

## Agreement for Service of Arclar Company L.L.C. Portal No. 3

This Agreement supercedes "Agreement for Service of Arclar Company L.L.C. Portal No. 3" signed on August 8, 2001.

SouthEastern Illinois Electric Cooperative, Illinois Power Company and Arclar Company, L.L.C. agree to the following terms for service of Arclar's Portal No. 3 facilities:

### Part A:

1. Illinois Power shall be entitled to serve the following Arclar Portal No. 3 facilities located on the "Henry Roe Tract"<sup>1</sup> as it existed on July 2, 1965:

<u>Description</u>	<u>Approximate Load (HP)</u>
Warehouse	25
Office	100
Slope Belt	800
Stacker Belt	150
Stacker Belt	150
Stacker Travel	15
Stacker Cable Winch	30
Overland Belt	350
<u>Sediment Pond No. 13 Pump</u>	<u>50</u>
Total:	1670 HP

2. In addition, Illinois Power shall be entitled to serve the Sediment Pond No. 15 Pump Station that is located outside the Henry Roe Tract as it existed on July 2, 1965. Illinois Power shall be entitled to serve this pump in order to avoid duplication of distribution/metering facilities. Said pump is estimated to be 50 HP.

3. In addition, Illinois Power shall be entitled to serve any miscellaneous and incidental power requirements related to the load that Illinois Power is entitled to serve as stated above.

4. Illinois Power shall be entitled to serve all future load located on the Henry Roe Tract (as it existed on July 2, 1965) that is being utilized by Arclar Company L.L.C. Portal No.

3. Should SouthEastern Illinois Electric Cooperative elect to become an Alternative Retail Electric Supplier, Arclar Company, L.L.C. remains liable for payment to Illinois Power Company in an amount equal to the sum of the 1.5 cents multiplied by the kilowatt- hours of electric usage allocated to IP as required by the terms and conditions of this Agreement for a period of 12 years from the date of this Agreement.

5. SouthEastern Illinois Electric Cooperative will purchase and install all metering equipment required to measure the demand and energy consumed by the facilities which Illinois

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<sup>1</sup> Attached hereto as "Exhibit A" and incorporated herein by reference is the area included in the Henry Roe Tract as of July 2, 1965.

Power is entitled to serve. This metering equipment will be located near the north boundary of the Henry Roe Tract as it existed on July 2, 1965 on the 4160/7200V Y distribution, underbuild circuit running south from the Arclar substation. Illinois Power will reimburse SouthEastern Illinois Electric Cooperative for the costs incurred installing this metering equipment and shall also reimburse SouthEastern Illinois Electric Cooperative for one-half (50%) of all material costs for the metering equipment. SouthEastern Illinois Electric Cooperative will maintain ownership of this metering equipment and shall also be responsible for all repair/replacement of this metering equipment. Illinois Power Company shall have the ability to audit and reject any part of the bill for the included material costs. Once Illinois Power has received the invoice and concurs with the same, it agrees to pay SouthEastern Illinois Electric Cooperative one-half of the amount due within thirty days of actual receipt of said invoice. Illinois Power shall have the authority to audit and examine the load to which it has the authority to serve beneath and above the ground. Any audits or examinations of the load served by Illinois Power either above or below ground shall be performed during normal business hours (8:00 a.m. to 4:00 p.m., Monday through Friday) excluding recognized National holidays of SouthEastern Illinois Electric Cooperative and Arclar.

6. Illinois Power shall have the right to have personnel on site at the time of the installation and to have the meter tested at installation. Illinois Power shall have the right to have the sub-metering tested by SouthEastern Illinois Electric Cooperative and at the expense of SouthEastern Illinois Electric Cooperative during normal business hours and in accordance with recognized testing practices and procedures. SouthEastern Illinois Electric Cooperative to provide meter information no later than the time of installation. The meter information to include, but is not limited to, meter reading display information.

7. Illinois Power Company shall have access to the metering point during normal business hours (8:00 a.m. to 4:00 p.m., Monday through Friday) excluding recognized National holidays of SouthEastern Illinois Electric Cooperative and Arclar.

