

SPONSOR: Heater

ORDINANCE NO. 183-06

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A LEASE AGREEMENT BETWEEN THE CITY OF JACKSON, OHIO, AND COLUMBUS SOUTHERN POWER COMPANY, FOR A REVOCABLE NON-EXCLUSIVE AND LIMITED LEASE TO RETAIN ATTACHMENTS ON COLUMBUS SOUTHERN POWER COMPANY'S STRUCTURES, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Jackson is involved in a project to upgrade its electric transmission facilities; and

WHEREAS, as part of the upgrade process, it is necessary for the City of Jackson to lease 1.05 miles of three phase 138kV transmission line conductors, and a shared portion of Columbus Southern Power Company's common structures; and

WHEREAS, this lease agreement is necessary in order to proceed with the City's electric distribution system upgrade.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSON, STATE OF OHIO, as follows:

Section One. The Mayor and/or his designated representative is authorized to enter into an Agreement between the City of Jackson, Ohio, and Columbus Southern Power Company, to lease 1.05 miles of three phase 138kV transmission line conductors, and a shared portion of Columbus Southern Power Company's common structures. A copy of the Lease Agreement is attached hereto as Exhibit "A". The cost of this lease agreement shall be in an amount of Eleven Thousand Six Hundred and No/100 Dollars (\$11,600.00), per year, for an initial period of ten (10) years, and shall be paid from line item _____.

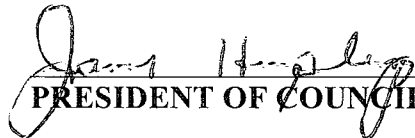
Section Two. This Ordinance is hereby declared to be an emergency Ordinance necessary for the immediate preservation of the public peace, health, or safety of the City of Jackson, in that it is necessary to enter into this lease agreement as soon as possible in order to continue with the City's electric distribution upgrade project in a timely manner. Therefore, this

Ordinance shall go into effect upon passage and approval by the Mayor, as provided in Ohio Revised Code Section 731.30.

Section Three. In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be deemed to have passed but with no emergency clause and shall take effect at the earliest time permitted by law.

Section Four. It is hereby found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that the deliberations of this Council that resulted in such formal actions, were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Date: July 24, 2007


PRESIDENT OF COUNCIL


CLERK OF COUNCIL

Approved:

Date: 7/31/06


MAYOR

John L. "Jack" Detty

From: Steve Benson [sbenson@jacksonohio.us]
Sent: Tuesday, July 18, 2006 1:28 PM
To: 'John L. "Jack" Detty'
Cc: 'Shane Goodman'; 'Donovan Workman'; 'Bryan Davis'
Subject: AEP

Jack;

I am also placing a proposed lease agreement in your box. Term is 10 years for \$11,600/yr.

Look this over as to form and see if it requires council action.

Steve Benson, P.E., P.S.
Director of Public Service
City Engineer

EXHIBIT "A"

STRUCTURE AND CONDUCTOR LEASE AND MAINTENANCE AGREEMENT

This Agreement is entered into as of _____, 2006 between Columbus Southern Power Company, Ohio corporation, (herein called "Owner") and the City of Jackson, Ohio (herein called "Lessee"),

Background Information.

- A. Lessee desires to lease from Owner 1.05 miles of three phase 138kV transmission line conductors (to be operated by Lessee at 138kV) and a shared portion of the Owner's common structures ("Lessee Facilities") installed on structures that will be owned and maintained by Owner. Lessee desires to keep the Lessee Facilities attached to Owner's structures (the Lessee Facilities attached to Owner's structures shall be referred to herein as "Attachments") and share in the cost of Owner maintaining the supporting structures and right of way. A drawing generally depicting the facilities leased hereunder is attached as Exhibit A.
- B. Owner is willing to permit Lessee on a non-exclusive basis to place the Attachments on Owner's structures pursuant to the terms and conditions of this Agreement. The Owner will maintain these Attachments for the Lessee at the Lessee's expense.

