where all books and records of Borrower pertaining to the Collateral is the place identified in Schedule 1 hereto and Borrower will not change such place without the prior written consent of CFC.

(f) All of the Collateral is located at the place identified in Schedule 1 hereto and Borrower will not change such place without the prior written consent of CFC.

(g) Borrower shall do, make, execute and deliver all such additional and further acts, things, deeds, assurances, instruments and documents as CFC may request to vest in and assure to CFC its rights hereunder or in any of the Collateral, including, without limitation, the execution and delivery of financing statements which CFC deems necessary or appropriate to perfect or continue the security interest granted herein, and Borrower agrees to pay all taxes, reasonable fees and costs (including attorney's fees) paid or incurred by CFC in connection with the preparation and filing or recordation thereof.

(h) Borrower shall promptly deliver to CFC, whenever requested by CFC and periodically but not more frequently than monthly if CFC shall so require, a Certified report or statement containing such information as may be requested by CFC concerning any of the Collateral, Borrower's financial condition or any other matter or matters.

(i) Borrower will maintain the Collateral in good order and condition, ordinary wear and tear excepted, and will use, operate and maintain the Collateral in compliance with all laws, regulations and ordinances and in compliance with all applicable insurance requirements and regulations. Borrower will pay promptly all taxes, judgments and charges of any kind levied or assessed thereon. Borrower shall promptly notify CFC in writing of any pending or threatened litigation involving the Collateral. Borrower shall promptly pay when due all transportation, storage, warehousing and other such charges and fees affecting or arising out of or relating to the Collateral and shall defend the Collateral, at Borrower's expense, against all claims and demands of any persons claiming any interest in the Collateral adverse to Borrower or CFC.

#### **4. REPRESENTATIONS AND WARRANTIES**

To induce CFC to enter into this Agreement, Borrower represents and warrants to CFC that:

**4.01 Good Standing.** Borrower is a corporation duly organized and existing in good standing under the laws of the state of its incorporation and has the power to own its property and to carry on its business and is duly

qualified to do business and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary.

**4.02 Authority.** Borrower has full power and authority to enter into this Agreement, to make the borrowings hereunder, to execute and deliver all documents and instruments required hereunder and to incur and perform the obligations provided for herein and in the Note, all of which have been duly authorized by all necessary and proper corporate and other action, and no consent or approval of any person, including, without limitation, stockholders and members of Borrower and any public authority or regulatory body, which has not been obtained is required as a condition to the validity or enforceability hereof or thereof.

**4.03 Binding Agreements.** This Agreement and the Note have been duly and properly executed by Borrower, constitute the valid and legally binding obligation of Borrower and are fully enforceable against Borrower in accordance with their terms, subject only to laws affecting the rights of creditors generally.

**4.04 No Conflicting Agreements.** The execution, delivery of and performance by Borrower of this Agreement and the Note, and the transactions contemplated thereby, will not (a) violate (i) any provision of law, any order, rule or regulation of any court or other agency of government, (ii) any award of any arbitrator, (iii) the charter or by-laws of Borrower, or (iv) any indenture, contract, agreement, mortgage, deed of trust or other instrument to which Borrower is a party or by which it or any of its property is bound, or (b) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument, or result in the creation or imposition of any Lien upon any of the property or assets of Borrower.

**4.05 Litigation.** There are no judgments, claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or its properties, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, which may result in any material adverse change in the business, operations, prospects, properties or assets or in the condition, financial or otherwise, of Borrower, and Borrower is not, to its knowledge, in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would have a material adverse effect on Borrower.

**4.06 Financial Condition.** The financial statements of Borrower as at the date set forth in Schedule 1 hereto, heretofore delivered to CFC are complete and correct, fairly present the financial condition of Borrower and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis. There are no liabilities of Borrower, direct or indirect, fixed or contingent, as of the date of such statements which are not reflected therein.

**4.07 Taxes.** Borrower has paid or caused to be paid all federal, state and local taxes to the extent that such taxes have become due. Borrower has

filed or caused to be filed all federal, state and local tax returns which are required to be filed by Borrower.

**4.08 Title to Properties.** Borrower has good and marketable title to all of its properties and assets.

**4.09 Licenses and Permits.** Borrower has duly obtained and now holds all licenses, permits, certifications, approvals and the like necessary to own and operate its property and business that are required by federal, state and local laws of the jurisdictions in which Borrower conducts its business and each remains valid and in full force and effect.

**4.10 Survival.** All representations and warranties made by the Borrower herein or made in any certificate delivered pursuant hereto shall survive the making of the Advance and the execution and delivery to CFC of the Note.

## **5. CONDITIONS OF LENDING**

CFC shall have no obligation to advance any funds to Borrower hereunder unless each of the following conditions precedent shall be satisfied as provided below:

**5.01 Representations and Warranties.** At Closing and at the time of every subsequent Advance hereunder, CFC and its counsel shall be fully satisfied that all covenants, representations and warranties set forth in this Agreement are true and correct on and as of such time with the same effect as though such covenants, representations and warranties had been made on and as of such time.

**5.02 Documents.** There shall have been delivered to CFC, fully completed and duly executed (when applicable), the following:

(a) This Agreement.

(b) The Note.

(c) A certificate of an officer of Borrower in a form which is fully satisfactory to CFC.