8. SouthEastern Illinois Electric Cooperative, shall also have the right to read said meter for purposes of deducting the consumption from the existing Arclar metering point for purposes of billing.

9. Arclar Company, L.L.C. agrees that Illinois Power shall have the right to utilize Arclar's substation and other distribution facilities required to serve the load in which Illinois Power is entitled to serve.

10. SouthEastern Illinois Electric Cooperative, once appropriate metering is installed, shall, in the name of Illinois Power Company and as IP's Agent, bill Arclar during the first 10 days of each month, for Arclar's previous month's energy usage as recorded on the meter(s) registering energy to those facilities, as allocated herein to be served by IP.. Arclar shall remit a payment amount equal to 1.5 cents multiplied by the energy usage recorded on the meter as outlined as in Part A, Section 4 of this Agreement and SouthEastern Illinois Cooperative shall then forward the amount of Arclar's payment to Illinois Power, less a charge of \$25 per month for providing such billing service. In addition a separate invoice for verification purposes shall be sent to:

Mr. Bob Perkes  
Illinois Power Company  
500 S. 27<sup>th</sup> Street  
Decatur, IL 62521

The mailing information shall be changed upon request from Illinois Power Company.

11. Illinois Power shall receive the payment for the previous month's usage by the twenty-fifth (25<sup>th</sup>) day of the subsequent month. Should the twenty-fifth (25<sup>th</sup>) day of the month fall on a weekend or national holiday, the payment should be received by the next working day.

If Arclar fails to make payment by due date, then at the request of Illinois Power, SouthEastern Illinois Electric Cooperative shall discontinue service to Arclar to the meter(s) measuring usage on the Henry Roe Tract upon fifteen (15) days written notice by SouthEastern to Arclar of its intention to do so. It is expressly understood that such termination of service shall not relieve Arclar of any obligation under this Agreement. Illinois Power shall have the option to instruct its agent, SouthEastern Illinois Electric Cooperative to bill Arclar appropriate late payment charges and/or surety deposits as allowed by Part 280 of the Illinois Administrative Code as may be amended from time to time.

12. If, after October 31, 2001, any energy usage, which has been allocated to Illinois Power by the terms of this Agreement, is not being metered in total by the submeter(s), then Arclar shall pay IP the sum of \$7,000 per month, or any prorated portion thereof, until such time the apportioned usage is being metered in total by the submeter(s).

**Part B:**

1. SouthEastern Illinois Electric Cooperative shall be entitled to serve all of the remaining Arclar Portal No. 3 facilities including the following:

<u>Description</u>	<u>Approximate Load (HP)</u>
Prep Plant	4000
Feeder Belt	20
Feeder Belt	20
Plant Feed Belt	125
Truck Loadout	500
Sediment Pond No. 14 Pump	50
Fan (North)	500
Fan (South)	500
Hoist (North)	50
Hoist (South)	50
Raw Coal Scalping Screen Belt	125
Rotary Breaker Drive	60
Scalping Screen Drive	50
Refuse Belt/Bin	50
<u>Underground</u>	<u>17700</u>
Total:	23800

Should any underground facilities, not already allocated to a power supplier by the terms of this Agreement, be installed under the Henry Roe Tract then Arclar shall be responsible for paying Illinois Power Company 1.5 cents (one and one-half) for each kilowatt- hour of energy used by those facilities, and the cost of submetering such energy usage shall be shared between IP and SouthEastern Illinois Electric Cooperative as provided elsewhere in this Agreement.

2. Absent other service rights specifically allocated to Illinois Power by this Agreement, SouthEastern Illinois Electric Cooperative shall be entitled to provide electric service for all underground mining processes emanating from Arclar's Willow Lake Mine Portal #3, as it currently exists and is illustrated by Exhibit B, which is attached to and made a part of this Agreement. Illinois Power and SouthEastern reserve all of their rights to serve electric energy to any surface facilities installed beyond the borders of the mine site as illustrated in Exhibit B not contemplated in this Agreement.