Statement of Agreement.

The parties acknowledge the accuracy of the above background information and in consideration of the promises and mutual covenants set forth herein agree as follows:

1. Scope of Lease

Owner hereby grants to Lessee a revocable, non-exclusive and limited lease to retain the Attachments on Owner's structures. Exhibit A shows the where the Attachments are located between Structures 4 and 9. The balance of the information included on the Exhibit A drawing is not included in this Agreement. It is listed for informational purposes only. Nothing in this Agreement shall be construed as a grant by Owner of an exclusive license, right or privilege to Lessee, nor as a limitation, restriction, or prohibition upon Owner's right to grant interests to third parties to the structures hereunder.

All structures covered by this Agreement remain the property of Owner regardless of any payment by Lessee toward their cost. No use, however extended, of Owner's structures or payment of any fee or charge required hereunder shall create or vest in Lessee any claim of right, possession, title, interest or ownership in such structures. Nothing in this Agreement shall be construed to compel Owner to construct, reconstruct, retain, extend, repair, place, replace or maintain any structure which, in Owner's sole discretion, is not needed for its own purposes. Owner and its successors and assigns shall have the right to operate, relocate and maintain its structures and attendant facilities in such a manner as will best enable it, in its sole discretion, to fulfill its service requirements.

1A. Scope of Maintenance

Owner hereby agrees to perform maintenance for the Lessee on the Attachments and Owner's supporting structures owned by the Owner, but used by the Lessee, or leased by the Lessee as outlined below:

For the Attachments, when they are found defective or need replaced due to normal wear and tear, fail the Owner will perform the necessary maintenance work. Exhibit A shows the details of the circuit arrangement.

2. Explanation of Terms

For the purpose of this Agreement, certain terms shall have the meanings given in this Article.

Proposal – A structure attachment construction proposal, in a format acceptable to Owner.

Design Standards – All applicable regulations or codes promulgated by any federal, state, local or other governmental authority having jurisdiction, including, but not limited to, the National Electrical Safety Code and Owner's design or attachment requirements.

Total Cost – The total cost of any maintenance, project or task undertaken hereunder, including all labor, materials, recurring expenses, non-recurring expenses and overhead expenses, as determined by Owner, including, without limitation, work caused by or attributable to the Attachments or Structure replacements or relocations.

Interest Rate – Shall be the lesser of: the interest rate at the then current Bank One, N.A. (or its successor) prime rate, plus four percentage points or the maximum interest rate allowed by law in the State of Ohio.

3. Attachments

Lessee will not be permitted to modify, install or remove any Attachments on any structure of Owner. Provided Lessee is not in default of this agreement, Owner will provide all maintenance work associated with the Attachments and for repairs to Owner's Common Structures, and Lessee will be responsible for the Total Cost of any such maintenance work on the Attachments and 40% of the Total Cost associated with a structure removal, replacement or relocation not caused by the Attachments. In cases where structure removal, replacement or relocation is caused by the Attachments, Lessee will be responsible for the Total Cost of any such work.

4. Structure Installation

- A. Structure Replacements: Where Owner must replace or relocate a structure and such replacement or relocation is not caused by Lessee's Attachment and Owner still operates a conductor and circuit on the structure in question, Owner and Lessee shall share the Total Cost of relocating or removing the old structure and replacing it with a new structure, with Lessee being responsible for 40% of such Total Cost, and Owner being responsible for 60% of the Total Cost. If Owner does not operate a conductor and circuit on the structure in question, Lessee shall be responsible for 100% of the Total Cost of any such removal, replacement or relocation costs. Owner shall provide Lessee reasonable advance notice before undertaking such replacement or relocation. The Owner will relocate and transfer the Attachments at Lessee 's expense.