(d) Evidence fully satisfactory to CFC that all insurance coverages required pursuant to this Agreement or the Other Agreements are in effect and, if requested by CFC, copies of all insurance policies and endorsements.

(e) A written opinion of counsel to Borrower, which is dated subsequent to the date hereof and prior to Closing, addressed to CFC, and fully satisfactory to CFC.

(f) Copies of financing statements, continuation statements and/or such other documents as are necessary to create or continue a perfected security interest in favor of CFC in the Collateral, together with receipts from the recording officials or other evidence of filing.



(g) A guarantee by the entity identified in Schedule 1 hereto, a certificate and a guarantor opinion of counsel.

**5.03 Special Conditions.** At Closing and at the time of every subsequent Advance hereunder, CFC and its counsel shall be fully satisfied that the Borrower has complied and will continue to comply with any special conditions identified in Schedule 1 hereto.

**5.04 No Default.** At Closing and at the time of every subsequent Advance hereunder, Borrower shall be in compliance with all of the terms, covenants, warranties and provisions set forth herein and in the Other Agreements, no Event of Default nor any event which, upon notice or lapse of time or both, could constitute an Event of Default, shall have occurred, and the documents and matters required to be executed, delivered, opined and/or certified pursuant to Subsection 5.02 hereof shall be in full force and effect and/or true and correct, as the case may be.

**5.05 Legal Matters.** At Closing, all legal matters in connection therewith or incidental thereto shall be fully satisfactory to CFC's counsel.

**5.06 Requisitions.** The Borrower will requisition its Advances by submitting its written requisition to CFC in form and substance satisfactory to CFC. Advances shall be made only for the purpose set forth on Schedule 1.

## **6. AFFIRMATIVE COVENANTS**

Borrower covenants and agrees with CFC that, until all of the Obligations have been paid in full, Borrower will:

**6.01 Membership.** Remain a member in good standing of CFC.

**6.02 Taxes.** Pay and discharge all taxes, assessments and governmental charges upon Borrower, its income and properties prior to the date on which penalties are attached thereto.

**6.03 Corporate Existence.** Maintain its corporate existence in good standing.

**6.04 Continuation of Business and Compliance with Laws.** Continue its business operations as now being conducted and comply with all applicable federal, state and local laws, rules, ordinances, regulations and orders.

**6.05 Litigation.** Promptly notify CFC in writing of any action, suit or proceeding at law or in equity by or before any court, governmental agency or instrumentality which could result in any material adverse change in the business, operations, prospects, properties or assets or in the condition, financial or otherwise, of Borrower.

**6.06 Extraordinary Loss.** Promptly notify CFC in writing of any event causing extraordinary loss or depreciation of the value of any of Borrower's assets and the facts with respect thereto.

**6.07 Books and Records.** Keep and maintain proper and current books and records in accordance with generally accepted accounting principles

consistently applied and permit access by CFC to, reproduction by CFC of and copying by CFC from, such books and records at all reasonable times during normal business hours.

**6.08 Maintenance of Properties.** Maintain all properties and improvements necessary to the conduct of Borrower's business in good working order and condition, ordinary wear and tear excepted, and cause replacements and repairs to be made when necessary for the proper conduct of its business.

**6.09 Licenses.** Maintain, preserve and protect all licenses that are necessary to the conduct of the business of Borrower as now conducted. The Borrower shall use its best efforts in its business judgment to maintain all licenses free of any conflict with the rights of any other person.

**6.10 Further Assurances and Corrective Instruments.** Promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, to CFC from time to time such supplements hereto and such financing statements and other instruments and documents as may be requested by CFC to protect and preserve the Collateral, CFC's security interest therein, perfection of CFC's security interest and/or CFC's rights and remedies hereunder.

**6.11 Use of Proceeds.** Use advances made hereunder and under the Note only for the purpose identified in Schedule 1 hereto and for the payment of the costs, expenses and fees incident to this Agreement and for no other purpose whatsoever without the prior written consent of CFC.

**6.12 Maintenance of DSC.** Until payment in full of the Note and performance of all obligations of the Borrower hereunder, maintain a DSC of 1.20, said ratio being determined by averaging the two highest annual ratios during the most recent three calendar years.

**6.13 Insurance.** Maintain insurance on the Mortgaged Property with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by entities engaged in the same and similar business or similarly situated and as may be further specified in Schedule 1 hereto. Said insurance shall name CFC as "loss payee" and a certificate evidencing said insurance shall be provided to CFC.

**6.14 Management Fee.** Not pay any management fees or, if currently paying a management fee, pay any increase in management fees.

**6.15 Annual Certificate.** Within ninety (90) days after the close of each calendar year, commencing with the year following the year in which the initial Advance hereunder shall have been made, deliver to CFC a written statement signed by its General Manager, stating that to the best of said person's knowledge, the Borrower has fulfilled all of its obligations under this Agreement and the Note throughout such year or, if there has been a default in the fulfillment of any such obligations, specifying each such default known to said person and the nature and status thereof.

**6.16 Financial Statements.** Furnish to CFC (a) as soon as available but in no event later than ninety (90) days after the end of each annual accounting period of Borrower, the audit report for such period, all in form and detail satisfactory to CFC, prepared in accordance with generally accepted