3. In addition, SouthEastern Illinois Electric Cooperative shall be entitled to serve two, 20 HP feeder belts that are located on the Henry Roe Tract, as it existed on July 2, 1965. SouthEastern Illinois Electric Cooperative is entitled to serve these two feeder belts due to the fact that they are fed and controlled by equipment at the preparation plant.

4. SouthEastern Illinois Electric Cooperative, Inc. shall be entitled to serve any miscellaneous and incidental power requirements related to the load that SouthEastern Illinois Electric Cooperative, Inc. is entitled to serve as set forth in this Agreement.

5. SouthEastern Illinois Electric Cooperative, Illinois Power Company and Arclar Company, L.L.C. agree to meet no later than 18 months prior to the date Arclar Company, L.L.C. needs electric service to Portal No. 4 to determine which electric supplier has service rights to Portal No. 4. Both SouthEastern Illinois Electric Cooperative, Inc., and Illinois Power Company shall provide evidence to each other 30 days prior to the date of the above referenced meeting of their respective claim of rights. Arclar Company L.L.C. shall provide written notice of the exact location of Portal No. 4, the date service is required and the electric service requirements at least 24 months prior to the date service is required.

6. As consideration for the rights and benefits provided in this Agreement, SouthEastern Illinois Electric Cooperative agrees to assume all risk of loss and to indemnify, defend and hold harmless Illinois Power Company, its officers, directors, employees, agents, servants, successors, parent companies and assigns (the "Indemnified Parties") from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, costs and expenses, fines, judgments (including without limitation any remediation and restoration costs, attorney, consultant, expert and witness fees and expenses incident thereto), which the Indemnified Parties may suffer, sustain, incur or in any way be subjected to resulting from (a) injury to or death of any and all persons) whomsoever (including but not limited to both parties hereto, all other persons, and their respective (sub)contractors, employees, officers and agents); (b) damage to or loss or destruction of property whatsoever (including but not limited to the SouthEastern Illinois Electric Cooperative or Arclar Company, L.L.C.'s facilities and all of their contents and respective component parts); and/or (c) any claim or cause of action for alleged loss of profits or business revenue or loss of service by another person or any other third party arising out of or in any way

connected with, caused by or resulting from (in whole or in part and whether directly or indirectly) the exercise of Illinois Power Company's rights or performance of (or failure to fully perform) its duties hereunder (including but not limited to the acts and omissions of its servants, (sub)contractors, independent contractors and all other persons performing any work on its behalf or in any other way using facilities or entering upon the premises on behalf of SouthEastern Illinois Electric Cooperative or Arclar Company, L.L.C. as described in this Agreement), excluding only such loss, damage or injuries as is caused by or directly attributable to the negligence or intentional acts of Illinois Power Company, its employees, agents, servants, successors and assigns. SouthEastern Illinois Electric Cooperative agrees to defend all such claim(s) using legal counsel reasonably acceptable to Illinois Power Company, at SouthEastern Illinois Electric Cooperative's sole cost and expense.

Illinois Power Company shall not be responsible in any way for any damage to SouthEastern Illinois Electric Cooperative's or Arclar Company, L.L.C.'s facilities or any part thereof which is caused by (a) any fire, casualty, act of God or other event of Force Majeure, (b) the construction and effects of operating of Portal No. 3 or other facilities, or (c) any other acts not within the control of Illinois Power Company, including but not limited to the actions (or failure to act) of other individuals.

7. This Agreement and its rights and obligations shall be binding upon the successors and assigns of SouthEastern Illinois Electric Cooperative, Inc., Illinois Power Company and Arclar.

Agreed to this 31st day of October, 2001.

SouthEastern Illinois Electric Cooperative, Inc.

Signed: James M. Cummins

Date 11-2-01

Title: General Manager

Illinois Power Company

Signed: Bob Z. Tober

Date 10/31/01

Title: Municipal & Cooperative Relations Manager

Arclar Company L.L.C.

Signed: Debra J. Pen

Date 11/2/01

Title: President

**ATTACHMENT/EXHIBIT**

**ITEM TOO LARGE TO SCAN**

**COPY AVAILABLE IN CHIEF CLERK'S OFFICE**