5. Rearrangement of Attachments

If Lessee 's desired Attachments can be accommodated on existing structures of Owner by rearranging facilities of Owner or existing attachments thereon of any other person, or if because of Lessee 's proposed Attachments it is necessary for Owner to rearrange its facilities on any structure not owned by it, then in any such case Lessee shall reimburse Owner and any such other person for the respective Total Cost incurred in making such rearrangement.

6. Unauthorized Attachments

Lessee may not place any additional equipment on the Lessee Facilities. Any Attachment made without the approval of Owner pursuant to the terms of this Agreement shall be considered an unauthorized Attachment. Upon discovery of an unauthorized Attachment, Owner may elect either of the following options: (i) order Lessee to remove the Attachment within thirty (30) days, or (ii) review such Attachment, at Lessee 's expense, to determine if the Attachment is in compliance with the Design Standards and, if necessary, order Lessee to comply with the Design Standards either through rearrangement pursuant to the Rearrangement Of Attachments Article above or structure replacement pursuant to the Structure Installation Article above.

7. Annual Lease Fee

Lessee shall pay Owner an annual lease payment of \$11,600.00 for the initial 10-year period of this agreement.

8. Time of Payment

Unless otherwise set forth herein, payments due hereunder shall be made within thirty (30) days from the date of the invoice. On all amounts not so paid, an additional charge for interest at the Interest Rate, compounded daily, will be assessed. Where the provisions of this Agreement require any payment by Lessee to Owner, Owner may, at its option, require that the estimated amount thereof be paid in advance of permission to use any structure or the performance by Owner of any work.

9. Indemnity

Lessee shall require any of its contractors and subcontractors that perform work within the vicinity of the Lessee Facilities to execute the Indemnity Agreement attached as Exhibit B.

To the extent permitted by law, Lessee for itself and its contractors and subcontractors hereby releases Owner, its affiliates, and their respective directors, officers, employees and agents (collectively, "Indemnitees"), from any and all liability for loss of or damage to the Lessee 's Attachments and for any interruption to, or failure of, the service rendered by Lessee or others in which such Attachments are used. Lessee further hereby agrees to indemnify, hold harmless, and defend Indemnitees from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon Indemnitees, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "liabilities") arising, directly or indirectly, out of the interruption or loss of Lessee 's, its subscribers or affiliates or because of any interference with communication reception of such services, or out of injuries to persons, including disease or death, or damage to property, or in any other way attributable to or arising either directly or indirectly out of, the attachment, operation, presence, use, maintenance, or removal of Lessee 's facilities to Owner's structures, or by the proximity of Lessee 's facilities to all other parties, including the Owner, occupying space on Owner's structures, except that Lessee 's obligation to indemnify Indemnitees shall not apply to any liabilities to the extent arising from Indemnitees' sole negligence or willful misconduct. Indemnitees shall be free to select counsel of their choice for their defense hereunder from Indemnitees' sole negligence or willful misconduct. Indemnitees shall be free to select counsel of their choice for their defense hereunder.

It is further agreed between the parties hereto, that to the extent any of the provisions of this Article are determined to be contrary to law or held to be invalid by any court of competent jurisdiction, this Article shall be construed and applied as if such invalid provisions were not contained herein, attempting at all times to conform, to the extent possible, to the intent of the parties as herein stated, and provide the maximum indemnity allowed by law. With respect to claims against one party by the other party's employees, the latter party agrees to expressly waive its immunity, if any, as a complying employer under the workers' compensation law but only to the extent that such immunity would bar or affect recovery under or enforcement of the indemnification obligations set forth in this Article. With respect to the state of Ohio, this waiver applies to Section 35, Article II of the Ohio Constitution and Ohio Rev. Code Section 4123.74.

The terms of this indemnity and any other indemnities set forth in this Agreement shall survive the termination of this Agreement. In the event that Owner becomes aware of a claim affecting Lessee under the terms of this indemnification clause, Owner shall endeavor to put Lessee on timely notice of such claim.

10. Default or Non-Compliance

If Lessee fails to comply with any of the provisions of this Agreement, or defaults in the performance of any of its obligations under this Agreement, and fails within thirty (30) days, after written notice from Owner to correct such default or noncompliance, Owner may, in the event of any failure to pay any of the charges, fees or amounts provided in this Agreement or any other substantial default, or of repeated defaults, terminate this Agreement. Notwithstanding the foregoing and excluding non-payment defaults, Lessee shall have up to an additional thirty (30) days to correct such non-payment default or noncompliance if Lessee promptly commences its corrective efforts within the thirty day period described above and diligently continues such corrective actions thereafter. No liability shall be incurred by Owner because of any or all such actions. The remedies provided herein are cumulative and in addition to any other remedies available to Owner under this Agreement or otherwise. No such termination, however, shall reduce or eliminate the obligation of the Lessee to make payments of any amounts due to Owner for any services covered, shall not waive charges for any Attachment and shall not affect Lessee's Indemnification of Owner or the Insurance requirements contained in this Agreement.

11. Term

Except as provided in the Default Or Noncompliance Article, this Agreement shall continue from the date hereof for 10 years with the option for the Lessee to renew for one five (5) year period at the end of the initial 10 year term, provided Lessee continues to make an annual lease payment of \$11,600.00 during the five year extension term and timely pays all other amounts due hereunder. Should Lessee opt to renew this Agreement for the five (5) year extension period, after this extension period expires, this Agreement may only be extended on an annual basis provided that the parties mutually consent to such an extension and agree upon an applicable lease rate and other charges due hereunder. During the initial term of the Agreement or during the five year extension term, and excluding cases where there has been a default, this Agreement may only be terminated with written consent of both parties.

12. Transfers of Ownership

This Agreement shall be binding upon and inure to the benefit of the parties hereto, and Lessee shall not assign, transfer, sublet or sublicense any of the rights hereby granted without the prior written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion.

13. Governing Law

This Agreement shall be construed in accordance with, and its performance shall be governed by, applicable laws in Ohio.

14. Third Party

This Agreement shall not create for, nor give to, any third party any claim or right of action against either party to this Agreement that would not arise in the absence of this Agreement.

15. Execution

This Agreement may be executed in two counterparts each of which so executed shall be deemed to be an original.

16. Agreement Modifications

This Agreement and its Exhibits constitute the entire agreement between the parties respecting structure attachments, and shall only be modified in a writing signed by both parties hereto.

17. Preservation of Remedies

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to Owner shall impair or affect Owner's right thereafter to exercise the same.

18. Headings

Headings used in this Agreement are inserted only for the convenience of the parties and shall not affect the interpretation or construction of this Agreement.

19. Survival of Obligations

All payment, performance and indemnity obligations of Licensee under this Agreement shall survive the termination of this Agreement, until said obligations are satisfied.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

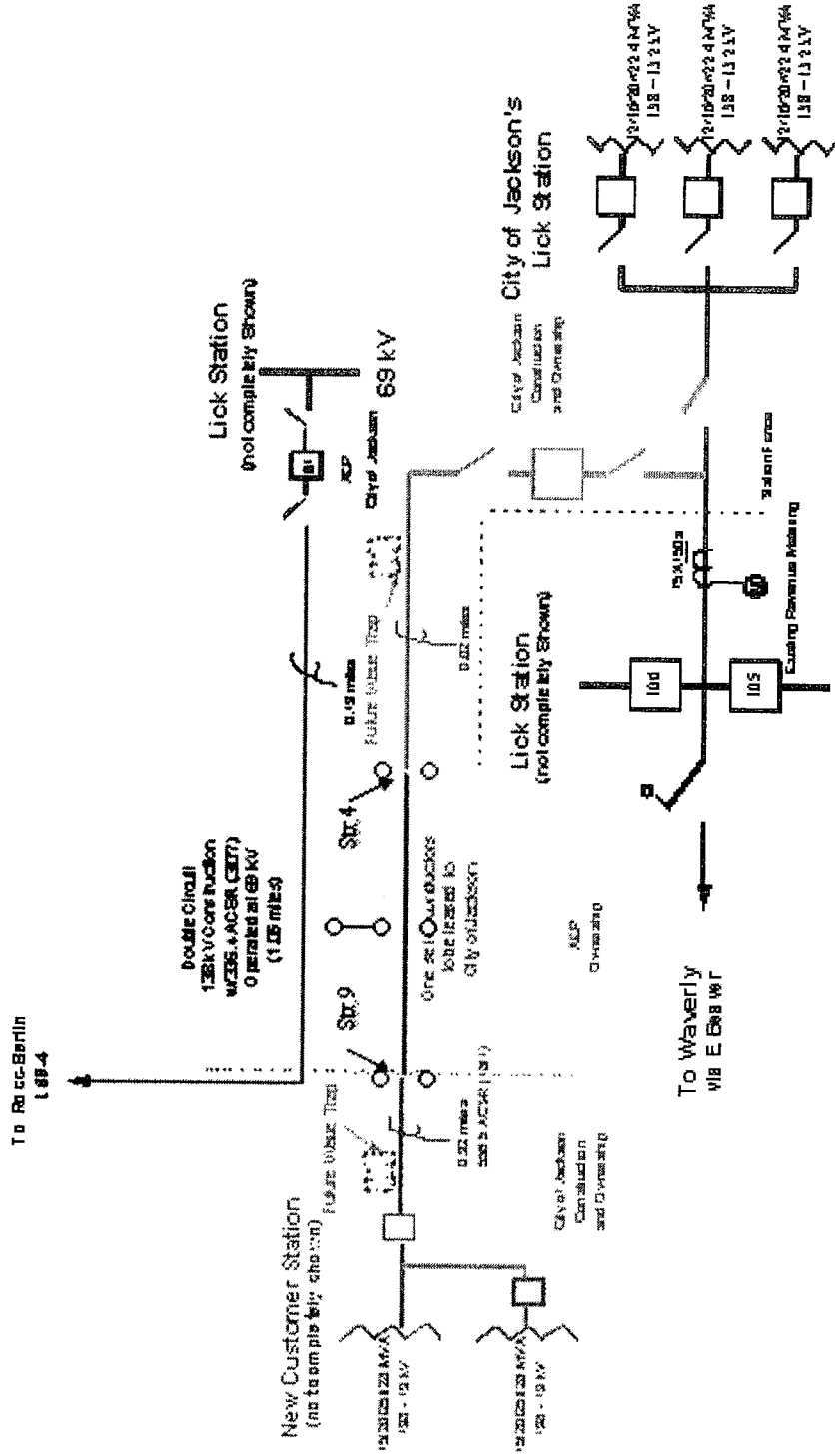
CITY OF JACKSON, OHIO

**COLUMBUS SOUTHERN POWER
COMPANY**

By: _____

By: _____

EXHIBIT A
DRAWING OF CIRCUIT



City of Jackson, Ohio
138 kV Delivery Point
Rev. 12/14/2005

138 kV

— New Construction by City Jackson
— Leased Conductors

**EXHIBIT B
INDEMNIFICATION OF ALL CLAIMS**

In consideration of Columbus Southern Power Company ("Owner") granting and providing the City of Jackson, Ohio ("Lessee") and its contractors and subcontractors with access and/or permission to work in the vicinity of Owner's facilities under the terms of that certain Structure Attachment Lessee Agreement between Lessee and Owner effective _____, the undersigned, its employees, contractors, subcontractors or agents, agrees to release, indemnify, save harmless, and defend Owner, its affiliates, and their respective directors, officers, employees and agents (collectively, "Indemnitees"), from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon the Indemnitees, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "liabilities") arising, directly or indirectly, out of the interruption of the Lessee or because of any interference with communication reception of such services, or out of injuries to persons, including disease or death, or damage to property, or in any other way attributable to or arising either directly or indirectly out of, the attachment, operation, presence, or use of Lessee's facilities to Owner's structures, including the loss of use thereof, or by the proximity of Lessee facilities to all other parties, including Owner, occupying space on Owner's structures, except that the undersigned's obligation to indemnify Indemnitees shall not apply to any liabilities arising from Indemnitees' sole negligence or willful misconduct. The undersigned shall be liable for reasonable attorneys' fees and all costs of litigation associated with enforcement of the obligations set forth in this obligation of indemnification and Indemnitees shall be free to select counsel of their choice.

The undersigned agrees to expressly waive the undersigned's immunity as a complying employer under the workers' compensation law of the jurisdictional state from indemnification. With respect to the contractors based in the State of Ohio, this waiver applies to Article 35, Article II of the Ohio Constitution and Ohio Revised Code Article 4123.74. The undersigned shall also hold Indemnitees harmless from any workers compensation claims by the undersigned's employees, agents, and contractors in accordance with the indemnity set forth in the first paragraph.

The undersigned hereby acknowledges that it has been warned that working in the vicinity of Owner's facilities poses potential dangers and that the undersigned is aware of said dangers and will furthermore warn all employees, agents, subcontractors, or any other parties who may be working on behalf of the undersigned, of the potential dangers.

Notwithstanding any other provision of this Agreement, neither Indemnitees nor their agents, representatives, contractors or subcontractors shall be liable to the undersigned in contract or tort, including negligence, for the Lessee or the undersigned's losses, expenses, loss of profits or revenues, costs of additional or replacement facilities, or claims of customers for such damages or for any other indirect, incidental or consequential loss or damage whatsoever in connection herewith.

It is further agreed between the parties hereto, that to the extent any of the provisions of this Release and Indemnification of all Claims are determined to be contrary to law or held to be invalid by any court of competent jurisdiction, this Release and Indemnification of all Claims shall be construed and applied as if such invalid provisions were not contained herein, attempting at all times to conform, to the extent possible, to the intent of the parties as stated herein and in the Structure Attachment License Agreement, and provide the maximum indemnity allowed by law.

The terms of this release and indemnity shall survive the termination of the Structure Attachment License Agreement.

The undersigned also agrees to fully comply with and maintain the insurance coverage and requirements set forth in the Structure Attachment License Agreement.

I have fully read this release and understand and consent to it in its entirety.

By: _____

Title: _____

Date: _____

John C. Werner
Senior Engineer
American Electric Power Company
700 Morrison Road
Gahanna, Ohio 43230 6642

Dear Mr. Werner:

This letter is the City of Jackson's authorization to proceed with the engineering and construction of the necessary facilities to allow the City of Jackson to expand our 138 kV system to construct a new 138 kV substation, referred to as Veteran's Substation. We are in agreement with the costs and plans outlined in the January 10, 2006 Facilities Study presented by AEP (APE Project #5005).

Formatted: Bullets and Numbering

Specifically, AEP is authorized to:

1. Make relay modifications at Lick Substation estimated at: \$90,900.00
2. Make enhancements to an existing 138 kV line to be leased by the City estimated at: \$88,500.00

The City of Jackson has funding in place to complete this work. A copy of City Ordinance 40-06 is attached for your record. Please proceed with the preparation of the necessary documents and agreements. The City will review them as soon as they are received and obtain City Council approval necessary to execute the agreement(s). If possible, please copy all information to our Engineer, MK Power Solutions, Inc.

Sincerely,

Steve Benson, P.E.
Safety and Service Director, City of Jackson

Cc: Michael E. Kiser, P.E., MK Power Solutions, Inc.

Deleted:

