OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3000

ACQUISITION

19 AUG 1991

DP(DARS)

MEMORANDUM FOR LTCOL MICHAEL RILEY, OASD(PA)(DFOI & SR)

SUBJECT: DAR CASE 90-471, ACQUISITION OF UTILITIES SERVICES

Attached is a matrix of 259 respondents and public comments received from those respondents on the proposed rule of subject case published in the Federal Register on May 24, 1991, (56FR 23982). This case involves revisions to DFARS Part 241.

These comments are provided for the public's review or request for copies. Our case manager is Mr. Charles W. Lloyd who may be contacted at (703) 697-7266.

Linda E. Greene

LINDA E. GREENE
Deputy Director
Defense Acquisition Regulations Council

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3000

ACQUISITION

19 SEP 1991

DP(DARS)

MEMORANDUM FOR LTCOL MICHAEL RILEY, OASD(PA)(DFOI & SR)

SUBJECT: DAR CASE 90-471, ACQUISITION OF UTILITIES SERVICES, ADDITIONAL PUBLIC COMMENTS

Attached is a matrix of an addendum to a previously received public comment and three additional public comments received from respondents on the proposed rule of subject case published in the Federal Register on May 24, 1991 (56FR23982). This case involves revisions to DFARS Parts 241.

These comments are provided for the public's review or request for copies. Our case manager is Mr. Charles W. Lloyd who may be reached at 697-7266.

Linda E. Greene

LINDA E. GREENE
Deputy Director
Defense Acquisition Regulations Council

Subject: Acquisition of Utility Services: Comments

FAR Case 91-13 , CAAC Case 88-76, DAR Case 90-471

Closing Date: 7/23/91

Analyst: Edward Loeb

To: CAA Council

Date: 8/20/91

LATE COMMENTS

Response Number	Date Received	Date of Letter	Commenter	Other Comments
*91-13-155 Addendum	8/8/91	8/5/91	Carolina Power & Light Co.	
91-13-260	8/7/91	7/22/91	Park Elec. Co-op., Inc.	
91-13-261	8/7/91	8/2/91	Treasury/Sec'y	
91-13-262	8/16/91	8/16/91	Office of GSA Acquisition Policy	

***See previous comment #155, substitute page 4 as stated.**

91-13-155
Addendum

Please do not hesitate to contact me if you have any questions about this correction of our comments.

Very truly yours,

H. Ray Starling

H. Ray Starling

HRS:ew
Attachment

cc: Mr. Charles Lloyd
Defense Acquisition Regulatory System
1211 South Fern Street
Arlington, Virginia 22202

Mr. Edward H. Comer
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

91-13-153
Addendum

c) CP&L's planning personnel annually request specific information regarding the ten-year load forecasts for military bases. The possibility of several large military bases being able to terminate service at the same time is likely to make CP&L's planning and load forecasting much more difficult, and in the long term this could increase CP&L's costs and potentially jeopardize reserve margins.

RECOMMENDATIONS:

1. Section 52.241-2(a) should be amended as follows (bold type represents language to be added):

   For the period (date) to (date), the Contractor agrees to furnish and the Government agrees to purchase (specify type) utility services in accordance with the applicable tariff(s), rules, and regulations as approved by the applicable governing regulatory body and as set forth in the contract. **[Note: The phrase "For the period (date) to (date)" may be deleted if an indefinite term is desired.]**

2. Section 52.241-2(b) should be deleted.

OFFICE AT 306 SOUTH 12TH

PARK ELECTRIC CO-OPERATIVE, INC.

P. O. BOX 908
LIVINGSTON, MONTANA
59047
PHONE 222-3100

91-13-260

July 22, 1991

Rodney E. Siring
MANAGER

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, NW
Room 4041
Washington, DC 20405

Re: FAR Case 91-13

Gentlemen:

We are just in receipt of a proposed rule on the acquisition of services from utilities (56 Federal Register 23982). Specifically, GSA is proposing at Section 41.007 (j) that the following language be added to all contracts between federal facilities and cooperative utilities:

52.241-13 Capital Credits

(b) Within 60 days after the close of the contractor's fiscal year, the contractor shall furnish to the Contracting Officer, in writing a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date payment is to be made.

(C) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits may be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

We have concern with those two paragraphs. I will try to enumerate our concerns below.

1. A rural electric cooperative usually cannot provide capital credit information within 60 days. It takes more time than that to complete an audit and an audit is required before assigning capital credits. Rural Electric Cooperatives are governed by a set of By Laws and the Rural Electric Administration. The By Laws and agreement with REA does not allow Capital Credits to be returned in less than a 10 year cycle.

AUG 7

91-13-260

Furthermore, the accounting for capital credits takes significant time and, therefore, capital credit assignment is usually made sometime after the 60-day period. We recommend paragraph (b) be changed to read "In accordance with the By-Laws of the cooperative, the Contractor shall furnish to the Contracting Officer, or the designated represented of the Contracting Officer, in writing a list of accrued credits."

(2) Rural electric cooperatives generally retain capital credits for a period of ten to forty years. Since funding from REA is being reduced, rural are being called upon to increase their equity position. The only way to increase equity position is through retaining of capital credits. Furthermore, cooperatives do not know when capital credits will be refunded. It depends upon the financial strength of the utility. Your proposed wording in paragraph (b) indicates the Contractor shall state to the Government the date payment is to be made. As stated above, this is almost impossible. Furthermore, in paragraph (C) it indicates that upon termination or expiration of the contract, the Contractor shall make payment to the Government for unpaid credits. This, as I state above, is almost impossible and should the rural electric make a special provision to the Government, it would be discriminatory and the rural electric would need to make payment to all customers. We recommend deletion of paragraph (c).

I hope this information is valuable to you. If we can be of further assistance, please let us know.

Sincerely,

PARK ELECTRIC COOPERATIVE, INC.

Rodney E. Siring

Rodney E. Siring
Manager

RES:ww

DEPARTMENT OF THE TREASURY
WASHINGTON

91-13-261

AUG 2 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW, Room 4041
Washington, D.C. 20405
Attn: Mr. Edward Loeb

Subject: FAR Case 91-13, Utility Services

Dear Mr. Loeb:

We have reviewed the proposed rule assigned subject FAR case number. As a result of our review, we have several comments which are set forth in the enclosure hereto.

Please refer any questions to Barbara Marshall at (202) 566-8715.

Sincerely,

for James J. Fisher
Assistant Director for
Procurement Policy and Review

Enclosure

91-13-261

ENCLOSURE

COMMENTS REGARDING FAR CASE 91-13

1. FAR Part 6.302-1(c) states that contracts awarded using this authority shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304. FAR 5.202(a)(5) states the Contracting Officer need not submit the notice required by 5.201 when the contract action is for utility services other than telecommunications services and only one source is available. It is recommended that when it is common knowledge that the utility service is provided by only one source witin a state, that the Contracting Officer prepare a determination and finding to justify the exception to synopsizing for the file, and exempt the requirement from the formal sole source justification requirement.

2. Section 41.003(b) has delegated authority to DOD and DOE to enter into utility service contracts for periods not exceeding ten years. If other agencies have a requirement for a contract exceeding one year they must get a delegation of authority from GSA. Was the intent to give agencies blanket authority to contract for periods of one year and less?

3. The concept of a delegated agency is a bit confusing, when read in the context of awards for utility services. It would appear that the difference between a delegated agency and a non-delegated agency lies in the amount of oversight provided by GSA during the actual award process. For instance, 41.004-3(c) states that non-delegated agencies, unless performing their own review, must obtain GSA review and approval prior to award. Thus, it appears the delegation provides independence from GSA involvement during the acquisition process (although GSA will conduct periodic overall reviews) unless a bilateral contract cannot be used. If this interpretation is correct, this GSA delegation appears to differ from other types of GSA delegations, ie., those under the Brooks Act, in which the delegation provides the procurement authority to acquire the service or supply. In the case of utilities, it appears the delegation does not provide procurement authority, but rather removes GSA from oversight of the instant acquisition. Perhaps this area could be clarified.

4. Section 41.003(a)(3) cites various statutory authorities, including 42 U.S.C. 2204 regarding the authority provided to DOE to enter into new contracts for electric services for periods not exceeding 25 years for certain installations. It would appear that this authority takes precedence over that provided in paragraph (b) of this section which provides a ten year authority to DOE. Perhaps this area should be clarified.

5. Section 41.004-2(a) requires a market survey. What is the purpose of this if it is known that only one utility company can provide the service?

91-13-261

6. Section 41.004-2(c) requires agencies to submit a copy of the letter of refusal, statements of the reason for the refusal, and the record of negotiations to GSA prior to acquiring utility services without executing a contract. The section does not require GSA to approve the action, rather it requires the agency to notify. Given this intent, why can't the notification be given to GSA after execution of an agreement?

7. Section 41.004-2(c) further states that after notifying GSA, the agency may proceed with the acquistion and pay for the utility service by issuing a purchase order or by ordering the utility service and paying for it upon the presentation of an invoice. Most accounting office payment systems will not pay invoices unless they are properly completed with a contract or order number. In addition, Contracting Officers should not order services unless the ordering document includes the mechanism for payment, ie., where the invoice should be submitted, appropriation codes, useage/consumption, etc. Most agencies currently order utility services using some acceptable method. We recommend that you include in the regulations payment procedures such as forms to use, etc., which will be acceptable to most accounting offices.

8. Section 41.004-2(e) states if an agency cannot get the contractor to execute a contract, the determinations made and actions taken are only good for one year. It further adds that the agency must take action to execute a bilateral written agreement prior to the expiration of the one year period. What does this mean and what happens if this action is unsuccessful? If still unsuccessful after the one year period expires, does the agency have to do another market survey and another solicitation? To annually issue a solicitation requesting a proposal from utility companies who have repeatedly refused to sign formal contracts seems unduly burdensome. If the concern is with buying utilities without an executed bilateral agreement, the Contracting Officer could be required to make an annual determination on the possiblity of getting the contractor to execute a bilateral agreement. If nothing has changed since the agreement was entered into or the last determination made, the Contracting Officer should document the file accordingly and continue with the agreement. If the Contracting Officer has reason to believe the contractor will now sign a bilateral contract, one should be prepared for signature; however, new solicitations and market surveys should not be required. The determination of the Contracting Officer could be done concurrently with the required annual review.

91-13-261

9. Clause 52.241-4, "Contractor's Facilities", paragraph (d) should be written to give the Government the option of negotiating to purchase the facilities rather having no option other than requiring the contractor to restore the premises to their original condition. Fifth line of paragraph (d), "revoke" should be changed to "invokes".

10. Clause 52.241-7, paragraph (d), first line should be changed to "Any changes to agreed rates, terms or conditions...".

General Services Administration
Office of Acquisition Policy
Washington, DC 20405

91-13-262

August 16, 1991

MEMORANDUM FOR ALBERT A. VICCHIOLLA
DIRECTOR
OFFICE OF FEDERAL ACQUISITION POLICY (VR)

FROM: IDA M. USTAD
DIRECTOR
OFFICE OF GSA ACQUISITION POLICY (VP)

SUBJECT: Federal Acquisition Regulation (FAR)
Acquisition of Utility Services (FAR case 91-13)

The General Services Administration (GSA) supports your efforts to rewrite the FAR coverage dealing with the acquisition of utility service. The proposed new Part 41 represents a major improvement over the current coverage. GSA does, however, have a number of comments and recommendations for revision which we believe, if adopted, will improve the final product. Our comments and recommendations are attached for your consideration.

If you have any questions regarding GSA's comments, please contact me on 501-1224.

Attachment

Federal Recycling Program Printed on Recycled Paper

91-13-262

1. FAR 15.812-2 --Capitalize "P" in "Part 41."

2. FAR 41.001 -- In the definition of "Authorization," change "that areawide contract" to "an areawide contract."

The definition of "Connection charge" should be revised to make it clear that the charges are in addition to the charges for monthly service. If the supplier's monthly service rates include the cost of connecting facilities, a connection charge would not be appropriate. GSA recommends the definition be revised to read "Connection charge means and amount charged the Federal Government by the utility supplier, in addition to charges for monthly service, for special facilities on either one or both sides of a Government delivery point that are required to make connections with existing supplier facilities. The special facilities are installed, owned, operated, and maintained by the utility supplier. Connection charges may be made if the supplier's monthly service rates exclude the costs of these facilities (see Termination liablity)."

In the definition of " Federal Power and Water Marketing Agency," change "supply services to customers" to "supplies to customers."

Revise the definition of "Franchise service territory" to shorten and clarify. Suggest revising to read as follows: "Franchise service territory means a defined geographical area that a utility supplier has been granted the right to serve."

In the definition of "Intervention," add the word "executive" between "Federal" and "agencies." GSA's intervention authority, and therefore the authority of agencies acting under delegations from GSA, is limited to representation of Federal <u>executive</u> agencies.

Delete the words "or delivery points" from the definition of "Multiple service locations." A delivery point is consider to be the point at which a meter is located at a service location. By contrast, a service location is the geographic location at which service is received. Several different delivery points may be designated at a single service location. The portions of the proposed regulation that refer to "Multiple service locations" (FAR 41.007(g) and 52.241-10) refer to different service locations throughout a supplier's service territory rather than delivery points.

Delete the words "delivery point(s)" from the definition of "separate contract" and substitute "service location(s)."

91-13-262

Also, suggest that consideration be given to adding "between a Government entity and a supplier" after "contract" and before the parenthesis.

Other customers may utilize connecting facilities. Therefore, in order to make it clear that the Government is only liable for its proportionate share of the unrecovered connecting costs GSA recommends the definition of "Termination liability" be revised to read "Termination liability . . . supplier its proportionate share of any unrecovered net cost of supplier provided connecting facilities in the . . . terminates a service contract. A termination liability may be in conjunction with, or in lieu of, a connection charge (see connection charge)."

The definition of "Utility service" should be amended to make it clear that natural gas purchased as a commodity at the wellhead is not a utility service subject to Part 41. GSA recommends the insertion of a parethetical statement after "gas." The statement should read "(except when provided as a commodity at the wellhead)."

The text of the regulation uses the term "unpublished rate" but the term is not defined. GSA recommends the addition of a definition to add clarity to the regulation. Suggest the following definition be added "Unpublished rate means a rate or tariff not contained in a utility supplier's generally available list of published tariffs. A supplier's unpublished rates may only be available upon specific request concerning the availability of such rates."

3. FAR 41.002 -- Recommend that paragraph (a) be revised to delete "including connection charges and termination liabilities." and substitute "including service connection." The current text suggests that connection charges and termination liabilities are services provided by the utility.

Recommend that paragraph (b)(1) be revised to refer to Subpart 17.5 instead of FAR 41.004-6. FAR 41.004-6 is unnecessary and can be deleted completely. The reader should be refered directly to FAR 17.5 instead of to 41.004-6 which simply refers the reader back to FAR 17.5.

Paragraph (b)(7) is not clear and its accuracy is questioned. First, the definition of a shared-savings project does not appear to be complete or to accurately describe what is contemplated by the statute. GSA recommends it be revised to read "shared-savings project means a project in which in which the Federal Government and

91-13-262

a private contractor agree and enter into a contract which provides that the private contractor will finance and perform energy conservation or load management activities at a Federal facility in return for a share of resulting savings to the Government." Second, the reference to "any energy savings or purchased utility services directly resulting from implementation of such measures" is not clear. GSA suggests you clearly state that contracts for utility service entered into by Federal agencies to service locations where shared-energy savings projects have been implemented may be entered into using the procedures in Part 41. Finally, the reference to 25 years should be deleted. As written it is more confusing than helpful. Contracts for shared-energy savings projects may be entered into for up to 25 years. The term of the contracts for such projects has nothing to do with the term of utility service contracts that may be entered into to acquire utility service for locations that have implemented shared-energy savings projects.

4. FAR 41.003 -- Agencies other than GSA, DOD, and DOE have authority to contract for utility service subject to annual appropriation limitations. For completeness and clarify the authority of other agencies should be mentioned.

GSA recommends that the last two sentences of paragraph (a)(1) be revised to read "This authority encompasses related functions such as contracting for utility services for periods not to exceed 10 years, managing public utility services, and representing the Federal executive agencies in public utility proceedings before Federal and state regulatory bodies."

Paragraph (b) should be revised to refer to "connection services" not "connection charges." Contracts are entered into for services not charges. Suggest rewording to read "GSA has delegated its authority to enter into contracts for utility services (including service connections) for periods ... and for connection services only to the Department of Veterans Affairs."

5. FAR 41.004-1 -- The reference to 41.004-6 in paragraph (d)(3)(ii) should be deleted. As noted earlier, FAR 41.004-6 is not needed and only serves to take the reader to 41.004-6 for the purpose of being referred back to FAR 17.5.

GSA recommends that paragraph (e) be revised to (1) eliminate the double negative, and (2) delete reference to "market survey" because the use of the term is inconsistent with FAR 7.101. Suggest the paragraph be revised to read

91-13-262

"(e) Prior to...with the advice of legal counsel, through discussions with available suppliers and other appropriate means, that such competition is consistent with state law and regulations, state territorial agreements, and state utility commission rulings that govern the provision of electric service. Proposals from ... in a manner consistent with..."

6. FAR 41.004-2 -- Capitalize "P" in "Part" in paragraph (a) for consistency with the rest of the FAR.

Suggest paragraph (b) be revised to read "As part of the procurement process, the contracting officer shall consider, in addition to alternative competitive sources, use of the following methods:" The reference to market survey seems inappropriate in light of the items listed.

Paragraph (b)(3) should be revised to delete reference to 41.004-6 and substitute FAR 17.5. As noted earlier, FAR 41.004-6 is not needed and should be deleted.

Pargraph (c) should be amended to delete the reference to a "corporate officer" and substitute a "responsible official". Not all utilities are corporations.

Paragraph (c)(1) should be deleted in its entirety. Instructing contracting personnel to issue a purchase order in accordance with 13.5 creates more questions and problems than it solves. A purchase order is an offer by the Government and becomes a binding contract as soon as the supplier acknowledges receipt of the order or provides the service. Trying to use a purchase order, which becomes a contract as soon as the utility supplies service, in situations where a utility has expressly refused to accept a Government contract with the same terms and conditions that are on the back of the purchase order is questionable and confusing to contracting personnel. Secondly, limiting its use to the small purchase limitation means it is of little utility anyway. Paragraph (c)(2) should be revised to delete "formal contract" and substitute "written contract" and to delete the reference to issuance of a purchase order.

Paragraph (d) should be revised to read "When obtaining service without a written contract, the contracting officer shall establish a utility history file. This utility history file shall contain, in addition to applicable documents described in 4.803, the following:"

91-13-262

Reference in paragraph (d)(2) to "a corporate officer" should be replaced with a reference to "a responsible official" for the reason stated earlier.

Paragraph (d)(4) should be amended to refer to both connection charges and termination liabilities. Suggest it be revised to read "Historical record of ... connection charges and/or termination liabilities."

GSA recommends that paragraph (e) be revised to delete the reference to "one year" and substitute "three years". Efforts by a contracting officer to obtain a bilaterally executed contract so soon after a definite and final refusal by the utility, if one is given, are unlikely to be successful. Use of contracting officers time for such an effort is not considered to be efficient. A three year period allows time for a change in supplier attitudes and is more likely to result in a successful agreement.

7. FAR 41.004-3 -- Suggest that paragraph (a) be revised to read "...provide technical and acquisition assistance, including pre-award reviews (see 41.005), and will arrange ..." Also, delete the parenthetical statement at the end of the paragraph and add a parentheses to the last sentence just before the period.

Delete the phrase "or annual review" from paragarph (c)(1) because its use is out of context and not relevant. The paragraph is discussing contracting for utility services and review of prospective contract documents.

GSA recommends that paragraph (e) be revised to read "(e) Agency requests for review and approval, as described in paragraph (c) of this subsection, shall only apply to contracts considered by the requesting agency to be ready for award. Such requests shall contain the information required by 41.005 and shall be forwarded to GSA as early as possible, but not later than 20 calendar days prior to the date new services are to commence or expiration of an existing contract. If GSA does not respond to the requesting agency within 20 working days after it receives a proposed utility service contract for review and approval (or within a lesser period if agreed upon), the requesting agency may execute the contract without GSA approval." This change is recommended to make it clear that the 20 day deadline applies only to contract actions that are ready for award. If a contract action is incomplete and forwarded for GSA review, GSA's role is considered an "assistance" action as described in 41.004-3(f).

91-13-262

8. FAR 41.004-4 -- Paragraph (b) should be revised to make it clear that both the supplier and the Government need to sign the authorization form. Suggest the paragraph be revised to read "... Upon bilateral execution of an authorization by the contracting officer and the utility service supplier, the supplier is required to furnish the services specified therein, without..."

The language contained in an areawide contract specifies use of an Authorization Form as the ordering document without mention of the need for a SF-26. FAR 41.001 further defines an Authorization Form as the document used to order service under an areawide contract without mention of the need for any other forms. Accordingly, GSA recommends deletion of the requirement for a SF-26 in paragraph (c). The use of the SF 26 would result in a duplication of effort because all relevant entries on the SF 26 are also required on the Authorization Form. GSA has successfully used the Authorization Form when ordering service from an areawide contract for years and sees no purpose to be served by adding a requirement for the SF-26. GSA suggests that paragraph (c) be revised to read "the bilaterally executed authorization under an areawide contract shall include as attachments any supplemental agreements between the ordering agency and the contractor on connection charges, special facilities, or service arrangements."

Based on the preceding comment paragraph (d) should also be revised to delete reference to the SF 26.

9. FAR 41.004-5 -- Recommend paragraph (a) be revised to (1) eliminate reference to 41.004-6 consistent with preceding comments, (2) recognize that a supplier may refuse a tendered contract, (3) add a reference to 41.004-2 since it specifies requirements not explicitly contained in the other references listed, and (4) omit the reference to 41.004-3(d) because it relates to requests for pre-award review authority, not contracting requirements. Suggest the paragraph be revised to read as follows: "... In the absence of ... or interagency agreement (see 17.5 for information on use of interagency agreements), agencies shall acquire utility services by separate contract, unless the supplier refuses, subject to their contracting authority (see 41.003), and the requirements and limitations of 41.004-1, 41.004-2, 41.004-3(c) and 41.008."

Revise paragraph (b) to delete the phrase "Subject to the procedures contained in 41.004-2," because is not a help to the reader. The referenced section deals with documentation not procedures.

91-13-262

Paragraph (b)(4) should be revised to refer to "subparagaraph" and "subsection" instead of "paragraph" and "section" in order to conform with FAR 1.104-2.

Paragraph (c) should refer to "41.005" instead of just paragraph (b). Also, the order of the FAR cites should be reversed to put them in the order that they appear in the regulation.

10. FAR 41.004-6 -- For the reasons previously stated, this section should be deleted in its entirety.

11. FAR 41.005 -- Recommend that paragraph (a) be amended (1) to add a parenthetical reference to 41.004-3(c) after "required", (2) to delete of the phrase "sufficiently in advance of award to permit a complete review." because FAR 41.004-3(e) which is referenced spells out the specific timeframes, and (3) to delete the reference to "assistance" in the second sentence because the section deals with pre-contract reviews not contracting assistance.

Delete language concerning connection charges from paragraph (b)(2) because ir is repetitious of 41.005(b)(7)(i) and therefore unnecessary.

Revise subparagraph (b)(7)(i) to add a reference to tariff provisions or written policy of the supplier. Recommend revising to read "Proposed refundable ...and its rationale for the charge including applicable tariff provisions or written policy of the supplier;"

GSA recommends that subparagraph (b)(7)(ii) be eliminated and that language be included in the contract to the effect that a connection charge to the Government shall not exceed charges to other customers for similar connection services. As written, this section of the regulation probably constitutes an information collection subject to OMB approval under the Paperwork Reduction Act. Such a course of action would be consistent with the treatment of other supplier charges.

Delete the phrase "or suppliers" from the first sentence of paragraph (c). Also, recommend that subparagraph (c)(5) be revised to read "For electric service contracts, a statement noting whether transformers and other system components, on either side of the delivery point, are owned ..."

Recommend that paragraph (d) be revised to read "Agencies receiving GSA delegations of contracting or pre-award review authority shall establish appropriate pre-award review

91-13-262

procedures for contracts that exceed the dollar thresholds specified in 41.004-3(c)(1) and (2)."

12. FAR 41.006-1 -- GSA recommends that paragraph (b) be revised for clarify and to explain the purpose of monthly and annual reviews. Revise to read "Agencies shall review (a) on a monthly basis, utility service invoices, and (b) on an annual basis, each contract or authorization for service in amounts that exceed the small purchase limitation. The purpose of the monthly review is verification that invoiced services were received. The purposes of annual reviews are to ensure that the utility supplier is furnishing the services to each facility under the utility's ...competitive resolicitations. ....If a change in rate schedule is appropriate, ... to begin billing under the lowest cost rate schedule immediately. The change to the new schedule shall be documented by the contracting officer by execution of a new authorization if services are procured under an areawide contract or by executing a contract modification if services are procured under a separate contract. A copy of the new authorization or modification shall be forwarded to the agency's office that is responsible for verifying bill amounts."

13. FAR 41.006-2 -- Paragraph (a) should be revised to recognize the fact that proposals for change may come from other than the supplier. Suggest it be changed to read "When a change is proposed to rates or terms and conditions ..."

Paragraph (b) should be similarly changed to recognize proposals for change may come from other than the supplier. Suggest it be changed to read "When a change is proposed in rates or terms ...the matter shall be referred to GSA at the address provided in 41.004-3(b). The...request from GSA a delegation of authority to intervene on ..."

Paragraph (c) should be revised to (1) recognize that rate changes may result from other than a supplier's request, (2) recognize that contract language may automatically incorporate a rate change without a contract modification, (3) recognize that a contract may not exist, (4) direct copies of the rate change to the agency office responsible for certifying invoices for payment (normally not the paying office), and (5) eliminate an unnecessary reference to 41.006-1. Suggest it be amended to read "If a regulatory body approves a rate change, ... any rate change shall automatically be made a part of the contract (if any), without contract modification. ...to avoid late payment provisions. A copy of the approved rate change shall be

91-13-262

sent to the agency's office responsible for certifying that services have been received and the accuracy of the amount of invoices."

Paragraph (d) should be revised to (1) recognize that a contract may not exist, and (2) direct copies of the contract modification to the agency office reponsible for certifying receipt of services and the accuracy of the amount of invoices. Suggest it be amended to read "... any rate change shall be made a part of the contract (if any), by contract modification. A copy of the contract modification or notice of rate change shall be sent to the agency office responsible for certifying that services have been received and the accuracy of the amount of the invoice."

14. FAR 41.007 -- Recommend paragraph (a) be revised to read " Because ...from area to area, differences may exist in the terms ...of the prescribed clauses ..."

Suggest that "a" be inserted before "regulatory body" in paragraph (e).

In order to note that a termination liability may be in conjunction with or in lieu of a connection charge, and to clarify what facilities are referenced, GSA recommends that paragraph (f) be revised to read "The contracting officer ... in conjunction with or in lieu of a connection charge upon completion of the connecting facilities."

15. FAR 41.008 -- Consideration should be given to creating a new form specifically designed for acquiring utility services instead of mandating the SF-33. If a new form is not created more flexibility should be provided to use other contracting forms e.g. SF-26 or SF-1447.

16. FAR 52.241-2 -- Paragraph (a) of the clause should be revised to make it clear that the contract does not bind the Government to regulatory body approved tariff(s), rules, or regulations that are contrary to Federal law. The last sentence of paragraph (d) should also be revised to provide for prorating the monthly charge if the service begins or ends during the month.

17. FAR 52.241-3 -- A "class of service" such as "commercial" class may have more than one rate schedule for which commercial customers may qualify dependent upon specific service requirements and load characteristics. Since the rate schedule within a class is the determining factor for cost, the rate schedule instead of the class of service should be

91-13-262

the focus of the clause. Accordingly, GSA recommends (1) the clause be retitled as "Change in Available Rate Schedules or in Service Requirements", (2) that paragraph (a) of the clause be revised to read "In the event of a change in available rate schedules or in Government requirements and load characteristics, the service received shall be provided under the Contractor's lowest cost rate schedule applicable to such service.", and (3) that paragraph (b) of the clause be modified to insert the word "governing" before "regulatory body" to make it clear which regulatory body is being referenced.

18. FAR 52.241-4 -- Paragraph (a) of the clause should be revised to recognize that the governing regulatory body may specify the conditions under which contractor failities are provided ant the method of cost recovery, and "point of delivery" should be changed to "point(s) of delivery."

Paragraph (b) of the clause should also be revised to (1) correct the typographical error in the first sentence by changing "thi" to "this", (2) recognize the influence of the governing regulatory body on supplier responsibilities, (3) modify the phrase "assumed by the Contractor" to read "the obligation of the Contractor." for consistency with FAR 52.241-8(b), and to clearly state the Contractor's responsibility for "repair".

Paragraph (c) should be revised to recognize that security considerations which do not rise to the level of "national security" may result in restrictions on access. Suggest the language be modified to read "...considered necessary for security reasons."

The first sentence of paragraph (d) of the clause should be revised to read "(d) Consistent with rules established by the governing regulatory body, such facilities shall be restored as near as practicable to the original condition, ordinary wear excepted, within a reasonable time after termination of this contract or discontinuance of service to the Government."

GSA also recommends that addition of an additional paragraph to recognize the respective liabilities of the Government and the contractor. Suggest a paragraph that reads as follows be added "(e) The Government shall in no event be liable or responsible for damage to any person or property directly occasioned through the Contractor's use or operation of its facilities, or through other actions of the Contractor; provided, however, that the Contractor shall not be liable or responsible for the actions of the Government, its employees, or agents."

9113-262

19. FAR 52.241-5 -- Paragraph (a)(1) should be revised to

(1) recognize the influence of a governing regulatory body on metering and meter reading requirements, (2) correct the typographical error ("jto"), (3) add meter repair as a contractor responsibility, and (4) change "at the service location" to " at a service location."

Paragraph (a)(2) should be revised to clarify what is being prorated. If the cost to be prorated are associated with minimum monthly charges or other fixed amounts based on a fixed billing period of "x" days, the clause should clearly state same.

Modify the second sentence of paragraph (b)(1) to change "will have" to "has".

Modify the first sentence of paragraph (d)(1) to refer to "each" service location instead of "the" service location. There may be more than one location. The language should also be revised to reflect the influence of the governing regulatory body on billing adjustments. If you are only paying for metered service it may not be necessary to make an adjustment. Doesn't this only relate to situations where there is a minimun monthly charge.

Modify the last sentence of paragraph (d)(2) to insert the word "billing" before "period."

20. FAR 52.241-6 -- GSA recommends that paragraph (b) of the clause be revised to (1) eliminate unnecessary reference to "published and unpublished rate schedules," (2) eliminate unnecessary use of the word "currently", i.e., "throughout the life of this contract" is sufficient, (3)make clear that the "cost" associated with service under alternative rate schedules is the point of focus, and (4) eliminate unnecessary reference to the "same class", i.e., the point of focus is "similar service requirements." Suggest the paragraph be revised to read " The Contractor hereby represents and warrants that throughout the life of this contract the rate schedule(s) under which the Government is billed is the lowest cost schedule(s) available to any other customer of the Contractor with similar service conditions, requirements, and load characteristics."

GSA also suggests that paragraph (d) be deleted as unnecessary. By other terms of the contract the Government has already agreed to rates approved by the governing regulatory body. If it is retained the word "approved" needs to be inserted before "by the regulatory body."

91-13-262

21. FAR 52.241-7 --Paragraph (a) needs to be reviewed. In some cases "change" is used and in other cases the plural "changes" is used.

Paragraph (d) should be revised to read as follows for clarity "Changes to rates or terms and conditions of service upon which both parties agree shall be..."

22. FAR 52.241-8 -- The proposed clause contains three provisions that pertain to Contractor connecting facilities which, in part, are (1) duplicative of each other, (2) contrary to some regulatory body rules, and (3) contradictory of each other. All three portion of the clause should be combined or be revised so that the clause is internally consistent. The clause should recognize that regulatory body rules/tariffs may specify customer and supplier responsibilities associated with connection service, that termination liability may be in lieu or or in conjunction with a connection charge, that the Government is not bound by regulatory body rules/tariffs that are contrary to Federal law, a crediting agreement may be precluded by regulatory body rules, the Government's responsibility for connection service costs may depend on current and potential usage of the connecting facilities by customers other than the Government, the cost of connecting facilities may be included in base rates, that some financially weak suppliers may be unable to provide connection service if salvage value is netted from the amount due from the Government, the factors on which a termination liability shall be based, the cost of connecting facilities may be passed on th the Government in the form of a facilities charge indicated on a separate line of the monthly bill, the contracting officer should be left some room for negotiation, and that other acceptable forms of connection charge payments are a lump sum payment at the time of construction/installation completion, progress payments during construction/installation, and advance payments (if approved in accordance with Part 32 of the FAR) prior to initiation of construction installation.

23. FAR 52.241-10 -- The prescription for this clause should be revised so that the clause is not required for areawide contracts or the clause should be revised to recognize the use of "authorizations" as a means of ordering service under an areawide contract.

Also, paragraph (b) of the clause should be amended to refer to "Any" minimum monthly charge instead of "the" minimum monthly charge. There may not be a minimum charge.

General Services Administration
Office of Acquisition Policy
Washington, DC 20405

August 6, 1991

MEMORANDUM FOR CHAIRMAN, CIVILIAN AGENCY ACQUISITION COUNCIL

ATTN: EDWARD LOEB
PROCUREMENT ANALYST

FROM: BEVERLY FAYSON
FAR SECRETARIAT

SUBJECT: Transmittal of Public Comments

Attached are public comments on the subject FAR case received.

FAR Case	CAAC Case	DARC Case	Subject	FR Cite	Closing Date
91-13	88-76	90-471	Acquisition of Utility Services	56 FR 23982; May 24, 1991	7/23/91

We recommend:

- That the DARC analyze public comments, draft final rule language, and provide it to the CAAC for review and consideration; or that DARC task one of its committees to analyze public comments and to submit a committee report, including final rule language, for review and consideration by both Councils.

X That the CAAC or the FAR Staff analyze public comments, draft final rule language, and provide it to DoD for review and consideration; or that the CAAC task one of its committees to analyze public comments and to submit a committee report, including final rule language, for review and consideration by both Councils.

- That the Councils agree on final rule language without further deliberation.

Enclosures

cc: Director, Defense Acquisition Regulations Council

Federal Recycling Program Printed on Recycled Paper

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Comments
91-13-1	6/25/91	6/19/91	CIA	91-20-2
91-13-2	6/25/91	6/21/91	USIA	91-9-5 91-11-4 90-67-4 91-17-4 91-18-4 91-20-3
91-13-3	6/26/91	6/25/91	American Defense Preparedness Assoc.	
91-13-4	6/26/91	6/21/91	Railroad Retirement Board	91-20-6
91-13-5	7/1/91	6/26/91	Gulf Gas Utilities Co.	
91-13-6	7/5/91	7/2/91	HUD	
91-13-7	7/17/91	7/15/91	Kiamichi Elec. Corp., Inc.	
91-13-8	7/18/91	7/15/91	North Western Elec.	
91-13-9	7/18/91	7/15/91	Benton Rural Elec. Assoc.	
91-13-10	7/18/91	7/15/91	DOT/Sec'y	
91-13-11	7/18/91	7/15/91	Salt River Rural Elec. Coop., Corp.	

FAR Case 91-13 Comments
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Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-12	7/18/91	7/15/91	Grant-Lafayette Elec.	
91-13-13	7/18/91	7/16/91	Southeastern Illinois Elec. Coop., Inc.	
91-13-14	7/18/91	7/15/91	Sac Osage Elec. Coop., Inc.	
91-13-15	7/18/91	7/15/91	So. Ky. Rural Elec.	
91-13-16	7/18/91	7/16/91	Southside Elec. Coop.	
91-13-17	7/19/91	7/18/91	Centerior Energy	
91-13-18	7/22/91	7/15/91	Tri-County Elec. Membership Corp.	
91-13-19	7/22/91	7/15/91	Mountain View Elec. Assoc., Inc.	
91-13-20	7/22/91	7/15/91	Cavalier Rural Elec. Coop., Inc.	
91-13-21	7/22/91	7/15/91	Highline Elec. Assoc.	
91-13-22	7/22/91	7/15/91	The Midwest Elec. Membership Corp.	
91-13-23	7/22/91	7/16/91	Alaska Rural Elec. Coop. Assoc.	
91-13-24	7/22/91	7/16/91	Rural Elec. Coop.	
91-13-25	7/22/91	7/16/91	Pee Dee Elec. Membership Corp.	
91-13-26	7/22/91	7/16/91	Buffalo Elec. Coop.	

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91-13-27	7/22/91	7/16/91	Northwest Kansas Elec. Coop. Assoc., Inc.	
91-13-28	7/22/91	7/16/91	Alfalfa Elec. Coop., Inc.	
91-13-29	7/22/91	7/16/91	Cherryland Elec. Coop.	
91-13-30	7/22/91	7/16/91	Douglas Elec. Coop.	
91-13-31	7/22/91	7/16/91	DOD/Army	
91-13-32	7/22/91	7/16/91	DOJ/JMD	
91-13-33	7/22/91	7/16/91	Delaware Elec. Coop. Inc.	
91-13-34	7/22/91	7/16/91	P.K.M. Elec. Coop., Inc.	
91-13-35	7/22/91	7/16/91	Sulphur Springs Valley Elec. Coop., Inc.	
91-13-36	7/22/91	7/17/91	Renville Sibley Coop. Power Assoc.	
91-13-37	7/22/91	7/17/91	McLean Elec. Co-op., Inc.	
91-13-38	7/22/91	7/17/91	Continental Divide Elec. Coop., Inc.	
91-13-39	7/22/91	7/17/91	Central Rural Elec. Coop.	
91-13-40	7/22/91	7/17/91	Tri-County Elec. Coop. Filmore-Houston-Winona	
91-13-41	7/22/91	undated	Valley Rural Elec. Co-op.	

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91-13-42	7/22/91	7/11/91	Carroll Elec. Coop. Corp.	
91-13-43	7/22/91	7/15/91	Butte Elec. Coop., Inc.	
91-13-44	7/22/91	7/16/91	Wild Rice Elec. Coop., Inc.	
91-13-45	7/22/91	7/16/91	DoD/IG	
91-13-46	7/22/91	7/16/91	Clinton County Elec. Coop., Inc.	
91-13-47	7/22/91	7/16/91	South Central Arkansas Elec. Coop., Inc.	
91-13-48	7/22/91	7/16/91	The Caney Valley Elec. Coop., Assoc., Inc.	
91-13-49	7/22/91	7/16/91	East Central Oklahoma Elec. Coop., Inc.	
91-13-50	7/22/91	7/16/91	Lyntegar Elec. Coop., Inc.	
91-13-51	7/22/91	7/16/91	Edgecombe-Martin County Elec. Membership Corp.	
91-13-52	7/22/91	7/17/91	Red Lake Elec. Coop., Inc.	
91-13-53	7/22/91	7/17/91	Sheyenne Valley Elec. Coop., Inc.	
91-13-54	7/22/91	7/17/91	HD Elec. Coop., Inc	
91-13-55	7/22/91	7/17/91	New Mexico Elec. Coops.	
91-13-56	7/22/91	7/17/91	Sangre De Cristo Elec. Assoc., Inc.	
91-13-57	7/22/91	7/17/91	Orcas Power & Light Co.	

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91-13-58	7/22/91	7/17/91	Corn Belt Elec. Coop., Inc.	
91-13-59	7/22/91	7/17/91	Y-W Elec. Assoc., Inc.	
91-13-60	7/22/91	7/17/91	Crawford Elec. Coop., Inc.	
91-13-61	7/22/91	7/17/91	Southwest Elec. Coop.	
91-13-62	7/22/91	7/17/91	Harmon Elec. Assoc., Inc.	
91-13-63	7/22/91	7/17/91	Moreau-Grand Elec. Coop., Inc.	
91-13-64	7/22/91	7/17/91	Hunt-Collin Elec. Coop., Inc.	
91-13-65	7/22/91	7/17/91	Kandiyohi Co-op. Elec. Power Assoc.	
91-13-66	7/22/91	7/17/91	Inland Power & Light Co.	
91-13-67	7/22/91	7/17/91	Clay Elec. Coop., Inc.	
91-13-68	7/22/91	7/17/91	Tenn. Elec. Coop., Inc.	
91-13-69	7/22/91	7/17/91	Intercounty Elec. Coop. Assoc.	
91-13-70	7/22/91	7/17/91	Western Montana Elec. Generating & Transmission Coop., Inc.	
91-13-71	7/22/91	7/17/91	Nespelem Valley Elec. Coop., Inc.	
91-13-72	7/22/91	7/17/91	Kiwash Elec. Coop., Inc.	
91-12-73	7/22/91	7/17/91	United Power, Inc.	

FAR Case 91-13 Comments
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91-13-74	7/22/91	7/15/91	Johnson County Elec. Coop.	
91-13-75	7/22/91	undated	The Cooperative Light & Power Assoc. of Lake County	
91-13-76	7/22/91	7/18/91	Arrowhead Elec. Coop., Inc.	
91-13-77	7/22/91	7/18/91	Craighead Elec. Coop.	
91-13-78	7/22/91	7/18/91	Boone Elec. Coop.	
91-13-79	7/22/91	7/18/91	Swisher Elec. Coop., Inc.	
91-13-80	7/22/91	7/18/91	Fairfield Elec. Coop., Inc.	
91-13-81	7/22/91	7/18/91	James Valley Elec. Coop., Inc.	
91-13-82	7/22/91	7/18/91	Tri-County Elec. Assoc., Inc. Plankinton, SD	
91-13-83	7/22/91	7/18/91	Plateau Elec. Coop.	
91-13-84	7/22/91	7/18/91	Okanogan County Elec. Coop., Inc.	
91-13-85	7/22/91	7/18/91	People's Elec. Coop.	
91-13-86	7/25/91	7/22/91	Indiana Statewide Assoc. of Rural Elec. Coop., Inc.	
91-13-87	7/22/91	7/18/91	Rural Elec. Co., Rupert, Idaho	
91-13-88	7/22/91	7/18/91	Ark Valley Elec. Coop. Assoc., Inc.	
91-13-89	7/22/91	7/18/91	Guernsey-Muskingum Elec. Coop., Inc.	

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91-13-90	7/22/91	7/18/91	Sun River Elec. Coop., Inc.	
91-13-91	7/22/91	7/18/91	Todd-Wadena Elec. Coop.	
91-13-92	7/22/91	7/18/91	Berkeley Elec. Coop., Inc.	
91-13-93	7/22/91	7/19/91	United Power Assoc. Elk River, MN	
91-13-94	7/22/91	7/19/91	Radiant Elec. Coop., Inc.	
91-13-95	7/22/91	7/19/91	Baker Elec. Coop., Inc.	
91-13-96	7/22/91	7/19/91	North Dakota Assoc. of Rural Elec. Coops.	
91-13-97	7/22/91	7/19/91	Empire Elec. Assoc., inc.	
91-13-98	7/22/91	7/19/91	Tri-State Generation and Transmission Assoc., Inc.	
91-13-99	7/22/91	7/19/91	R.S.R. Elec. Coop., Inc.	
91-13-100	7/22/91	7/19/91	Bridger Valley Elec. Assoc.	
91-13-101	7/22/91	7/19/91	Northern Lights, Inc.	
91-13-102	7/22/91	7/19/91	Clearwater Power Co.	
91-13-103	7/22/91	7/19/91	Sheridan Elec. Co-op., Inc.	
91-13-104	7/22/91	7/19/91	Southern Pine Elec. Power Assoc.	
91-13-105	7/22/91	7/19/91	Mor-Gran-Sou Elec. Coop., Inc.	
91-13-106	7/22/91	7/19/91	Trico Elec. Coop., Inc.	

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91-13-107	7/22/91	7/19/91	Blachly-Lane Elec. Co-op.	
91-13-108	7/22/91	7/19/91	North Carolina Assoc. of Elec. Coop., Inc., et al.	
91-13-109	7/22/91	7/19/91	Blue Ridge Elec. Membership Corp.	
91-13-110	7/22/91	7/19/91	M.J.M. Elec. Coop., Inc.	
91-13-111	7/22/91	7/19/91	Kootenai Elec. Coop., Inc.	
91-13-112	7/22/91	7/19/91	Big Flat Elec. Coop., Inc.	
91-13-113	7/22/91	7/19/91	Charles Mix Elec. Assoc. Inc.	
91-13-114	7/22/91	7/19/91	South Louisiana Elec. Coop., Assoc.	
91-13-115	7/22/91	7/19/91	Intermountain Rural Elec. Assoc.	
91-13-116	7/22/91	7/19/91	Redwood Elec. Coop.	
91-13-117	7/22/91	7/19/91	Minn. Valley Coop., Light & Power Assoc.	
91-13-118	7/22/91	7/19/91	Cam Wal Elec. Coop., Inc.	
91-13-119	7/22/91	7/19/91	Green River Elec. Coop.	
91-13-120	7/22/91	7/19/91	Jackson County Rural Elec.	
91-13-121	7/22/91	7/19/91	McNair, McLemore, Middlebrooks & Co.	
91-13-122	7/22/91	7/19/91	Crawford Elec. Coop.	

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91-13-123	7/22/91	7/20/91	North Carolina Elec. Membership Corp.	
91-13-124	7/22/91	7/22/91	Central Elec. Coop., Inc.	
91-13-125	7/23/91	7/16/91	People's Co-op Power Assoc. (PCPA)	
91-13-126	7/23/91	7/17/91	Gunnison County Elec. Assoc., Inc.	
91-13-127	7/23/91	7/17/91	Raft River Rural Elec. Coop., Inc.	
91-13-128	7/23/91	7/17/91	Sequachee Valley Elec. Coop.	
91-13-129	7/23/91	7/18/91	West Central Elec. Coop., Inc.	
91-13-130	7/23/91	7/18/91	Rita Blanca Elec. Coop., Inc.	
91-13-131	7/23/91	7/18/91	Carbon Power & Light Inc.	
91-13-132	7/23/91	7/18/91	Top O'Michigan Elec. Co.	
91-13-133	7/23/91	7/18/91	San Luis Valley Rural Elec. Coop., Inc.	
91-13-134	7/23/91	7/18/91	Elec. Data System Corp.	
91-13-135	7/23/91	7/18/91	Iowa Lakes Elec. Coop.	
91-13-136	7/23/91	7/18/91	Osage Valley Elec. Coop.	
91-13-137	7/23/91	7/18/91	Lower Valley Power & Light, Inc.	
91-13-138	7/23/91	7/19/91	West River Elec. Assoc., Inc.	

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91-13-139	7/23/91	7/19/91	Niobrara Valley Elec. Membership Corp.	
91-13-140	7/23/91	7/19/91	Navopache Elec. Co-op., Inc.	
91-13-141	7/23/91	7/19/91	La Plata Elec. Assoc., Inc.	
91-13-142	7/23/91	7/19/91	United Elec. Coop., Inc.	
91-13-143	7/23/91	7/19/91	Dixie Elec. Power Assoc. Waynesboro, MS	
91-13-144	7/23/91	7/19/91	Rayle Elec. Membership Corp.	
91-13-145	7/23/91	7/19/91	J-A-C Elec. Co-op., Inc.	
91-13-146	7/23/91	7/19/91	Slope Elec. Coop., Inc.	
91-13-147	7/23/91	7/19/91	McLennan County Elec. Coop., Inc.	
91-13-148	7/23/91	7/19/91	East River Elec. Power Coop.	
91-13-149	7/23/91	7/19/91	North Star Elec. Coop., Inc.	
91-13-150	7/23/91	7/19/91	Jo-Carroll Elec. Coop.	
91-13-151	7/23/91	7/22/91	Concho Valley Elec. Coop., Inc., and Sw. Tx. Elec. Coop., Inc.	
91-13-152	7/23/91	7/22/91	VMD Assoc. of Elec. Coops.	
91-13-153	7/23/91	7/22/91	Lone Star Gas Co.	
91-13-154	7/23/91	7/22/91	Gulf States Utilities Co.	
91-13-155	7/23/91	7/22/91	Carolina Power & Light Co.	
91-13-156	7/23/91	7/22/91	Ouachita Elec. Coop., Corp.	

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91-13-157	7/23/91	7/22/91	Delta-Montrose Elec. Assoc.	
91-13-158	7/23/91	7/22/91	Georgia Elec. Membership Corp.	
91-13-159	7/23/91	7/22/91	The Central Georgia Elec. Membership Corp.	
91-13-160	7/23/91	7/22/91	Canoochee Elec. Membership Corp.	
91-13-161	7/23/91	7/22/91	Southern Co. Servs., Inc. et al.	
91-13-162	7/23/91	7/22/91	Virginia Power	
91-13-163	7/23/91	7/22/91	Oconee Elec. Membership Corp. and Black River Elec. Coop., Inc.	
91-13-164	7/23/91	7/22/91	Montana-Dakota Utilities Co.	
91-13-165	7/22/91	7/22/91	Choctawhatchee Elec. Coop., Inc.	
91-13-166	7/23/91	7/22/91	Kodiak Elec. Assoc. Inc.	
91-13-167	7/23/91	7/22/91	CoBank	
91-13-168	7/23/91	7/22/91	Barron Elec. Coop.	
91-13-169	7/23/91	7/22/91	Norris Elec. Coop.	
91-13-170	7/23/91	7/23/91	Dixie Elec. Membership Corp.	
91-13-171	7/23/91	7/23/91	Oglethorpe Power Corp.	
91-13-172	7/23/91	7/23/91	Fall River Rural Elec. Coop., Inc.	
91-13-173	7/23/91	7/23/91	Arkansas Power & Light Co. et al.	

FAR Case 91-13 Comments Due: 7/23/91
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-174	7/23/91	7/23/91	San Diego Gas & Elec.	
91-13-175	7/23/91	7/23/91	Edison Elec. Institute	
91-13-176	7/23/91	7/23/91	USDA/REA	
91-13-177	7/23/91	7/23/91	Nevada Power Co.	
91-13-178	7/23/91	7/23/91	Cuivre River Elec. Coop., Inc.	
91-13-179	7/23/91	7/23/91	Golden Valley Elec. Assoc., Inc.	
91-13-180	7/23/91	7/23/91	Hawaiian Elec. Co., Inc.	
91-13-181	7/23/91	7/23/91	Nat'l Rural Elec. Coop. Assoc.	
91-13-182	7/23/91	7/23/91	American Gas Assoc.	
91-13-183	7/23/91	7/23/91	Copper Valley Elec. Assoc., Inc.	
Additional comments received after comment due date.				
91-13-184	7/24/91	7/22/91	Cobb Elec. Membership Coop.	
91-13-185	7/24/91	7/22/91	Sawnee Elec. Memebership Corp.	
91-13-186	7/24/91	7/22/91	Lamar Elec. Membership Corp.	
91-13-187	7/24/91	7/22/91	Roanoke Elec. Membership Corp.	
91-13-188	7/24/91	7/22/91	Randolph Elec. Membership Corp.	
91-13-189	7/24/91	7/23/91	Idaho Coop. Util. Assoc.	
91-13-190	7/24/91	7/23/91	Southern Maryland Elec. Coop., Inc.	
91-13-191	7/25/91	7/16/91	Licking Valley Rural Elec. Coop.	

FAR Case 91-13 Comments Due: 7/23/91
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-192	7/25/91	7/17/91	East Mississippi Elec. Power Assoc.	
91-13-193	7/25/91	7/19/91	Farmers' Elec. Coop., Inc.	
91-13-194	7/25/91	7/22/91	Rock County Elec. Coop., Inc.	
91-13-195	7/25/91	7/22/91	Wise Elec. Coop., Inc.	
91-13-196	7/25/91	7/22/91	Jackson County Rural Elec. Co-op., Corp.	
91-13-197	7/25/91	7/22/91	Tideland Elec. Membership Corp.	
91-13-198	7/25/91	7/22/91	Decatur County REMC	
91-13-199	7/25/91	7/22/91	Carteret-Craven Elec. Membership Corp.	
91-13-200	7/25/91	7/2/91	Se - Ma - No Elec. Coop.	
91-13-201	7/25/91	7/16/91	Capital Elec. Coop., Inc.	
91-13-202	7/25/91	7/19/91	Minnkota Power Coop., Inc.	
91-13-203	7/25/91	7/22/91	Turner-Hutchinson Elec. Coop., Inc.	
91-13-204	7/25/91	7/22/91	Arkansas Elec. Coop., Inc.	
91-13-205	7/25/91	7/22/91	Marshall County Rural Elec. Membership Corp.	
91-13-206	7/25/91	7/22/91	Lamb County Elec. Coop. Inc.	
91-13-207	7/25/91	7/18/91	Black Hills Elec. Coop., Inc.	
91-13-208	7/25/91	7/22/91	Jackson Elec. Membership Corp.	
91-13-209	7/25/91	7/22/91	Assoc. of Illinois Elec. Coop.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-210	7/25/91	7/22/91	Moon Lake Elec. Assoc.	
91-13-211	7/25/91	7/22/91	South River Elec. Membership Corp.	
91-13-212	7/25/91	7/19/91	Lumbee River Elec. Membership Corp.	
91-13-213	7/25/91	7/22/91	Alaska Village Elec. Coop., Inc.	
91-13-214	7/25/91	7/22/91	Central Montana Elec. Power Coop., Inc.	
91-13-215	7/25/91	7/23/91	Adams Elec. Coop., Inc.	
91-13-216	7/25/91	7/22/91	Columbia Rural Elec. Assoc., Inc.	
91-13-217	7/25/91	7/22/91	Farmers' Elec. Coop., Inc. of New Mexico	
91-13-218	7/25/91	7/22/91	Habersham Elec. Membership Corp.	
91-13-219	7/25/91	7/23/91	Baltimore Gas & Elec.	
91-13-220	7/25/91	7/23/91	Walton Elec. Membership Corp.	
91-13-221	7/25/91	7/23/91	East Central Elec. Assoc.	
91-13-222	7/25/91	7/25/91	Central & South West Corp., et al.	
91-13-223	7/25/91	7/25/91	Flint Elec. Membership Corp.	
91-13-224	7/26/91	7/25/91	Homer Elec. Assoc., Inc.	
91-13-225	7/26/91	7/18/91	Lynches River Elec. Coop., Inc.	
91-13-226	7/26/91	7/23/91	Central Elec. Power Coop., Inc.	
91-13-227	7/26/91	7/23/91	Kansas Elec. Coop., Inc.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-228	7/26/91	7/23/91	Rushmore Elec. Power Coop., Inc.	
91-13-229	7/26/91	7/24/91	Rural Elec. Membership Corp. Daviess-Martin County	
91-13-230	7/26/91	7/23/91	Matanuska Elec. Assoc., Inc.	
91-13-231	7/26/91	7/18/91	Wright-Hennepin Coop. Elec. Assoc.	
91-13-232	7/26/91	7/23/91	Valley Elec. Assoc., Inc.	
91-13-233	7/26/91	7/22/91	Washington Elec. Membership Corp.	
91-13-234	7/26/91	7/23/91	Southwest Rural Elec. (SWRE)	
91-13-235	7/26/91	7/23/91	Hot Springs REA, Inc.	
91-13-236	7/26/91	7/17/91	Palmetto Elec. Coop.	
91-13-237	7/26/91	7/23/91	Amicalola Elec. Membership Corp.	
91-13-238	7/26/91	7/23/91	Bon Homme Yankton Elec. Assoc., Inc.	
91-13-239	7/26/91	7/23/91	Grand Elec. Coop., Inc.	
91-13-240	7/29/91	7/22/91	Ravalli County Elec. Co-op.	
91-13-241	7/29/91	7/23/91	Dixie Elec. Membership Corp. (DEMCO)	
91-13-242	7/29/91	7/23/91	Talqin Elec. Coop., Inc.	
91-13-243	7/29/91	7/23/91	Union County Elec. Coop., Inc.	
91-13-244	7/29/91	7/24/91	Fayette Union County REMC	
91-13-245	7/29/91	7/23/91	Jay County REMC	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-246	7/29/91	7/23/91	Kankakee Valley REMC	
91-13-247	7/29/91	7/22/91	Mille Lacs Elec. Coop.	
91-13-248	7/29/91	7/22/91	Salmon River Elec. Co-op., Inc.	
91-13-249	7/29/91	7/23/91	Clay-Union Elec. Corp.	
91-13-250	7/29/91	7/23/91	Sioux Valley Elec.	
91-13-251	7/29/91	7/22/91	Mid-Carolina Elec. Coop., Inc.	
91-13-252	7/29/91	7/23/91	Harrison County Rural Elec. Coop.	
91-13-253	7/29/91	7/25/91	South Alabama Elec. Coop., Inc.	
91-13-254	7/30/91	7/22/91	The Satilla REMC	
91-13-255	7/30/91	7/23/91	Pioneer Rural Elec. Coop., Inc.	
91-13-256	7/31/91	7/24/91	Poudre Valley Rural Elec. Assoc.	
91-13-257	7/31/91	7/29/91	Senator Steve Symms (Constituent Referrals; duplicates)	
91-13-258	7/31/91	7/18/91	NSF	
91-13-259	8/5/91	7/31/91	DOD/Army	

Central Intelligence Agency

Washington, D.C. 20505

91-13-1

JUN 19 1991

FAR Secretariat
General Services Administration
Office of Acquisition Policy
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Attention: Ms. Beverly Fayson
FAR Secretariat

Dear Ms. Fayson:

Regarding your letter of 31 May 1991, this Agency has reviewed the following rule, revising the Federal Acquisition Regulations (FAR), and has no comment on it:

FAR Case 91-20, Notification of Ownership Changes

FAR Case 91-13, Acquisition of Utility Services

We appreciate your forwarding the above cases to us.

Sincerely,

Franklin T. King
Chief
Procurement Management Staff
Office of Logistics

JUN 5 1991

United States Information Agency

Washington, D.C. 20547

91-13-2

USIA

June 21, 1991

Ms. Beverly Fayson
FAR Secretariat (VRS)
General Services Administration
18th & F Sts., N.W. Room 4041
Washington, D.C. 20405

Dear Ms. Fayson:

Re: FAR Case Nos. 90-67; 91-9; 91-11; 91-13; 91-17; 91-18 and 91-20

We have reviewed and concur in the seven proposed rules to revise the Federal Acquisition Regulation (FAR) as follows:

a. Preproduction Startup Costs. FAR Case 90-67.

b. Helium. FAR Case 91-9.

c. Shipments to Ports and Air Terminals. FAR Case 91-11.

d. Acquisition of Utility Services. FAR Case 91-13.

e. Contractor Acquisition of APDE. FAR Case 91-17.

f. Multiyear Contracting. FAR Case 91-18.

g. Notification of Ownership Changes. FAR Case 91-20.

Thank you for submitting this material for our review.

Sincerely,

Philip R. Rogers
Agency Procurement Executive
Office of Contracts

JUN 25 1991

AMERICAN DEFENSE PREPAREDNESS ASSOCIATION
DEDICATED TO PEACE WITH SECURITY THROUGH DEFENSE PREPAREDNESS
TWO COLONIAL PLACE 2101 WILSON BOULEVARD SUITE 400 ARLINGTON, VIRGINIA 22201-3061
703-522-1820 FAX: 703-522-1885
Founded 1919

91-13-3

June 25, 1991

Beverly Fayson
General Services Administration
Office of Federal Acquisition Policy
18th and F Sts., NW, Room 4037
Washington, DC 20405

re: FAR Case 91-13

Dear Ms. Fayson:

This responds to your request for comments concerning Case 91-13, Acquisition of Utility Services.

We find no objectionable provision in the rewritten Part 41 and concur in its publication. This is a comprehensive treatment of the subject.

We appreciate the opportunity to review and comment on Case 91-13.

Sincerely,

William Eicher

William E. Eicher
Major General, US Army (Ret.)
Vice President

WEE:meh

JUN 26 1991

91-13-4

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF SUPPLY AND SERVICE

June 21, 1991

Ms. Beverly Fayson
FAR Secretariat (VRS)
General Services Administration
Room 4041
18th and F Streets, NW
Washington, D.C. 20405

Reference: FAR Cases 91-20 and 91-13

Dear Ms. Fayson:

As requested, we have reviewed the proposed revision to the Federal Acquisition Regulation (FAR). We have no comments at this time.

Very truly yours,

Henry M. Valiulis
Director of Supply
and Service

JUN 26 1991

GGU

GULF GAS UTILITIES CO.

18065 UPPER BAY ROAD. SUITE 210. HOUSTON. TEXAS 77058 713 333-4484

DALLAS OFFICE: 4223 HARVEST HILL. DALLAS. TEXAS 75244 214/661-2322 FAX 661-2356

91-13-5

June 26, 1991

GENERAL SERVICES ADMINISTRATION
FAR Secretariat (VRS)
18th and F Streets, NW, Room 4041
Washington, DC 20405

Re: FAR Case 91-13

Gentlemen:

Gulf Gas Utilities Company (GGU) a small Texas natural gas utility company would like to comment on the FAR Case 91-13, as it relates to natural gas service. Due to the deregulation of the natural gas industry, there are many opportunities for competition that did not exist a few years or months ago; therefore, your request for comments is timely.

1. **41.001 Definitions.**

   a. **Areawide contract** means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover the utility service needs of Federal agencies within the franchise/service area of the supplier.

   Comment: In many areas, specifically in Texas, exclusive franchises are illegal by State law. Therefore, before an area wide contract is negotiated with one company, all options for fair and open competition should be considered. Also, by breaking large area wide contracts into individually metered locations, the Government might realize more competitive pricing by negotiating transportation agreements with existing pipelines and competitively competing their natural gas needs. This would also open up the opportunity for small business participation.

   b. **Franchise service territory** means a geographic area, defined or granted to a specific utility service supplier(s) to supply the customers in that area.

   Comment: This definition is misleading. A franchise, in Texas, is granted to allow a company the right to use the

JUL 1 1991

91-13-5

streets and alleys for a fee, and if a company does not need to use the city streets then a franchise is not required to service a customer in that geographic area. Therefore, it is possible to service a customer in someone else's franchised area, without a franchise.

2. **41.004-2 Procedures.**

(a) Prior to executing a utility service contract, the contracting officer shall comply with parts 6 and 7 and subsections 41.004-1(d) and (e). In accordance with parts 6 and 7, agencies shall conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement.

Comment: Recently I have felt the results of these "market surveys or acquisition planning" and believe that an additional step needs to be incorporated into the Federal Regulations. A statement of intent to procure natural gas by an agency, synopsised in the CBD, with a request for response from interested parties, would guarantee that open and fair competition is considered before a sole source solicitation is determined relevant. (My personal experience is that our industry is changing so rapidly, that no consultant or market survey can be up-to-date on every location; therefore, the only mechanism to assure fairness is to announce the potential need far enough in advance for interested parties to respond.)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-3000

91-13-6

July 2, 1991

OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION

Ms. Beverly Fayson
FAR Secretariat
General Services Administration
Room 4041
18th and F Streets, NW.
Washington, DC 20405

Dear Ms. Fayson:

In response to the Federal Register notice of May 24, 1991, we have the following comments on FAR Case 91-13, Acquisition of Utility Services:

- The term "areawide contracts" is used throughout Part 41; however, it is our understanding that these are basic agreements, not contracts. If these were contracts, then it would be redundant to require, as subsection 41.004-4 does, that a Standard Form 26 (a contract award document) be used to place orders under such "contracts." To be consistent with the terminology used elsewhere in the FAR (see FAR 2.101 and 16.702(a)), we recommend that the term "areawide agreement" be employed.

- It would be more appropriate for the coverage on specifications contained in section 41.009 to be included in Part 10 of the FAR; however, a cross-reference in Part 41 could still be used.

You may contact Ed Girovasi or Rob Lloyd of my staff on 708-0294 if you have any questions.

Sincerely,

Roosevelt Jones

Roosevelt Jones
Director, Office of
Procurement and Contracts

JUL 5 1991

JUL 5 1991

91-13-7

Kiamichi Electric Cooperative, Inc.

P.O. DRAWER 340 PHONE 465-2336
OKLAHOMA 33, LATIMER
WILBURTON, OKLAHOMA 74578

BOARD OF TRUSTEES

ATTORNEY
Gene Sice

GENERAL MANAGER

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.- Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Gentlemen:

In reviewing the proposed rules for FAR Case 91-13, it appears the Government will be treated as any other customer of a cooperative except in 52.241-13 Capital Credits.

Sections (b) and (c) will go against the By-Laws of our cooperative since Capital Credit allocations are made annually after the year end financial reports are completed. It will be impossible to determine what, if any, Capital Credits will be due to any account prior to that time. No Capital Credit retirements are made prior to the time the financial condition of the cooperative warrants. The Cooperative is currently on a First-In, First-Out retirement and a 20 year rotation cycle.

The proposed rules would definitely pose a severe hardship in the operation of the cooperative in the accounting process.

Our allocation and retirement of Capital Credits are presently acceptable to the Rural Electrification Administration.

Please consider a change in your Proposed Rules to comply with the individual cooperatives' By-Laws and Terms and Conditions of Services.

Sincerely,

Duane S. Wood
General Manager

DSW:jas

JUL 17

91-13-8

NORTH WESTERN ELECTRIC

P. O. BOX 391
BRYAN, OHIO 43506-039
Phone (419) - 636 - 5051
FAX (419) - 636 - 0194

a consumer owned power system serving northwestern Ohio

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, DC 20405

REFERENCE: FAR Case 91-13

TO WHOM IT MAY CONCERN:

The following comments are in reference to FAR Case 91-13. The proposed published rule on the acquisition of services from utilities is ridiculous and puts an undue burden on our cooperative by being in conflict with our Code of Regulations.

Although we presently rotate our capital patronage on a fixed cycle, there is no guarantee we will continue such a practice annually. Each year our Board analyzes our financial position and then determines whether to rotate such patronage. Paragraph "B" of the proposed regulation states the amount and date capital patronage is to be paid to the government. This cannot be determined with any certainty by our cooperative at the close of our fiscal year.

We don't need any more regulations of this ill conceived type.

Sincerely,

Lyle D. Brigle /lsb

Lyle D. Brigle
Manager - Engineer

LDB/lsb

JUL 8 '91

91-13-9

Benton Rural Electric Association

402 7th St.—P.O. Box 1150—Phone Area Code 509-786-2913
Fax 509-786-2231

Prosser, Washington 99350

SERVING IN BENTON AND YAKIMA COUNTIES SINCE 1937

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N. W.
Room 4041
Washington, D. C. 20405

SUBJECT: FAR Case 91-13

Dear Sirs:

In review of the above referenced case, I understand that GSA is proposing at section 41.007(j) the inclusion of section 52.241-13 entitled Capital Credits.

Our utility, Benton Rural Electric Association, is a cooperative which was formed and is operated under the Rural Electrification Act. Pursuant to the Act and as guided by our Articles of Incorporation and Bylaws, our Association maintains capital credit files on members of the cooperative who receive electrical service. However, we maintain no capital credit reporting system for any other purposes. To this extent, if the government or any of its agencies are members of our cooperative and therefore take electric service from our cooperative, an account has already been established. If the government or its agencies are not currently taking electricity from our co-op, then they will not be listed on our capital credit system. Also provided in our Articles and Bylaws is the authority for the Board of Tustees to set the rotation schedule for those capital credits. The capital credits are allocated on an annual basis and are paid according to a schedule which is previously established by the Board of Trustees. As a result, our notices are distributed at the end of each calendar year and are paid pursuant to this rotation cycle. There is no provision whatsoever in our Articles or Bylaws to allow the payment of capital credits outside of this normal rotation cycle unless the member or patron is deceased and then we pay the estates.

JUL 18 1991

91-13-9

As a result, I find your proposal for section 52.241-13 on capital credits in direct violation of our Articles and Bylaws. Therefore, it will be impossible for our cooperative to implement and/or to follow.

I appreciate the opportunity to comment on this section and would be glad to address any other issues on this matter that you see necessary.

Sincerely yours,

Charles L. Dawsey

CHARLES L. DAWSEY
General Manager

CLD:kh

91-13-10

U.S. Department of Transportation
Office of the Secretary of Transportation

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, NW
Washington, DC 20405

Gentlemen:

This responds to your request for comments on the Federal Acquisition Regulation Case 91-13.

Paragraph 41.001 **Definitions:** The definition of "**connection charge**" is unclear. Does the term mean all non-recurring costs associated with the installation of utility services at a particular point?

Paragraph 41.004-2 **Procedures**, subparagraph (e): This section makes it incumbent on the contracting officer to attempt to execute a contract at least once a year in situations in which the utility company has been unwilling to execute a contract. This seems unreasonable given that the contracting officer is also required to furnish the General Services Administration (GSA) with detailed data concerning a utility's unwillingness to sign a contract. After the contracting officer has attempted to obtain the signature, and has given GSA the required information, it should be GSA's responsibility to persuade the utility to sign a contract.

Paragraph 41.004-4 **GSA areawide contracts:** Subparagraph (c) requires that an SF 26 (Award/Contract) be attached to each executed areawide contract. Since both forms are contracts, this seems to imply that two separate contracts are being required for individual service. We see no reason for this proliferation of paperwork. In subparagraph (d), it should be stated whether or not this requirement to furnish GSA with copies of executed contracts is dependent on the contract being in excess of a specific monetary amount.

If you have any questions regarding our comments, please contact Vincent Careatti on (202) 366-4278.

Sincerely,

Linda M. Higgins

Linda M. Higgins
Director of Acquisition and
Grant Management

JUL 18 1991

91-13-11

SALT RIVER RURAL ELECTRIC
COOPERATIVE CORPORATION
111 West Brashear Avenue
Bardstown, Kentucky 40004
(502) 348-3931 Fax (502) 348-1993

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13
Objections to proposed paragraphs (b) and (c)

TO WHOM IT MAY CONCERN:

I have read with alarm your proposed rule on the acquisition of services from utilities (56 Federal Register 23982), section 41.007 (j), paragraphs (b) and (c). The proposed provisions will create an unduly burdensome hardship on any electrical cooperative. Please consider the following:

1. Capital Credits is the cooperative way of raising capital to operate the Cooperative, which is shared by all members;
2. Capital Credits are retained until such time as the financial conditions of the Cooperative justify their retirement;
3. Few if any cooperatives are in a position to project the year of retirement of capital credits, especially at the time the credits are put on the books. Economic conditions, etc., have a great bearing on the ability of a cooperative to retire capital credits;
4. To compel that capital credits of the government be paid upon termination of a contract, will cause those capital credits to be rotated out of turn and in preference to other consumers, which is unfair and violates cooperative principles;
5. Some cooperatives are not equipped to notify their members of the amount of capital credits attributed to them in a given year. Further, the cost of preparing and mailing said notices to the membership becomes both inefficient and prohibitive.

Please take this letter as a resounding NO! to the proposed paragraphs. Take time to think of more than the ease and comfort of the bureaucrats in Washington, D.C., and contemplate what your proposals will do the little people who have to carry the awesome burden of government. PLEASE?

Respectfully,

George E. Mangan

George E. Mangan
General Manager

cc: Michael Oldak

JUL 18 1991

GRANT-LAFAYETTE

TELEPHONE 608-723-2121
FAX 608-723-2688

91-13-12

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th & "F" Street, N.W.
Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Sirs:

In reference to your published proposed rule on the acquisition of services from utilities (56 Federal Register 23982), specifically Section 41.007(j) - 52.241.13 Capital Credits, paragraphs (b) and (c) and (d) - our comments are as follows:

Paragraph (b) It is impossible for us to furnish a list of the accrued credits within 60 days after the close of our fiscal year. Our audit has not been finalized as of this date. Also, this paragraph says "the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made. The by-laws provide that the directors authorize the payment when financially feasible. We cannot commit ourselves to a definite date of payment at the time of allocation.

Paragraph (c) The Cooperative's by-laws do not allow payment of capital credits at the time of expiration of a contract but payment is made in a normal cycle. To pay you otherwise would be preferential treatment and paying preferentially could result in the cooperative losing our tax-exempt status.

Paragraph (d) Payment would be made with a regular company check, not a "certified check". Again, this presents an extra burden. If you want services from us, then you should follow our rules of service.

Sincerely,

GRANT-LAFAYETTE ELECTRIC COOPERATIVE

Richard E. Kolb

Richard E. Kolb
Manager

JUL 18 1991

91-13-13

SOUTHEASTERN ILLINOIS ELECTRIC COOPERATIVE, INC.

P. O. Box 251 • Eldorado, Illinois 62930 • Phone: Area Code 618/273-2611

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N. W., Room 4041
Washington, D. C. 20405

Re: FAR Case 91-13

Dear Sirs:

I recently became aware of a GSA proposed rule on the acquisition of services from utilities which would require cooperatives to establish a distinct and separate bookkeeping system for any and all accounts established with the Federal Government. The Federal Government is indeed a member of the cooperative and is certainly entitled to the return of patronage capital; however, this patronage should be returned on the same basis and same rotation as any other cooperative member. What is being proposed in FAR Case 91-13 is shallow in thought, ill conceived, and if implemented, will result in higher utility bills for all cooperative members, including the Federal Government.

Sincerely,

SOUTHEASTERN ILLINOIS
ELECTRIC COOPERATIVE, INC.

James M. Cummins

James M. Cummins
General Manager

JMC/bp

cc: Greg Cruse

JUL 18

91-13-14

July 15, 1991

General Services Administration, FAR Secretariat (VAS)

18th and F Streets

N.W. Room 4041

Washington, D.C. 20405

Re: FAR Case 91-13

(56 Federal Register 23982) - 52.241-13 Capital Credits

Comments:

The proposed rule changes on Capital Credits between rural electric cooperatives and government agencies will be an accounting nightmare! The paragraphs (b) and (c) are particularly disturbing since they would cause us to handle the government accounts differently than other members. This would result in discrimination and would be unfair to other members!

There is no way that we could state the date payment of capital credits would be made or make payment out of order for one and not for all members!

Please reconsider at least the paragraphs (b) and (c) of 52.241-13 Capital Credits. These paragraphs would cause all kinds of trouble with rural electric cooperative across the nation!

Thanks for your consideration;

Harold Myers

Harold Myers, Manager

Sac Osage Electric Coop., Inc.

91-13-15

SOUTH KENTUCKY RURAL ELECTRIC
COOPERATIVE CORPORATION
P.O. Box 910
Keith Sloan, President
Somerset, Kentucky 42502
Phone (606) 679-4121

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Gentlemen:

RE: FAR Case 91-13

In section 52.241-13 Capital Credits, we agree that the Government is a member of the Cooperative and as any other member is entitled to capital credits consistent with all other members of the Cooperative.

We find that paragraph (b) & (c) are not consistent with the capital credits refunds to all other members and would cause unnecessary time and expense to comply with these two paragraphs.

We also find in paragraph (d) that it would be inconsistent to prepare a certified check to the treasurer while all other capital credits checks are prepared by a computer without this extra burden and expense. Your consideration of these points would be appreciated very much.

Very truly yours,

SOUTH KENTUCKY RECC

Clifford M. Payne

Clifford M. Payne, Director
Admin., DP & Finance

CMP:fb

c: Keith Sloan, President

JUL 18 1991

91-13-16

SOUTHSIDE ELECTRIC COOPERATIVE

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Reference: FAR Case 91-13

Dear Sir:

I am in receipt of the proposed rules in reference to the above-cited case as published in the Federal Register, Volume 56, Number 101, Friday, May 24, 1991. As Executive Vice President of Southside Electric Cooperative, I must take exception to the proposed rule under 52.241-13 Capital Credits. More specifically, the sections that read as follows:

"(b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Office, in writing a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made."

Southside Electric Cooperative's Bylaws specifically spell out the right of the Board of Directors to determine when capital credit payments can be made in a manner that will not place financial hardship on the Cooperative. We do provide a notification approximately 90 days after the close of our fiscal year for the capital credits assigned to that account for that year. The capital credits are accrued by year and not grouped together in order that payment can be made for specific years or part of the year as our financial situation allows. The payment of capital credits is not pre-determined for the year when the assignment is made. It is the goal of the Cooperative to end up on a ten-year rotating cycle; however, financial conditions can vary that cycle in future years.

JUL 18 1991

Headquarters Office: P. O. Box 7 Crewe, VA 23930 (804) 645-7721 VA WATTS Toll Free 800-552-2118
Western District Office: P. O. Box 186 Altavista, VA 24517 (804) 369-5295
Eastern District Office: P. O. Box 56 Dinwiddie, VA 23841 (804) 469-3753

91-13-16

"(c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits."

Southside Electric Cooperative finds this to be in total violation of the principles of a cooperative where each member is refunded their capital credits as the Cooperative is financially able. This would place the United States Government in a preferential position to receive their capital credits before the other members of the Cooperative who must wait until the normal rotation cycle for capital credits. The exception to this is the Board can approve the payment of accumulated capital credits upon the death of any patron (natural person) if a legal representative of the estate applies for such capital credits. This exception was placed in effect simply to assist in the closing of estates and specifically identifies the payment for an "individual," not a business that closes. Once again, this is under the sole discretion of the Board of Directors to make these payments. It certainly appears that the Government would be again violating the principles of a cooperative by requesting preferential treatment.

"(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____, unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued."

Once again, as stated above, the disbursement of capital credits is done on an annual basis as approved by the Board of Directors and may be for one or more years or, in fact, for less than one year. These payments are made on the financial ability of the Cooperative to make those payments at that given time. The Cooperative's account number is usually accompanied by a consumer's identification number which would be the contracting account number with the Federal Government.

These specific items as identified in the published Federal Register proposals give the Cooperative considerable problems simply due to the fact that we see these changes as giving preferential treatment to the Federal Government over the members of the Cooperative that contribute capital on a continuing basis.

I must note at this point that capital credits from "associated organizations" (such as our generation and transmission power

91-13-16

supply cooperative) are returned to the members of the Cooperative on the same pro-rata basis as our operating capital credits, except they are refunded within thirteen (13) months after receipt of payment from these associated organizations.

Thank you for the opportunity to express our opinion on these proposed rules, and we certainly do not feel that the rules should be drafted in order to provide preferential treatment to the Federal Government. Electric cooperatives are unique in the fact that profits made are returned to our members as economically feasible where the independently-owned electrical utilities return their profits to their stockholders. We do not feel the Federal Government should try to take advantage of the other Cooperative members by requesting preferential treatment in their payment of capital credits.

With kindest regards,

John C. Anderson
Executive Vice President

JCA/jlh
C: Mr. Robert Bergland, General Manager, National Rural Electric Cooperative Association
Mr. Michael Oldak, Regulatory Counsel, National Rural Electric Cooperative Association
Southside Electric Cooperative Board of Directors

CENTERIOR ENERGY

91-13-17

Independence OH
216 447 3100

P.O. Box 9466
Cleveland OH 44101-9466

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
Room 4041
18th and F Streets, N.W.
Washington, D.C. 20405

Re: FAR Case 91-13 Proposed Rulemaking
Comments by Centerior Energy Corporation

Greetings:

Centerior Energy Corporation, on behalf of its operating companies, The Cleveland Electric Illuminating Company and The Toledo Edison Company, submit six copies of its comments on the proposed re-write of the FAR, as described in the Federal Register, Vol. 56, No. 101, dated May 24, 1991. Date stamp and return two of the copies to me in the enclosed envelope.

Please direct questions concerning these comments to the undersigned, counsel for Centerior Energy Corporation.

Very truly yours,

Craig I. Smith
Principal Counsel

#204:7-18-91/CIS/MES/CSC:GSALTR

JUL 19 1991

Operating Companies:
Cleveland Electric Illuminating
Toledo Edison

91-13-17

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation:)
Acquisition of Utility Services)
48 CFR Parts 6, 8, 15, 41 and 52)

FAR Case 91-13

COMMENTS BY THE CENTERIOR ENERGY CORPORATION,
ON BEHALF OF ITS OPERATING COMPANIES,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY
AND THE TOLEDO EDISON COMPANY

INTRODUCTION

Centerior Energy Corporation, on behalf of its operating companies, The Cleveland Electric Illuminating Company and The Toledo Edison Company, submit these comments on the proposed rewrite of the Federal Acquisition Rules (FAR), as described in the Federal Register, Vol. 56 No. 101, dated May 24, 1991.

CENTERIOR ENERGY

Centerior Energy Corporation, a public utility holding company, is the parent company of CEI and Toledo Edison Company: Ohio public utilities engaged in the generation, purchase, transmission, distribution and sale of electric energy. CEI serves approximately 737,000 customers in a 1,700 square mile area in northeastern Ohio, including the City of Cleveland.

91-13-17

Toledo Edison provides service within an area of approximately 2,500 square miles in northwestern Ohio, including the City of Toledo, and serves approximately 283,000 customers.

The Centerior operating companies are regulated by the Public Utilities Commission of Ohio as to retail sale of electric energy, and by the Federal Energy Regulatory Commission as to wholesale transactions of electric energy.

THE FAR PROPOSAL

GSA[1] describes its proposal as a major re-write to, in part, further guide contracting officers of public utility services; further define contract terms; and better delineate existing statutory and delegated authority for utility service contracting. Centerior is concerned about the proposal in two respects:

THE PROPOSAL ALTERS GSA'S LONG-STANDING POLICY THAT ENCOURAGES AREAWIDE CONTRACTS.

GSA seemingly veers away from a long-standing policy of preferring areawide contracts for the acquisition of utility service. Areawide contracts, as "master" contracts between the GSA and utilities, benefit the federal government through efficient, full service procurement of utility services from one electric supplier. The proposed rule diminishes the status of

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1. For purposes of these comments, the agencies are collectively known as GSA or, simply, the federal government.

91-13-17

areawide contracts. No longer considered "master" contracts, they merely become one of several means for the federal government to acquire utility services.

Besides ending its preference for areawide contracts, GSA encourages the unbundling of utility services upon the rationale that separately negotiated contracts promote competition. This newly pronounced policy to unbundle services that utilities traditionally provide, and upon which they determine their cost of service, is facilitated by proposed paragraph 41.004-2(a):

> "...If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for <u>certain portions</u> of the requirement." (emphasis added)

The GSA interest in bifurcating the rendition of utility service into separate distinct components is further underscored by the definition of "entire utility service", to include partial services, such as standby or back-up service; the generation, transmission and/or distribution of electric energy; product quality, system reliability, and system operation; as well as the metering and billing for the product (Id.).

GSA's variation from the traditionally perceived rendition of full utility service signals a disturbing change in emphasis. An incremental, piece-meal approach to the acquisition of utility

91-13-17

services destroys the efficiency and reliability advantages of receiving generation, transmission and distribution service from fully-integrated utility systems.

This now divergent emphasis on the part of GSA hardly will end the debate; rather, it brings into focus whether lower costs for the federal government will actually result from less reliance and from the de-emphasis of areawide contracting; and, conversely, it brings into focus whether utilities, knowing that the government will only enter into areawide contracts as a last resort, will have incentives to enter into them at all.

GOVERNMENT PROCUREMENT ACTION TO ENCOURAGE RETAIL WHEELING OF POWER TO ITS FACILITIES IS A POLICY NOT ARTICULATED BY CONGRESS, AND WOULD BE, IN FACT, CONTRARY TO CONGRESS' ENERGY ENACTMENTS AND RUN CONTRARY TO SOUND PUBLIC ENERGY POLICY.

An obscure provision of paragraph 41.004-5(b)(7), requires the contracting officer to document the willingness of the utility "to wheel or otherwise transport utility service". As used in this context, "utility service" would include the transmission of service directly to the federal agency from sources other than the local utility in whose service franchise territory the agency is located.

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3000

ACQUISITION

19 AUG 1991

DP(DARS)

MEMORANDUM FOR LTCOL MICHAEL RILEY, OASD(PA)(DFOI & SR)

SUBJECT: DAR CASE 90-471, ACQUISITION OF UTILITIES SERVICES

Attached is a matrix of 259 respondents and public comments received from those respondents on the proposed rule of subject case published in the Federal Register on May 24, 1991, (56FR 23982). This case involves revisions to DFARS Part 241.

These comments are provided for the public's review or request for copies. Our case manager is Mr. Charles W. Lloyd who may be contacted at (703) 697-7266.

Linda E. Greene

LINDA E. GREENE
Deputy Director
Defense Acquisition Regulations Council

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3000

ACQUISITION

19 SEP 1991

DP(DARS)

MEMORANDUM FOR LTCOL MICHAEL RILEY, OASD(PA)(DFOI & SR)

SUBJECT: DAR CASE 90-471, ACQUISITION OF UTILITIES SERVICES, ADDITIONAL PUBLIC COMMENTS

Attached is a matrix of an addendum to a previously received public comment and three additional public comments received from respondents on the proposed rule of subject case published in the Federal Register on May 24, 1991 (56FR23982). This case involves revisions to DFARS Parts 241.

These comments are provided for the public's review or request for copies. Our case manager is Mr. Charles W. Lloyd who may be reached at 697-7266.

Linda E. Greene

LINDA E. GREENE
Deputy Director
Defense Acquisition Regulations Council

Subject: Acquisition of Utility Services: Comments

FAR Case 91-13 , CAAC Case 88-76, DAR Case 90-471

Closing Date: 7/23/91

Analyst: Edward Loeb

To: CAA Council

Date: 8/20/91

LATE COMMENTS

Response Number	Date Received	Date of Letter	Commenter	Other Comments
*91-13-155 Addendum	8/8/91	8/5/91	Carolina Power & Light Co.	
91-13-260	8/7/91	7/22/91	Park Elec. Co-op., Inc.	
91-13-261	8/7/91	8/2/91	Treasury/Sec'y	
91-13-262	8/16/91	8/16/91	Office of GSA Acquisition Policy	

***See previous comment #155, substitute page 4 as stated.**

91-13-155
Addendum

Please do not hesitate to contact me if you have any questions about this correction of our comments.

Very truly yours,

H. Ray Starling

H. Ray Starling

HRS:ew
Attachment

cc: Mr. Charles Lloyd
Defense Acquisition Regulatory System
1211 South Fern Street
Arlington, Virginia 22202

Mr. Edward H. Comer
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

91-13-153
Addendum

c) CP&L's planning personnel annually request specific information regarding the ten-year load forecasts for military bases. The possibility of several large military bases being able to terminate service at the same time is likely to make CP&L's planning and load forecasting much more difficult, and in the long term this could increase CP&L's costs and potentially jeopardize reserve margins.

RECOMMENDATIONS:

1. Section 52.241-2(a) should be amended as follows (bold type represents language to be added):

   For the period (date) to (date), the Contractor agrees to furnish and the Government agrees to purchase (specify type) utility services in accordance with the applicable tariff(s), rules, and regulations as approved by the applicable governing regulatory body and as set forth in the contract. **[Note: The phrase "For the period (date) to (date)" may be deleted if an indefinite term is desired.]**

2. Section 52.241-2(b) should be deleted.

OFFICE AT 306 SOUTH 12TH

PARK ELECTRIC CO-OPERATIVE, INC.

P. O. BOX 908
LIVINGSTON, MONTANA
59047
PHONE 222-3100

91-13-260

July 22, 1991

Rodney E. Siring
MANAGER

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, NW
Room 4041
Washington, DC 20405

Re: FAR Case 91-13

Gentlemen:

We are just in receipt of a proposed rule on the acquisition of services from utilities (56 Federal Register 23982). Specifically, GSA is proposing at Section 41.007 (j) that the following language be added to all contracts between federal facilities and cooperative utilities:

52.241-13 Capital Credits

(b) Within 60 days after the close of the contractor's fiscal year, the contractor shall furnish to the Contracting Officer, in writing a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date payment is to be made.

(C) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits may be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

We have concern with those two paragraphs. I will try to enumerate our concerns below.

1. A rural electric cooperative usually cannot provide capital credit information within 60 days. It takes more time than that to complete an audit and an audit is required before assigning capital credits. Rural Electric Cooperatives are governed by a set of By Laws and the Rural Electric Administration. The By Laws and agreement with REA does not allow Capital Credits to be returned in less than a 10 year cycle.

AUG 7

91-13-260

Furthermore, the accounting for capital credits takes significant time and, therefore, capital credit assignment is usually made sometime after the 60-day period. We recommend paragraph (b) be changed to read "In accordance with the By-Laws of the cooperative, the Contractor shall furnish to the Contracting Officer, or the designated represented of the Contracting Officer, in writing a list of accrued credits."

(2) Rural electric cooperatives generally retain capital credits for a period of ten to forty years. Since funding from REA is being reduced, rural are being called upon to increase their equity position. The only way to increase equity position is through retaining of capital credits. Furthermore, cooperatives do not know when capital credits will be refunded. It depends upon the financial strength of the utility. Your proposed wording in paragraph (b) indicates the Contractor shall state to the Government the date payment is to be made. As stated above, this is almost impossible. Furthermore, in paragraph (C) it indicates that upon termination or expiration of the contract, the Contractor shall make payment to the Government for unpaid credits. This, as I state above, is almost impossible and should the rural electric make a special provision to the Government, it would be discriminatory and the rural electric would need to make payment to all customers. We recommend deletion of paragraph (c).

I hope this information is valuable to you. If we can be of further assistance, please let us know.

Sincerely,

PARK ELECTRIC COOPERATIVE, INC.

Rodney E. Siring

Rodney E. Siring
Manager

RES:ww

DEPARTMENT OF THE TREASURY
WASHINGTON

91-13-261

AUG 2 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW, Room 4041
Washington, D.C. 20405
Attn: Mr. Edward Loeb

Subject: FAR Case 91-13, Utility Services

Dear Mr. Loeb:

We have reviewed the proposed rule assigned subject FAR case number. As a result of our review, we have several comments which are set forth in the enclosure hereto.

Please refer any questions to Barbara Marshall at (202) 566-8715.

Sincerely,

for James J. Fisher
Assistant Director for
Procurement Policy and Review

Enclosure

91-13-261

ENCLOSURE

COMMENTS REGARDING FAR CASE 91-13

1. FAR Part 6.302-1(c) states that contracts awarded using this authority shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304. FAR 5.202(a)(5) states the Contracting Officer need not submit the notice required by 5.201 when the contract action is for utility services other than telecommunications services and only one source is available. It is recommended that when it is common knowledge that the utility service is provided by only one source witin a state, that the Contracting Officer prepare a determination and finding to justify the exception to synopsizing for the file, and exempt the requirement from the formal sole source justification requirement.

2. Section 41.003(b) has delegated authority to DOD and DOE to enter into utility service contracts for periods not exceeding ten years. If other agencies have a requirement for a contract exceeding one year they must get a delegation of authority from GSA. Was the intent to give agencies blanket authority to contract for periods of one year and less?

3. The concept of a delegated agency is a bit confusing, when read in the context of awards for utility services. It would appear that the difference between a delegated agency and a non-delegated agency lies in the amount of oversight provided by GSA during the actual award process. For instance, 41.004-3(c) states that non-delegated agencies, unless performing their own review, must obtain GSA review and approval prior to award. Thus, it appears the delegation provides independence from GSA involvement during the acquisition process (although GSA will conduct periodic overall reviews) unless a bilateral contract cannot be used. If this interpretation is correct, this GSA delegation appears to differ from other types of GSA delegations, ie., those under the Brooks Act, in which the delegation provides the procurement authority to acquire the service or supply. In the case of utilities, it appears the delegation does not provide procurement authority, but rather removes GSA from oversight of the instant acquisition. Perhaps this area could be clarified.

4. Section 41.003(a)(3) cites various statutory authorities, including 42 U.S.C. 2204 regarding the authority provided to DOE to enter into new contracts for electric services for periods not exceeding 25 years for certain installations. It would appear that this authority takes precedence over that provided in paragraph (b) of this section which provides a ten year authority to DOE. Perhaps this area should be clarified.

5. Section 41.004-2(a) requires a market survey. What is the purpose of this if it is known that only one utility company can provide the service?

91-13-261

6. Section 41.004-2(c) requires agencies to submit a copy of the letter of refusal, statements of the reason for the refusal, and the record of negotiations to GSA prior to acquiring utility services without executing a contract. The section does not require GSA to approve the action, rather it requires the agency to notify. Given this intent, why can't the notification be given to GSA after execution of an agreement?

7. Section 41.004-2(c) further states that after notifying GSA, the agency may proceed with the acquistion and pay for the utility service by issuing a purchase order or by ordering the utility service and paying for it upon the presentation of an invoice. Most accounting office payment systems will not pay invoices unless they are properly completed with a contract or order number. In addition, Contracting Officers should not order services unless the ordering document includes the mechanism for payment, ie., where the invoice should be submitted, appropriation codes, useage/consumption, etc. Most agencies currently order utility services using some acceptable method. We recommend that you include in the regulations payment procedures such as forms to use, etc., which will be acceptable to most accounting offices.

8. Section 41.004-2(e) states if an agency cannot get the contractor to execute a contract, the determinations made and actions taken are only good for one year. It further adds that the agency must take action to execute a bilateral written agreement prior to the expiration of the one year period. What does this mean and what happens if this action is unsuccessful? If still unsuccessful after the one year period expires, does the agency have to do another market survey and another solicitation? To annually issue a solicitation requesting a proposal from utility companies who have repeatedly refused to sign formal contracts seems unduly burdensome. If the concern is with buying utilities without an executed bilateral agreement, the Contracting Officer could be required to make an annual determination on the possiblity of getting the contractor to execute a bilateral agreement. If nothing has changed since the agreement was entered into or the last determination made, the Contracting Officer should document the file accordingly and continue with the agreement. If the Contracting Officer has reason to believe the contractor will now sign a bilateral contract, one should be prepared for signature; however, new solicitations and market surveys should not be required. The determination of the Contracting Officer could be done concurrently with the required annual review.

91-13-261

9. Clause 52.241-4, "Contractor's Facilities", paragraph (d) should be written to give the Government the option of negotiating to purchase the facilities rather having no option other than requiring the contractor to restore the premises to their original condition. Fifth line of paragraph (d), "revoke" should be changed to "invokes".

10. Clause 52.241-7, paragraph (d), first line should be changed to "Any changes to agreed rates, terms or conditions...".

General Services Administration
Office of Acquisition Policy
Washington, DC 20405

91-13-262

August 16, 1991

MEMORANDUM FOR ALBERT A. VICCHIOLLA
DIRECTOR
OFFICE OF FEDERAL ACQUISITION POLICY (VR)

FROM: IDA M. USTAD
DIRECTOR
OFFICE OF GSA ACQUISITION POLICY (VP)

SUBJECT: Federal Acquisition Regulation (FAR)
Acquisition of Utility Services (FAR case 91-13)

The General Services Administration (GSA) supports your efforts to rewrite the FAR coverage dealing with the acquisition of utility service. The proposed new Part 41 represents a major improvement over the current coverage. GSA does, however, have a number of comments and recommendations for revision which we believe, if adopted, will improve the final product. Our comments and recommendations are attached for your consideration.

If you have any questions regarding GSA's comments, please contact me on 501-1224.

Attachment

Federal Recycling Program Printed on Recycled Paper

91-13-262

1. FAR 15.812-2 --Capitalize "P" in "Part 41."

2. FAR 41.001 -- In the definition of "Authorization," change "that areawide contract" to "an areawide contract."

The definition of "Connection charge" should be revised to make it clear that the charges are in addition to the charges for monthly service. If the supplier's monthly service rates include the cost of connecting facilities, a connection charge would not be appropriate. GSA recommends the definition be revised to read "Connection charge means and amount charged the Federal Government by the utility supplier, in addition to charges for monthly service, for special facilities on either one or both sides of a Government delivery point that are required to make connections with existing supplier facilities. The special facilities are installed, owned, operated, and maintained by the utility supplier. Connection charges may be made if the supplier's monthly service rates exclude the costs of these facilities (see Termination liablity)."

In the definition of " Federal Power and Water Marketing Agency," change "supply services to customers" to "supplies to customers."

Revise the definition of "Franchise service territory" to shorten and clarify. Suggest revising to read as follows: "Franchise service territory means a defined geographical area that a utility supplier has been granted the right to serve."

In the definition of "Intervention," add the word "executive" between "Federal" and "agencies." GSA's intervention authority, and therefore the authority of agencies acting under delegations from GSA, is limited to representation of Federal <u>executive</u> agencies.

Delete the words "or delivery points" from the definition of "Multiple service locations." A delivery point is consider to be the point at which a meter is located at a service location. By contrast, a service location is the geographic location at which service is received. Several different delivery points may be designated at a single service location. The portions of the proposed regulation that refer to "Multiple service locations" (FAR 41.007(g) and 52.241-10) refer to different service locations throughout a supplier's service territory rather than delivery points.

Delete the words "delivery point(s)" from the definition of "separate contract" and substitute "service location(s)."

91-13-262

Also, suggest that consideration be given to adding "between a Government entity and a supplier" after "contract" and before the parenthesis.

Other customers may utilize connecting facilities. Therefore, in order to make it clear that the Government is only liable for its proportionate share of the unrecovered connecting costs GSA recommends the definition of "Termination liability" be revised to read "Termination liability . . . supplier its proportionate share of any unrecovered net cost of supplier provided connecting facilities in the . . . terminates a service contract. A termination liability may be in conjunction with, or in lieu of, a connection charge (see connection charge)."

The definition of "Utility service" should be amended to make it clear that natural gas purchased as a commodity at the wellhead is not a utility service subject to Part 41. GSA recommends the insertion of a parethetical statement after "gas." The statement should read "(except when provided as a commodity at the wellhead)."

The text of the regulation uses the term "unpublished rate" but the term is not defined. GSA recommends the addition of a definition to add clarity to the regulation. Suggest the following definition be added "Unpublished rate means a rate or tariff not contained in a utility supplier's generally available list of published tariffs. A supplier's unpublished rates may only be available upon specific request concerning the availability of such rates."

3. FAR 41.002 -- Recommend that paragraph (a) be revised to delete "including connection charges and termination liabilities." and substitute "including service connection." The current text suggests that connection charges and termination liabilities are services provided by the utility.

Recommend that paragraph (b)(1) be revised to refer to Subpart 17.5 instead of FAR 41.004-6. FAR 41.004-6 is unnecessary and can be deleted completely. The reader should be refered directly to FAR 17.5 instead of to 41.004-6 which simply refers the reader back to FAR 17.5.

Paragraph (b)(7) is not clear and its accuracy is questioned. First, the definition of a shared-savings project does not appear to be complete or to accurately describe what is contemplated by the statute. GSA recommends it be revised to read "shared-savings project means a project in which in which the Federal Government and

91-13-262

a private contractor agree and enter into a contract which provides that the private contractor will finance and perform energy conservation or load management activities at a Federal facility in return for a share of resulting savings to the Government." Second, the reference to "any energy savings or purchased utility services directly resulting from implementation of such measures" is not clear. GSA suggests you clearly state that contracts for utility service entered into by Federal agencies to service locations where shared-energy savings projects have been implemented may be entered into using the procedures in Part 41. Finally, the reference to 25 years should be deleted. As written it is more confusing than helpful. Contracts for shared-energy savings projects may be entered into for up to 25 years. The term of the contracts for such projects has nothing to do with the term of utility service contracts that may be entered into to acquire utility service for locations that have implemented shared-energy savings projects.

4. FAR 41.003 -- Agencies other than GSA, DOD, and DOE have authority to contract for utility service subject to annual appropriation limitations. For completeness and clarify the authority of other agencies should be mentioned.

GSA recommends that the last two sentences of paragraph (a)(1) be revised to read "This authority encompasses related functions such as contracting for utility services for periods not to exceed 10 years, managing public utility services, and representing the Federal executive agencies in public utility proceedings before Federal and state regulatory bodies."

Paragraph (b) should be revised to refer to "connection services" not "connection charges." Contracts are entered into for services not charges. Suggest rewording to read "GSA has delegated its authority to enter into contracts for utility services (including service connections) for periods ... and for connection services only to the Department of Veterans Affairs."

5. FAR 41.004-1 -- The reference to 41.004-6 in paragraph (d)(3)(ii) should be deleted. As noted earlier, FAR 41.004-6 is not needed and only serves to take the reader to 41.004-6 for the purpose of being referred back to FAR 17.5.

GSA recommends that paragraph (e) be revised to (1) eliminate the double negative, and (2) delete reference to "market survey" because the use of the term is inconsistent with FAR 7.101. Suggest the paragraph be revised to read

91-13-262

"(e) Prior to...with the advice of legal counsel, through discussions with available suppliers and other appropriate means, that such competition is consistent with state law and regulations, state territorial agreements, and state utility commission rulings that govern the provision of electric service. Proposals from ... in a manner consistent with..."

6. FAR 41.004-2 -- Capitalize "P" in "Part" in paragraph (a) for consistency with the rest of the FAR.

Suggest paragraph (b) be revised to read "As part of the procurement process, the contracting officer shall consider, in addition to alternative competitive sources, use of the following methods:" The reference to market survey seems inappropriate in light of the items listed.

Paragraph (b)(3) should be revised to delete reference to 41.004-6 and substitute FAR 17.5. As noted earlier, FAR 41.004-6 is not needed and should be deleted.

Pargraph (c) should be amended to delete the reference to a "corporate officer" and substitute a "responsible official". Not all utilities are corporations.

Paragraph (c)(1) should be deleted in its entirety. Instructing contracting personnel to issue a purchase order in accordance with 13.5 creates more questions and problems than it solves. A purchase order is an offer by the Government and becomes a binding contract as soon as the supplier acknowledges receipt of the order or provides the service. Trying to use a purchase order, which becomes a contract as soon as the utility supplies service, in situations where a utility has expressly refused to accept a Government contract with the same terms and conditions that are on the back of the purchase order is questionable and confusing to contracting personnel. Secondly, limiting its use to the small purchase limitation means it is of little utility anyway. Paragraph (c)(2) should be revised to delete "formal contract" and substitute "written contract" and to delete the reference to issuance of a purchase order.

Paragraph (d) should be revised to read "When obtaining service without a written contract, the contracting officer shall establish a utility history file. This utility history file shall contain, in addition to applicable documents described in 4.803, the following:"

91-13-262

Reference in paragraph (d)(2) to "a corporate officer" should be replaced with a reference to "a responsible official" for the reason stated earlier.

Paragraph (d)(4) should be amended to refer to both connection charges and termination liabilities. Suggest it be revised to read "Historical record of ... connection charges and/or termination liabilities."

GSA recommends that paragraph (e) be revised to delete the reference to "one year" and substitute "three years". Efforts by a contracting officer to obtain a bilaterally executed contract so soon after a definite and final refusal by the utility, if one is given, are unlikely to be successful. Use of contracting officers time for such an effort is not considered to be efficient. A three year period allows time for a change in supplier attitudes and is more likely to result in a successful agreement.

7. FAR 41.004-3 -- Suggest that paragraph (a) be revised to read "...provide technical and acquisition assistance, including pre-award reviews (see 41.005), and will arrange ..." Also, delete the parenthetical statement at the end of the paragraph and add a parentheses to the last sentence just before the period.

Delete the phrase "or annual review" from paragarph (c)(1) because its use is out of context and not relevant. The paragraph is discussing contracting for utility services and review of prospective contract documents.

GSA recommends that paragraph (e) be revised to read "(e) Agency requests for review and approval, as described in paragraph (c) of this subsection, shall only apply to contracts considered by the requesting agency to be ready for award. Such requests shall contain the information required by 41.005 and shall be forwarded to GSA as early as possible, but not later than 20 calendar days prior to the date new services are to commence or expiration of an existing contract. If GSA does not respond to the requesting agency within 20 working days after it receives a proposed utility service contract for review and approval (or within a lesser period if agreed upon), the requesting agency may execute the contract without GSA approval." This change is recommended to make it clear that the 20 day deadline applies only to contract actions that are ready for award. If a contract action is incomplete and forwarded for GSA review, GSA's role is considered an "assistance" action as described in 41.004-3(f).

91-13-262

8. FAR 41.004-4 -- Paragraph (b) should be revised to make it clear that both the supplier and the Government need to sign the authorization form. Suggest the paragraph be revised to read "... Upon bilateral execution of an authorization by the contracting officer and the utility service supplier, the supplier is required to furnish the services specified therein, without..."

The language contained in an areawide contract specifies use of an Authorization Form as the ordering document without mention of the need for a SF-26. FAR 41.001 further defines an Authorization Form as the document used to order service under an areawide contract without mention of the need for any other forms. Accordingly, GSA recommends deletion of the requirement for a SF-26 in paragraph (c). The use of the SF 26 would result in a duplication of effort because all relevant entries on the SF 26 are also required on the Authorization Form. GSA has successfully used the Authorization Form when ordering service from an areawide contract for years and sees no purpose to be served by adding a requirement for the SF-26. GSA suggests that paragraph (c) be revised to read "the bilaterally executed authorization under an areawide contract shall include as attachments any supplemental agreements between the ordering agency and the contractor on connection charges, special facilities, or service arrangements."

Based on the preceding comment paragraph (d) should also be revised to delete reference to the SF 26.

9. FAR 41.004-5 -- Recommend paragraph (a) be revised to (1) eliminate reference to 41.004-6 consistent with preceding comments, (2) recognize that a supplier may refuse a tendered contract, (3) add a reference to 41.004-2 since it specifies requirements not explicitly contained in the other references listed, and (4) omit the reference to 41.004-3(d) because it relates to requests for pre-award review authority, not contracting requirements. Suggest the paragraph be revised to read as follows: "... In the absence of ... or interagency agreement (see 17.5 for information on use of interagency agreements), agencies shall acquire utility services by separate contract, unless the supplier refuses, subject to their contracting authority (see 41.003), and the requirements and limitations of 41.004-1, 41.004-2, 41.004-3(c) and 41.008."

Revise paragraph (b) to delete the phrase "Subject to the procedures contained in 41.004-2," because is not a help to the reader. The referenced section deals with documentation not procedures.

91-13-262

Paragraph (b)(4) should be revised to refer to "subparagaraph" and "subsection" instead of "paragraph" and "section" in order to conform with FAR 1.104-2.

Paragraph (c) should refer to "41.005" instead of just paragraph (b). Also, the order of the FAR cites should be reversed to put them in the order that they appear in the regulation.

10. FAR 41.004-6 -- For the reasons previously stated, this section should be deleted in its entirety.

11. FAR 41.005 -- Recommend that paragraph (a) be amended (1) to add a parenthetical reference to 41.004-3(c) after "required", (2) to delete of the phrase "sufficiently in advance of award to permit a complete review." because FAR 41.004-3(e) which is referenced spells out the specific timeframes, and (3) to delete the reference to "assistance" in the second sentence because the section deals with pre-contract reviews not contracting assistance.

Delete language concerning connection charges from paragraph (b)(2) because ir is repetitious of 41.005(b)(7)(i) and therefore unnecessary.

Revise subparagraph (b)(7)(i) to add a reference to tariff provisions or written policy of the supplier. Recommend revising to read "Proposed refundable ...and its rationale for the charge including applicable tariff provisions or written policy of the supplier;"

GSA recommends that subparagraph (b)(7)(ii) be eliminated and that language be included in the contract to the effect that a connection charge to the Government shall not exceed charges to other customers for similar connection services. As written, this section of the regulation probably constitutes an information collection subject to OMB approval under the Paperwork Reduction Act. Such a course of action would be consistent with the treatment of other supplier charges.

Delete the phrase "or suppliers" from the first sentence of paragraph (c). Also, recommend that subparagraph (c)(5) be revised to read "For electric service contracts, a statement noting whether transformers and other system components, on either side of the delivery point, are owned ..."

Recommend that paragraph (d) be revised to read "Agencies receiving GSA delegations of contracting or pre-award review authority shall establish appropriate pre-award review

91-13-262

procedures for contracts that exceed the dollar thresholds specified in 41.004-3(c)(1) and (2)."

12. FAR 41.006-1 -- GSA recommends that paragraph (b) be revised for clarify and to explain the purpose of monthly and annual reviews. Revise to read "Agencies shall review (a) on a monthly basis, utility service invoices, and (b) on an annual basis, each contract or authorization for service in amounts that exceed the small purchase limitation. The purpose of the monthly review is verification that invoiced services were received. The purposes of annual reviews are to ensure that the utility supplier is furnishing the services to each facility under the utility's ...competitive resolicitations. ....If a change in rate schedule is appropriate, ... to begin billing under the lowest cost rate schedule immediately. The change to the new schedule shall be documented by the contracting officer by execution of a new authorization if services are procured under an areawide contract or by executing a contract modification if services are procured under a separate contract. A copy of the new authorization or modification shall be forwarded to the agency's office that is responsible for verifying bill amounts."

13. FAR 41.006-2 -- Paragraph (a) should be revised to recognize the fact that proposals for change may come from other than the supplier. Suggest it be changed to read "When a change is proposed to rates or terms and conditions ..."

Paragraph (b) should be similarly changed to recognize proposals for change may come from other than the supplier. Suggest it be changed to read "When a change is proposed in rates or terms ...the matter shall be referred to GSA at the address provided in 41.004-3(b). The...request from GSA a delegation of authority to intervene on ..."

Paragraph (c) should be revised to (1) recognize that rate changes may result from other than a supplier's request, (2) recognize that contract language may automatically incorporate a rate change without a contract modification, (3) recognize that a contract may not exist, (4) direct copies of the rate change to the agency office responsible for certifying invoices for payment (normally not the paying office), and (5) eliminate an unnecessary reference to 41.006-1. Suggest it be amended to read "If a regulatory body approves a rate change, ... any rate change shall automatically be made a part of the contract (if any), without contract modification. ...to avoid late payment provisions. A copy of the approved rate change shall be

91-13-262

sent to the agency's office responsible for certifying that services have been received and the accuracy of the amount of invoices."

Paragraph (d) should be revised to (1) recognize that a contract may not exist, and (2) direct copies of the contract modification to the agency office reponsible for certifying receipt of services and the accuracy of the amount of invoices. Suggest it be amended to read "... any rate change shall be made a part of the contract (if any), by contract modification. A copy of the contract modification or notice of rate change shall be sent to the agency office responsible for certifying that services have been received and the accuracy of the amount of the invoice."

14. FAR 41.007 -- Recommend paragraph (a) be revised to read " Because ...from area to area, differences may exist in the terms ...of the prescribed clauses ..."

Suggest that "a" be inserted before "regulatory body" in paragraph (e).

In order to note that a termination liability may be in conjunction with or in lieu of a connection charge, and to clarify what facilities are referenced, GSA recommends that paragraph (f) be revised to read "The contracting officer ... in conjunction with or in lieu of a connection charge upon completion of the connecting facilities."

15. FAR 41.008 -- Consideration should be given to creating a new form specifically designed for acquiring utility services instead of mandating the SF-33. If a new form is not created more flexibility should be provided to use other contracting forms e.g. SF-26 or SF-1447.

16. FAR 52.241-2 -- Paragraph (a) of the clause should be revised to make it clear that the contract does not bind the Government to regulatory body approved tariff(s), rules, or regulations that are contrary to Federal law. The last sentence of paragraph (d) should also be revised to provide for prorating the monthly charge if the service begins or ends during the month.

17. FAR 52.241-3 -- A "class of service" such as "commercial" class may have more than one rate schedule for which commercial customers may qualify dependent upon specific service requirements and load characteristics. Since the rate schedule within a class is the determining factor for cost, the rate schedule instead of the class of service should be

91-13-262

the focus of the clause. Accordingly, GSA recommends (1) the clause be retitled as "Change in Available Rate Schedules or in Service Requirements", (2) that paragraph (a) of the clause be revised to read "In the event of a change in available rate schedules or in Government requirements and load characteristics, the service received shall be provided under the Contractor's lowest cost rate schedule applicable to such service.", and (3) that paragraph (b) of the clause be modified to insert the word "governing" before "regulatory body" to make it clear which regulatory body is being referenced.

18. FAR 52.241-4 -- Paragraph (a) of the clause should be revised to recognize that the governing regulatory body may specify the conditions under which contractor failities are provided ant the method of cost recovery, and "point of delivery" should be changed to "point(s) of delivery."

Paragraph (b) of the clause should also be revised to (1) correct the typographical error in the first sentence by changing "thi" to "this", (2) recognize the influence of the governing regulatory body on supplier responsibilities, (3) modify the phrase "assumed by the Contractor" to read "the obligation of the Contractor." for consistency with FAR 52.241-8(b), and to clearly state the Contractor's responsibility for "repair".

Paragraph (c) should be revised to recognize that security considerations which do not rise to the level of "national security" may result in restrictions on access. Suggest the language be modified to read "...considered necessary for security reasons."

The first sentence of paragraph (d) of the clause should be revised to read "(d) Consistent with rules established by the governing regulatory body, such facilities shall be restored as near as practicable to the original condition, ordinary wear excepted, within a reasonable time after termination of this contract or discontinuance of service to the Government."

GSA also recommends that addition of an additional paragraph to recognize the respective liabilities of the Government and the contractor. Suggest a paragraph that reads as follows be added "(e) The Government shall in no event be liable or responsible for damage to any person or property directly occasioned through the Contractor's use or operation of its facilities, or through other actions of the Contractor; provided, however, that the Contractor shall not be liable or responsible for the actions of the Government, its employees, or agents."

9113-262

19. FAR 52.241-5 -- Paragraph (a)(1) should be revised to

(1) recognize the influence of a governing regulatory body on metering and meter reading requirements, (2) correct the typographical error ("jto"), (3) add meter repair as a contractor responsibility, and (4) change "at the service location" to " at a service location."

Paragraph (a)(2) should be revised to clarify what is being prorated. If the cost to be prorated are associated with minimum monthly charges or other fixed amounts based on a fixed billing period of "x" days, the clause should clearly state same.

Modify the second sentence of paragraph (b)(1) to change "will have" to "has".

Modify the first sentence of paragraph (d)(1) to refer to "each" service location instead of "the" service location. There may be more than one location. The language should also be revised to reflect the influence of the governing regulatory body on billing adjustments. If you are only paying for metered service it may not be necessary to make an adjustment. Doesn't this only relate to situations where there is a minimun monthly charge.

Modify the last sentence of paragraph (d)(2) to insert the word "billing" before "period."

20. FAR 52.241-6 -- GSA recommends that paragraph (b) of the clause be revised to (1) eliminate unnecessary reference to "published and unpublished rate schedules," (2) eliminate unnecessary use of the word "currently", i.e., "throughout the life of this contract" is sufficient, (3)make clear that the "cost" associated with service under alternative rate schedules is the point of focus, and (4) eliminate unnecessary reference to the "same class", i.e., the point of focus is "similar service requirements." Suggest the paragraph be revised to read " The Contractor hereby represents and warrants that throughout the life of this contract the rate schedule(s) under which the Government is billed is the lowest cost schedule(s) available to any other customer of the Contractor with similar service conditions, requirements, and load characteristics."

GSA also suggests that paragraph (d) be deleted as unnecessary. By other terms of the contract the Government has already agreed to rates approved by the governing regulatory body. If it is retained the word "approved" needs to be inserted before "by the regulatory body."

91-13-262

21. FAR 52.241-7 --Paragraph (a) needs to be reviewed. In some cases "change" is used and in other cases the plural "changes" is used.

Paragraph (d) should be revised to read as follows for clarity "Changes to rates or terms and conditions of service upon which both parties agree shall be..."

22. FAR 52.241-8 -- The proposed clause contains three provisions that pertain to Contractor connecting facilities which, in part, are (1) duplicative of each other, (2) contrary to some regulatory body rules, and (3) contradictory of each other. All three portion of the clause should be combined or be revised so that the clause is internally consistent. The clause should recognize that regulatory body rules/tariffs may specify customer and supplier responsibilities associated with connection service, that termination liability may be in lieu or or in conjunction with a connection charge, that the Government is not bound by regulatory body rules/tariffs that are contrary to Federal law, a crediting agreement may be precluded by regulatory body rules, the Government's responsibility for connection service costs may depend on current and potential usage of the connecting facilities by customers other than the Government, the cost of connecting facilities may be included in base rates, that some financially weak suppliers may be unable to provide connection service if salvage value is netted from the amount due from the Government, the factors on which a termination liability shall be based, the cost of connecting facilities may be passed on th the Government in the form of a facilities charge indicated on a separate line of the monthly bill, the contracting officer should be left some room for negotiation, and that other acceptable forms of connection charge payments are a lump sum payment at the time of construction/installation completion, progress payments during construction/installation, and advance payments (if approved in accordance with Part 32 of the FAR) prior to initiation of construction installation.

23. FAR 52.241-10 -- The prescription for this clause should be revised so that the clause is not required for areawide contracts or the clause should be revised to recognize the use of "authorizations" as a means of ordering service under an areawide contract.

Also, paragraph (b) of the clause should be amended to refer to "Any" minimum monthly charge instead of "the" minimum monthly charge. There may not be a minimum charge.

General Services Administration
Office of Acquisition Policy
Washington, DC 20405

August 6, 1991

MEMORANDUM FOR CHAIRMAN, CIVILIAN AGENCY ACQUISITION COUNCIL

ATTN: EDWARD LOEB
PROCUREMENT ANALYST

FROM: BEVERLY FAYSON
FAR SECRETARIAT

SUBJECT: Transmittal of Public Comments

Attached are public comments on the subject FAR case received.

FAR Case	CAAC Case	DARC Case	Subject	FR Cite	Closing Date
91-13	88-76	90-471	Acquisition of Utility Services	56 FR 23982; May 24, 1991	7/23/91

We recommend:

- That the DARC analyze public comments, draft final rule language, and provide it to the CAAC for review and consideration; or that DARC task one of its committees to analyze public comments and to submit a committee report, including final rule language, for review and consideration by both Councils.

X That the CAAC or the FAR Staff analyze public comments, draft final rule language, and provide it to DoD for review and consideration; or that the CAAC task one of its committees to analyze public comments and to submit a committee report, including final rule language, for review and consideration by both Councils.

- That the Councils agree on final rule language without further deliberation.

Enclosures

cc: Director, Defense Acquisition Regulations Council

Federal Recycling Program Printed on Recycled Paper

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Comments
91-13-1	6/25/91	6/19/91	CIA	91-20-2
91-13-2	6/25/91	6/21/91	USIA	91-9-5 91-11-4 90-67-4 91-17-4 91-18-4 91-20-3
91-13-3	6/26/91	6/25/91	American Defense Preparedness Assoc.	
91-13-4	6/26/91	6/21/91	Railroad Retirement Board	91-20-6
91-13-5	7/1/91	6/26/91	Gulf Gas Utilities Co.	
91-13-6	7/5/91	7/2/91	HUD	
91-13-7	7/17/91	7/15/91	Kiamichi Elec. Corp., Inc.	
91-13-8	7/18/91	7/15/91	North Western Elec.	
91-13-9	7/18/91	7/15/91	Benton Rural Elec. Assoc.	
91-13-10	7/18/91	7/15/91	DOT/Sec'y	
91-13-11	7/18/91	7/15/91	Salt River Rural Elec. Coop., Corp.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
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Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-12	7/18/91	7/15/91	Grant-Lafayette Elec.	
91-13-13	7/18/91	7/16/91	Southeastern Illinois Elec. Coop., Inc.	
91-13-14	7/18/91	7/15/91	Sac Osage Elec. Coop., Inc.	
91-13-15	7/18/91	7/15/91	So. Ky. Rural Elec.	
91-13-16	7/18/91	7/16/91	Southside Elec. Coop.	
91-13-17	7/19/91	7/18/91	Centerior Energy	
91-13-18	7/22/91	7/15/91	Tri-County Elec. Membership Corp.	
91-13-19	7/22/91	7/15/91	Mountain View Elec. Assoc., Inc.	
91-13-20	7/22/91	7/15/91	Cavalier Rural Elec. Coop., Inc.	
91-13-21	7/22/91	7/15/91	Highline Elec. Assoc.	
91-13-22	7/22/91	7/15/91	The Midwest Elec. Membership Corp.	
91-13-23	7/22/91	7/16/91	Alaska Rural Elec. Coop. Assoc.	
91-13-24	7/22/91	7/16/91	Rural Elec. Coop.	
91-13-25	7/22/91	7/16/91	Pee Dee Elec. Membership Corp.	
91-13-26	7/22/91	7/16/91	Buffalo Elec. Coop.	

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Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-27	7/22/91	7/16/91	Northwest Kansas Elec. Coop. Assoc., Inc.	
91-13-28	7/22/91	7/16/91	Alfalfa Elec. Coop., Inc.	
91-13-29	7/22/91	7/16/91	Cherryland Elec. Coop.	
91-13-30	7/22/91	7/16/91	Douglas Elec. Coop.	
91-13-31	7/22/91	7/16/91	DOD/Army	
91-13-32	7/22/91	7/16/91	DOJ/JMD	
91-13-33	7/22/91	7/16/91	Delaware Elec. Coop. Inc.	
91-13-34	7/22/91	7/16/91	P.K.M. Elec. Coop., Inc.	
91-13-35	7/22/91	7/16/91	Sulphur Springs Valley Elec. Coop., Inc.	
91-13-36	7/22/91	7/17/91	Renville Sibley Coop. Power Assoc.	
91-13-37	7/22/91	7/17/91	McLean Elec. Co-op., Inc.	
91-13-38	7/22/91	7/17/91	Continental Divide Elec. Coop., Inc.	
91-13-39	7/22/91	7/17/91	Central Rural Elec. Coop.	
91-13-40	7/22/91	7/17/91	Tri-County Elec. Coop. Filmore-Houston-Winona	
91-13-41	7/22/91	undated	Valley Rural Elec. Co-op.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
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Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-42	7/22/91	7/11/91	Carroll Elec. Coop. Corp.	
91-13-43	7/22/91	7/15/91	Butte Elec. Coop., Inc.	
91-13-44	7/22/91	7/16/91	Wild Rice Elec. Coop., Inc.	
91-13-45	7/22/91	7/16/91	DoD/IG	
91-13-46	7/22/91	7/16/91	Clinton County Elec. Coop., Inc.	
91-13-47	7/22/91	7/16/91	South Central Arkansas Elec. Coop., Inc.	
91-13-48	7/22/91	7/16/91	The Caney Valley Elec. Coop., Assoc., Inc.	
91-13-49	7/22/91	7/16/91	East Central Oklahoma Elec. Coop., Inc.	
91-13-50	7/22/91	7/16/91	Lyntegar Elec. Coop., Inc.	
91-13-51	7/22/91	7/16/91	Edgecombe-Martin County Elec. Membership Corp.	
91-13-52	7/22/91	7/17/91	Red Lake Elec. Coop., Inc.	
91-13-53	7/22/91	7/17/91	Sheyenne Valley Elec. Coop., Inc.	
91-13-54	7/22/91	7/17/91	HD Elec. Coop., Inc	
91-13-55	7/22/91	7/17/91	New Mexico Elec. Coops.	
91-13-56	7/22/91	7/17/91	Sangre De Cristo Elec. Assoc., Inc.	
91-13-57	7/22/91	7/17/91	Orcas Power & Light Co.	

FAR Case 91-13 Comments
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Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-58	7/22/91	7/17/91	Corn Belt Elec. Coop., Inc.	
91-13-59	7/22/91	7/17/91	Y-W Elec. Assoc., Inc.	
91-13-60	7/22/91	7/17/91	Crawford Elec. Coop., Inc.	
91-13-61	7/22/91	7/17/91	Southwest Elec. Coop.	
91-13-62	7/22/91	7/17/91	Harmon Elec. Assoc., Inc.	
91-13-63	7/22/91	7/17/91	Moreau-Grand Elec. Coop., Inc.	
91-13-64	7/22/91	7/17/91	Hunt-Collin Elec. Coop., Inc.	
91-13-65	7/22/91	7/17/91	Kandiyohi Co-op. Elec. Power Assoc.	
91-13-66	7/22/91	7/17/91	Inland Power & Light Co.	
91-13-67	7/22/91	7/17/91	Clay Elec. Coop., Inc.	
91-13-68	7/22/91	7/17/91	Tenn. Elec. Coop., Inc.	
91-13-69	7/22/91	7/17/91	Intercounty Elec. Coop. Assoc.	
91-13-70	7/22/91	7/17/91	Western Montana Elec. Generating & Transmission Coop., Inc.	
91-13-71	7/22/91	7/17/91	Nespelem Valley Elec. Coop., Inc.	
91-13-72	7/22/91	7/17/91	Kiwash Elec. Coop., Inc.	
91-12-73	7/22/91	7/17/91	United Power, Inc.	

FAR Case 91-13 Comments
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Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-74	7/22/91	7/15/91	Johnson County Elec. Coop.	
91-13-75	7/22/91	undated	The Cooperative Light & Power Assoc. of Lake County	
91-13-76	7/22/91	7/18/91	Arrowhead Elec. Coop., Inc.	
91-13-77	7/22/91	7/18/91	Craighead Elec. Coop.	
91-13-78	7/22/91	7/18/91	Boone Elec. Coop.	
91-13-79	7/22/91	7/18/91	Swisher Elec. Coop., Inc.	
91-13-80	7/22/91	7/18/91	Fairfield Elec. Coop., Inc.	
91-13-81	7/22/91	7/18/91	James Valley Elec. Coop., Inc.	
91-13-82	7/22/91	7/18/91	Tri-County Elec. Assoc., Inc. Plankinton, SD	
91-13-83	7/22/91	7/18/91	Plateau Elec. Coop.	
91-13-84	7/22/91	7/18/91	Okanogan County Elec. Coop., Inc.	
91-13-85	7/22/91	7/18/91	People's Elec. Coop.	
91-13-86	7/25/91	7/22/91	Indiana Statewide Assoc. of Rural Elec. Coop., Inc.	
91-13-87	7/22/91	7/18/91	Rural Elec. Co., Rupert, Idaho	
91-13-88	7/22/91	7/18/91	Ark Valley Elec. Coop. Assoc., Inc.	
91-13-89	7/22/91	7/18/91	Guernsey-Muskingum Elec. Coop., Inc.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-90	7/22/91	7/18/91	Sun River Elec. Coop., Inc.	
91-13-91	7/22/91	7/18/91	Todd-Wadena Elec. Coop.	
91-13-92	7/22/91	7/18/91	Berkeley Elec. Coop., Inc.	
91-13-93	7/22/91	7/19/91	United Power Assoc. Elk River, MN	
91-13-94	7/22/91	7/19/91	Radiant Elec. Coop., Inc.	
91-13-95	7/22/91	7/19/91	Baker Elec. Coop., Inc.	
91-13-96	7/22/91	7/19/91	North Dakota Assoc. of Rural Elec. Coops.	
91-13-97	7/22/91	7/19/91	Empire Elec. Assoc., inc.	
91-13-98	7/22/91	7/19/91	Tri-State Generation and Transmission Assoc., Inc.	
91-13-99	7/22/91	7/19/91	R.S.R. Elec. Coop., Inc.	
91-13-100	7/22/91	7/19/91	Bridger Valley Elec. Assoc.	
91-13-101	7/22/91	7/19/91	Northern Lights, Inc.	
91-13-102	7/22/91	7/19/91	Clearwater Power Co.	
91-13-103	7/22/91	7/19/91	Sheridan Elec. Co-op., Inc.	
91-13-104	7/22/91	7/19/91	Southern Pine Elec. Power Assoc.	
91-13-105	7/22/91	7/19/91	Mor-Gran-Sou Elec. Coop., Inc.	
91-13-106	7/22/91	7/19/91	Trico Elec. Coop., Inc.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-107	7/22/91	7/19/91	Blachly-Lane Elec. Co-op.	
91-13-108	7/22/91	7/19/91	North Carolina Assoc. of Elec. Coop., Inc., et al.	
91-13-109	7/22/91	7/19/91	Blue Ridge Elec. Membership Corp.	
91-13-110	7/22/91	7/19/91	M.J.M. Elec. Coop., Inc.	
91-13-111	7/22/91	7/19/91	Kootenai Elec. Coop., Inc.	
91-13-112	7/22/91	7/19/91	Big Flat Elec. Coop., Inc.	
91-13-113	7/22/91	7/19/91	Charles Mix Elec. Assoc. Inc.	
91-13-114	7/22/91	7/19/91	South Louisiana Elec. Coop., Assoc.	
91-13-115	7/22/91	7/19/91	Intermountain Rural Elec. Assoc.	
91-13-116	7/22/91	7/19/91	Redwood Elec. Coop.	
91-13-117	7/22/91	7/19/91	Minn. Valley Coop., Light & Power Assoc.	
91-13-118	7/22/91	7/19/91	Cam Wal Elec. Coop., Inc.	
91-13-119	7/22/91	7/19/91	Green River Elec. Coop.	
91-13-120	7/22/91	7/19/91	Jackson County Rural Elec.	
91-13-121	7/22/91	7/19/91	McNair, McLemore, Middlebrooks & Co.	
91-13-122	7/22/91	7/19/91	Crawford Elec. Coop.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-123	7/22/91	7/20/91	North Carolina Elec. Membership Corp.	
91-13-124	7/22/91	7/22/91	Central Elec. Coop., Inc.	
91-13-125	7/23/91	7/16/91	People's Co-op Power Assoc. (PCPA)	
91-13-126	7/23/91	7/17/91	Gunnison County Elec. Assoc., Inc.	
91-13-127	7/23/91	7/17/91	Raft River Rural Elec. Coop., Inc.	
91-13-128	7/23/91	7/17/91	Sequachee Valley Elec. Coop.	
91-13-129	7/23/91	7/18/91	West Central Elec. Coop., Inc.	
91-13-130	7/23/91	7/18/91	Rita Blanca Elec. Coop., Inc.	
91-13-131	7/23/91	7/18/91	Carbon Power & Light Inc.	
91-13-132	7/23/91	7/18/91	Top O'Michigan Elec. Co.	
91-13-133	7/23/91	7/18/91	San Luis Valley Rural Elec. Coop., Inc.	
91-13-134	7/23/91	7/18/91	Elec. Data System Corp.	
91-13-135	7/23/91	7/18/91	Iowa Lakes Elec. Coop.	
91-13-136	7/23/91	7/18/91	Osage Valley Elec. Coop.	
91-13-137	7/23/91	7/18/91	Lower Valley Power & Light, Inc.	
91-13-138	7/23/91	7/19/91	West River Elec. Assoc., Inc.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-139	7/23/91	7/19/91	Niobrara Valley Elec. Membership Corp.	
91-13-140	7/23/91	7/19/91	Navopache Elec. Co-op., Inc.	
91-13-141	7/23/91	7/19/91	La Plata Elec. Assoc., Inc.	
91-13-142	7/23/91	7/19/91	United Elec. Coop., Inc.	
91-13-143	7/23/91	7/19/91	Dixie Elec. Power Assoc. Waynesboro, MS	
91-13-144	7/23/91	7/19/91	Rayle Elec. Membership Corp.	
91-13-145	7/23/91	7/19/91	J-A-C Elec. Co-op., Inc.	
91-13-146	7/23/91	7/19/91	Slope Elec. Coop., Inc.	
91-13-147	7/23/91	7/19/91	McLennan County Elec. Coop., Inc.	
91-13-148	7/23/91	7/19/91	East River Elec. Power Coop.	
91-13-149	7/23/91	7/19/91	North Star Elec. Coop., Inc.	
91-13-150	7/23/91	7/19/91	Jo-Carroll Elec. Coop.	
91-13-151	7/23/91	7/22/91	Concho Valley Elec. Coop., Inc., and Sw. Tx. Elec. Coop., Inc.	
91-13-152	7/23/91	7/22/91	VMD Assoc. of Elec. Coops.	
91-13-153	7/23/91	7/22/91	Lone Star Gas Co.	
91-13-154	7/23/91	7/22/91	Gulf States Utilities Co.	
91-13-155	7/23/91	7/22/91	Carolina Power & Light Co.	
91-13-156	7/23/91	7/22/91	Ouachita Elec. Coop., Corp.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-157	7/23/91	7/22/91	Delta-Montrose Elec. Assoc.	
91-13-158	7/23/91	7/22/91	Georgia Elec. Membership Corp.	
91-13-159	7/23/91	7/22/91	The Central Georgia Elec. Membership Corp.	
91-13-160	7/23/91	7/22/91	Canoochee Elec. Membership Corp.	
91-13-161	7/23/91	7/22/91	Southern Co. Servs., Inc. et al.	
91-13-162	7/23/91	7/22/91	Virginia Power	
91-13-163	7/23/91	7/22/91	Oconee Elec. Membership Corp. and Black River Elec. Coop., Inc.	
91-13-164	7/23/91	7/22/91	Montana-Dakota Utilities Co.	
91-13-165	7/22/91	7/22/91	Choctawhatchee Elec. Coop., Inc.	
91-13-166	7/23/91	7/22/91	Kodiak Elec. Assoc. Inc.	
91-13-167	7/23/91	7/22/91	CoBank	
91-13-168	7/23/91	7/22/91	Barron Elec. Coop.	
91-13-169	7/23/91	7/22/91	Norris Elec. Coop.	
91-13-170	7/23/91	7/23/91	Dixie Elec. Membership Corp.	
91-13-171	7/23/91	7/23/91	Oglethorpe Power Corp.	
91-13-172	7/23/91	7/23/91	Fall River Rural Elec. Coop., Inc.	
91-13-173	7/23/91	7/23/91	Arkansas Power & Light Co. et al.	

FAR Case 91-13 Comments Due: 7/23/91
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-174	7/23/91	7/23/91	San Diego Gas & Elec.	
91-13-175	7/23/91	7/23/91	Edison Elec. Institute	
91-13-176	7/23/91	7/23/91	USDA/REA	
91-13-177	7/23/91	7/23/91	Nevada Power Co.	
91-13-178	7/23/91	7/23/91	Cuivre River Elec. Coop., Inc.	
91-13-179	7/23/91	7/23/91	Golden Valley Elec. Assoc., Inc.	
91-13-180	7/23/91	7/23/91	Hawaiian Elec. Co., Inc.	
91-13-181	7/23/91	7/23/91	Nat'l Rural Elec. Coop. Assoc.	
91-13-182	7/23/91	7/23/91	American Gas Assoc.	
91-13-183	7/23/91	7/23/91	Copper Valley Elec. Assoc., Inc.	
Additional comments received after comment due date.				
91-13-184	7/24/91	7/22/91	Cobb Elec. Membership Coop.	
91-13-185	7/24/91	7/22/91	Sawnee Elec. Memebership Corp.	
91-13-186	7/24/91	7/22/91	Lamar Elec. Membership Corp.	
91-13-187	7/24/91	7/22/91	Roanoke Elec. Membership Corp.	
91-13-188	7/24/91	7/22/91	Randolph Elec. Membership Corp.	
91-13-189	7/24/91	7/23/91	Idaho Coop. Util. Assoc.	
91-13-190	7/24/91	7/23/91	Southern Maryland Elec. Coop., Inc.	
91-13-191	7/25/91	7/16/91	Licking Valley Rural Elec. Coop.	

FAR Case 91-13 Comments Due: 7/23/91
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-192	7/25/91	7/17/91	East Mississippi Elec. Power Assoc.	
91-13-193	7/25/91	7/19/91	Farmers' Elec. Coop., Inc.	
91-13-194	7/25/91	7/22/91	Rock County Elec. Coop., Inc.	
91-13-195	7/25/91	7/22/91	Wise Elec. Coop., Inc.	
91-13-196	7/25/91	7/22/91	Jackson County Rural Elec. Co-op., Corp.	
91-13-197	7/25/91	7/22/91	Tideland Elec. Membership Corp.	
91-13-198	7/25/91	7/22/91	Decatur County REMC	
91-13-199	7/25/91	7/22/91	Carteret-Craven Elec. Membership Corp.	
91-13-200	7/25/91	7/2/91	Se - Ma - No Elec. Coop.	
91-13-201	7/25/91	7/16/91	Capital Elec. Coop., Inc.	
91-13-202	7/25/91	7/19/91	Minnkota Power Coop., Inc.	
91-13-203	7/25/91	7/22/91	Turner-Hutchinson Elec. Coop., Inc.	
91-13-204	7/25/91	7/22/91	Arkansas Elec. Coop., Inc.	
91-13-205	7/25/91	7/22/91	Marshall County Rural Elec. Membership Corp.	
91-13-206	7/25/91	7/22/91	Lamb County Elec. Coop. Inc.	
91-13-207	7/25/91	7/18/91	Black Hills Elec. Coop., Inc.	
91-13-208	7/25/91	7/22/91	Jackson Elec. Membership Corp.	
91-13-209	7/25/91	7/22/91	Assoc. of Illinois Elec. Coop.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-210	7/25/91	7/22/91	Moon Lake Elec. Assoc.	
91-13-211	7/25/91	7/22/91	South River Elec. Membership Corp.	
91-13-212	7/25/91	7/19/91	Lumbee River Elec. Membership Corp.	
91-13-213	7/25/91	7/22/91	Alaska Village Elec. Coop., Inc.	
91-13-214	7/25/91	7/22/91	Central Montana Elec. Power Coop., Inc.	
91-13-215	7/25/91	7/23/91	Adams Elec. Coop., Inc.	
91-13-216	7/25/91	7/22/91	Columbia Rural Elec. Assoc., Inc.	
91-13-217	7/25/91	7/22/91	Farmers' Elec. Coop., Inc. of New Mexico	
91-13-218	7/25/91	7/22/91	Habersham Elec. Membership Corp.	
91-13-219	7/25/91	7/23/91	Baltimore Gas & Elec.	
91-13-220	7/25/91	7/23/91	Walton Elec. Membership Corp.	
91-13-221	7/25/91	7/23/91	East Central Elec. Assoc.	
91-13-222	7/25/91	7/25/91	Central & South West Corp., et al.	
91-13-223	7/25/91	7/25/91	Flint Elec. Membership Corp.	
91-13-224	7/26/91	7/25/91	Homer Elec. Assoc., Inc.	
91-13-225	7/26/91	7/18/91	Lynches River Elec. Coop., Inc.	
91-13-226	7/26/91	7/23/91	Central Elec. Power Coop., Inc.	
91-13-227	7/26/91	7/23/91	Kansas Elec. Coop., Inc.	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-228	7/26/91	7/23/91	Rushmore Elec. Power Coop., Inc.	
91-13-229	7/26/91	7/24/91	Rural Elec. Membership Corp. Daviess-Martin County	
91-13-230	7/26/91	7/23/91	Matanuska Elec. Assoc., Inc.	
91-13-231	7/26/91	7/18/91	Wright-Hennepin Coop. Elec. Assoc.	
91-13-232	7/26/91	7/23/91	Valley Elec. Assoc., Inc.	
91-13-233	7/26/91	7/22/91	Washington Elec. Membership Corp.	
91-13-234	7/26/91	7/23/91	Southwest Rural Elec. (SWRE)	
91-13-235	7/26/91	7/23/91	Hot Springs REA, Inc.	
91-13-236	7/26/91	7/17/91	Palmetto Elec. Coop.	
91-13-237	7/26/91	7/23/91	Amicalola Elec. Membership Corp.	
91-13-238	7/26/91	7/23/91	Bon Homme Yankton Elec. Assoc., Inc.	
91-13-239	7/26/91	7/23/91	Grand Elec. Coop., Inc.	
91-13-240	7/29/91	7/22/91	Ravalli County Elec. Co-op.	
91-13-241	7/29/91	7/23/91	Dixie Elec. Membership Corp. (DEMCO)	
91-13-242	7/29/91	7/23/91	Talqin Elec. Coop., Inc.	
91-13-243	7/29/91	7/23/91	Union County Elec. Coop., Inc.	
91-13-244	7/29/91	7/24/91	Fayette Union County REMC	
91-13-245	7/29/91	7/23/91	Jay County REMC	

FAR Case 91-13 Comments
CAAC Case 88-76, DAR Case 90-471
Analyst: Edward Loeb

Due: 7/23/91

Subject: Acquisition of Utility Services

To: CAA Council

Date: 8/5/91

Response Number	Date Received	Date of Letter	Commenter	Other Comments
91-13-246	7/29/91	7/23/91	Kankakee Valley REMC	
91-13-247	7/29/91	7/22/91	Mille Lacs Elec. Coop.	
91-13-248	7/29/91	7/22/91	Salmon River Elec. Co-op., Inc.	
91-13-249	7/29/91	7/23/91	Clay-Union Elec. Corp.	
91-13-250	7/29/91	7/23/91	Sioux Valley Elec.	
91-13-251	7/29/91	7/22/91	Mid-Carolina Elec. Coop., Inc.	
91-13-252	7/29/91	7/23/91	Harrison County Rural Elec. Coop.	
91-13-253	7/29/91	7/25/91	South Alabama Elec. Coop., Inc.	
91-13-254	7/30/91	7/22/91	The Satilla REMC	
91-13-255	7/30/91	7/23/91	Pioneer Rural Elec. Coop., Inc.	
91-13-256	7/31/91	7/24/91	Poudre Valley Rural Elec. Assoc.	
91-13-257	7/31/91	7/29/91	Senator Steve Symms (Constituent Referrals; duplicates)	
91-13-258	7/31/91	7/18/91	NSF	
91-13-259	8/5/91	7/31/91	DOD/Army	

Central Intelligence Agency

Washington, D.C. 20505

91-13-1

JUN 19 1991

FAR Secretariat
General Services Administration
Office of Acquisition Policy
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Attention: Ms. Beverly Fayson
FAR Secretariat

Dear Ms. Fayson:

Regarding your letter of 31 May 1991, this Agency has reviewed the following rule, revising the Federal Acquisition Regulations (FAR), and has no comment on it:

FAR Case 91-20, Notification of Ownership Changes

FAR Case 91-13, Acquisition of Utility Services

We appreciate your forwarding the above cases to us.

Sincerely,

Franklin T. King
Chief
Procurement Management Staff
Office of Logistics

JUN 5 1991

United States Information Agency

Washington, D.C. 20547

91-13-2

USIA

June 21, 1991

Ms. Beverly Fayson
FAR Secretariat (VRS)
General Services Administration
18th & F Sts., N.W. Room 4041
Washington, D.C. 20405

Dear Ms. Fayson:

Re: FAR Case Nos. 90-67; 91-9; 91-11; 91-13; 91-17; 91-18 and 91-20

We have reviewed and concur in the seven proposed rules to revise the Federal Acquisition Regulation (FAR) as follows:

a. Preproduction Startup Costs. FAR Case 90-67.

b. Helium. FAR Case 91-9.

c. Shipments to Ports and Air Terminals. FAR Case 91-11.

d. Acquisition of Utility Services. FAR Case 91-13.

e. Contractor Acquisition of APDE. FAR Case 91-17.

f. Multiyear Contracting. FAR Case 91-18.

g. Notification of Ownership Changes. FAR Case 91-20.

Thank you for submitting this material for our review.

Sincerely,

Philip R. Rogers
Agency Procurement Executive
Office of Contracts

JUN 25 1991

AMERICAN DEFENSE PREPAREDNESS ASSOCIATION
DEDICATED TO PEACE WITH SECURITY THROUGH DEFENSE PREPAREDNESS
TWO COLONIAL PLACE 2101 WILSON BOULEVARD SUITE 400 ARLINGTON, VIRGINIA 22201-3061
703-522-1820 FAX: 703-522-1885
Founded 1919

91-13-3

June 25, 1991

Beverly Fayson
General Services Administration
Office of Federal Acquisition Policy
18th and F Sts., NW, Room 4037
Washington, DC 20405

re: FAR Case 91-13

Dear Ms. Fayson:

This responds to your request for comments concerning Case 91-13, Acquisition of Utility Services.

We find no objectionable provision in the rewritten Part 41 and concur in its publication. This is a comprehensive treatment of the subject.

We appreciate the opportunity to review and comment on Case 91-13.

Sincerely,

William Eicher

William E. Eicher
Major General, US Army (Ret.)
Vice President

WEE:meh

JUN 26 1991

91-13-4

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF SUPPLY AND SERVICE

June 21, 1991

Ms. Beverly Fayson
FAR Secretariat (VRS)
General Services Administration
Room 4041
18th and F Streets, NW
Washington, D.C. 20405

Reference: FAR Cases 91-20 and 91-13

Dear Ms. Fayson:

As requested, we have reviewed the proposed revision to the Federal Acquisition Regulation (FAR). We have no comments at this time.

Very truly yours,

Henry M. Valiulis
Director of Supply
and Service

JUN 26 1991

GGU

GULF GAS UTILITIES CO.

18065 UPPER BAY ROAD. SUITE 210. HOUSTON. TEXAS 77058 713 333-4484

DALLAS OFFICE: 4223 HARVEST HILL. DALLAS. TEXAS 75244 214/661-2322 FAX 661-2356

91-13-5

June 26, 1991

GENERAL SERVICES ADMINISTRATION
FAR Secretariat (VRS)
18th and F Streets, NW, Room 4041
Washington, DC 20405

Re: FAR Case 91-13

Gentlemen:

Gulf Gas Utilities Company (GGU) a small Texas natural gas utility company would like to comment on the FAR Case 91-13, as it relates to natural gas service. Due to the deregulation of the natural gas industry, there are many opportunities for competition that did not exist a few years or months ago; therefore, your request for comments is timely.

1. **41.001 Definitions.**

   a. **Areawide contract** means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover the utility service needs of Federal agencies within the franchise/service area of the supplier.

   Comment: In many areas, specifically in Texas, exclusive franchises are illegal by State law. Therefore, before an area wide contract is negotiated with one company, all options for fair and open competition should be considered. Also, by breaking large area wide contracts into individually metered locations, the Government might realize more competitive pricing by negotiating transportation agreements with existing pipelines and competitively competing their natural gas needs. This would also open up the opportunity for small business participation.

   b. **Franchise service territory** means a geographic area, defined or granted to a specific utility service supplier(s) to supply the customers in that area.

   Comment: This definition is misleading. A franchise, in Texas, is granted to allow a company the right to use the

JUL 1 1991

91-13-5

streets and alleys for a fee, and if a company does not need to use the city streets then a franchise is not required to service a customer in that geographic area. Therefore, it is possible to service a customer in someone else's franchised area, without a franchise.

2. **41.004-2 Procedures.**

(a) Prior to executing a utility service contract, the contracting officer shall comply with parts 6 and 7 and subsections 41.004-1(d) and (e). In accordance with parts 6 and 7, agencies shall conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement.

Comment: Recently I have felt the results of these "market surveys or acquisition planning" and believe that an additional step needs to be incorporated into the Federal Regulations. A statement of intent to procure natural gas by an agency, synopsised in the CBD, with a request for response from interested parties, would guarantee that open and fair competition is considered before a sole source solicitation is determined relevant. (My personal experience is that our industry is changing so rapidly, that no consultant or market survey can be up-to-date on every location; therefore, the only mechanism to assure fairness is to announce the potential need far enough in advance for interested parties to respond.)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-3000

91-13-6

July 2, 1991

OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION

Ms. Beverly Fayson
FAR Secretariat
General Services Administration
Room 4041
18th and F Streets, NW.
Washington, DC 20405

Dear Ms. Fayson:

In response to the Federal Register notice of May 24, 1991, we have the following comments on FAR Case 91-13, Acquisition of Utility Services:

- The term "areawide contracts" is used throughout Part 41; however, it is our understanding that these are basic agreements, not contracts. If these were contracts, then it would be redundant to require, as subsection 41.004-4 does, that a Standard Form 26 (a contract award document) be used to place orders under such "contracts." To be consistent with the terminology used elsewhere in the FAR (see FAR 2.101 and 16.702(a)), we recommend that the term "areawide agreement" be employed.

- It would be more appropriate for the coverage on specifications contained in section 41.009 to be included in Part 10 of the FAR; however, a cross-reference in Part 41 could still be used.

You may contact Ed Girovasi or Rob Lloyd of my staff on 708-0294 if you have any questions.

Sincerely,

Roosevelt Jones

Roosevelt Jones
Director, Office of
Procurement and Contracts

JUL 5 1991

JUL 5 1991

91-13-7

Kiamichi Electric Cooperative, Inc.

P.O. DRAWER 340 PHONE 465-2336
OKLAHOMA 33, LATIMER
WILBURTON, OKLAHOMA 74578

BOARD OF TRUSTEES

ATTORNEY
Gene Sice

GENERAL MANAGER

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.- Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Gentlemen:

In reviewing the proposed rules for FAR Case 91-13, it appears the Government will be treated as any other customer of a cooperative except in 52.241-13 Capital Credits.

Sections (b) and (c) will go against the By-Laws of our cooperative since Capital Credit allocations are made annually after the year end financial reports are completed. It will be impossible to determine what, if any, Capital Credits will be due to any account prior to that time. No Capital Credit retirements are made prior to the time the financial condition of the cooperative warrants. The Cooperative is currently on a First-In, First-Out retirement and a 20 year rotation cycle.

The proposed rules would definitely pose a severe hardship in the operation of the cooperative in the accounting process.

Our allocation and retirement of Capital Credits are presently acceptable to the Rural Electrification Administration.

Please consider a change in your Proposed Rules to comply with the individual cooperatives' By-Laws and Terms and Conditions of Services.

Sincerely,

Duane S. Wood
General Manager

DSW:jas

JUL 17

91-13-8

NORTH WESTERN ELECTRIC

P. O. BOX 391
BRYAN, OHIO 43506-039
Phone (419) - 636 - 5051
FAX (419) - 636 - 0194

a consumer owned power system serving northwestern Ohio

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, DC 20405

REFERENCE: FAR Case 91-13

TO WHOM IT MAY CONCERN:

The following comments are in reference to FAR Case 91-13. The proposed published rule on the acquisition of services from utilities is ridiculous and puts an undue burden on our cooperative by being in conflict with our Code of Regulations.

Although we presently rotate our capital patronage on a fixed cycle, there is no guarantee we will continue such a practice annually. Each year our Board analyzes our financial position and then determines whether to rotate such patronage. Paragraph "B" of the proposed regulation states the amount and date capital patronage is to be paid to the government. This cannot be determined with any certainty by our cooperative at the close of our fiscal year.

We don't need any more regulations of this ill conceived type.

Sincerely,

Lyle D. Brigle /lsb

Lyle D. Brigle
Manager - Engineer

LDB/lsb

JUL 8 '91

91-13-9

Benton Rural Electric Association

402 7th St.—P.O. Box 1150—Phone Area Code 509-786-2913
Fax 509-786-2231

Prosser, Washington 99350

SERVING IN BENTON AND YAKIMA COUNTIES SINCE 1937

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N. W.
Room 4041
Washington, D. C. 20405

SUBJECT: FAR Case 91-13

Dear Sirs:

In review of the above referenced case, I understand that GSA is proposing at section 41.007(j) the inclusion of section 52.241-13 entitled Capital Credits.

Our utility, Benton Rural Electric Association, is a cooperative which was formed and is operated under the Rural Electrification Act. Pursuant to the Act and as guided by our Articles of Incorporation and Bylaws, our Association maintains capital credit files on members of the cooperative who receive electrical service. However, we maintain no capital credit reporting system for any other purposes. To this extent, if the government or any of its agencies are members of our cooperative and therefore take electric service from our cooperative, an account has already been established. If the government or its agencies are not currently taking electricity from our co-op, then they will not be listed on our capital credit system. Also provided in our Articles and Bylaws is the authority for the Board of Tustees to set the rotation schedule for those capital credits. The capital credits are allocated on an annual basis and are paid according to a schedule which is previously established by the Board of Trustees. As a result, our notices are distributed at the end of each calendar year and are paid pursuant to this rotation cycle. There is no provision whatsoever in our Articles or Bylaws to allow the payment of capital credits outside of this normal rotation cycle unless the member or patron is deceased and then we pay the estates.

JUL 18 1991

91-13-9

As a result, I find your proposal for section 52.241-13 on capital credits in direct violation of our Articles and Bylaws. Therefore, it will be impossible for our cooperative to implement and/or to follow.

I appreciate the opportunity to comment on this section and would be glad to address any other issues on this matter that you see necessary.

Sincerely yours,

Charles L. Dawsey

CHARLES L. DAWSEY
General Manager

CLD:kh

91-13-10

U.S. Department of Transportation
Office of the Secretary of Transportation

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, NW
Washington, DC 20405

Gentlemen:

This responds to your request for comments on the Federal Acquisition Regulation Case 91-13.

Paragraph 41.001 **Definitions:** The definition of "**connection charge**" is unclear. Does the term mean all non-recurring costs associated with the installation of utility services at a particular point?

Paragraph 41.004-2 **Procedures**, subparagraph (e): This section makes it incumbent on the contracting officer to attempt to execute a contract at least once a year in situations in which the utility company has been unwilling to execute a contract. This seems unreasonable given that the contracting officer is also required to furnish the General Services Administration (GSA) with detailed data concerning a utility's unwillingness to sign a contract. After the contracting officer has attempted to obtain the signature, and has given GSA the required information, it should be GSA's responsibility to persuade the utility to sign a contract.

Paragraph 41.004-4 **GSA areawide contracts:** Subparagraph (c) requires that an SF 26 (Award/Contract) be attached to each executed areawide contract. Since both forms are contracts, this seems to imply that two separate contracts are being required for individual service. We see no reason for this proliferation of paperwork. In subparagraph (d), it should be stated whether or not this requirement to furnish GSA with copies of executed contracts is dependent on the contract being in excess of a specific monetary amount.

If you have any questions regarding our comments, please contact Vincent Careatti on (202) 366-4278.

Sincerely,

Linda M. Higgins

Linda M. Higgins
Director of Acquisition and
Grant Management

JUL 18 1991

91-13-11

SALT RIVER RURAL ELECTRIC
COOPERATIVE CORPORATION
111 West Brashear Avenue
Bardstown, Kentucky 40004
(502) 348-3931 Fax (502) 348-1993

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13
Objections to proposed paragraphs (b) and (c)

TO WHOM IT MAY CONCERN:

I have read with alarm your proposed rule on the acquisition of services from utilities (56 Federal Register 23982), section 41.007 (j), paragraphs (b) and (c). The proposed provisions will create an unduly burdensome hardship on any electrical cooperative. Please consider the following:

1. Capital Credits is the cooperative way of raising capital to operate the Cooperative, which is shared by all members;
2. Capital Credits are retained until such time as the financial conditions of the Cooperative justify their retirement;
3. Few if any cooperatives are in a position to project the year of retirement of capital credits, especially at the time the credits are put on the books. Economic conditions, etc., have a great bearing on the ability of a cooperative to retire capital credits;
4. To compel that capital credits of the government be paid upon termination of a contract, will cause those capital credits to be rotated out of turn and in preference to other consumers, which is unfair and violates cooperative principles;
5. Some cooperatives are not equipped to notify their members of the amount of capital credits attributed to them in a given year. Further, the cost of preparing and mailing said notices to the membership becomes both inefficient and prohibitive.

Please take this letter as a resounding NO! to the proposed paragraphs. Take time to think of more than the ease and comfort of the bureaucrats in Washington, D.C., and contemplate what your proposals will do the little people who have to carry the awesome burden of government. PLEASE?

Respectfully,

George E. Mangan

George E. Mangan
General Manager

cc: Michael Oldak

JUL 18 1991

GRANT-LAFAYETTE

TELEPHONE 608-723-2121
FAX 608-723-2688

91-13-12

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th & "F" Street, N.W.
Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Sirs:

In reference to your published proposed rule on the acquisition of services from utilities (56 Federal Register 23982), specifically Section 41.007(j) - 52.241.13 Capital Credits, paragraphs (b) and (c) and (d) - our comments are as follows:

Paragraph (b) It is impossible for us to furnish a list of the accrued credits within 60 days after the close of our fiscal year. Our audit has not been finalized as of this date. Also, this paragraph says "the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made. The by-laws provide that the directors authorize the payment when financially feasible. We cannot commit ourselves to a definite date of payment at the time of allocation.

Paragraph (c) The Cooperative's by-laws do not allow payment of capital credits at the time of expiration of a contract but payment is made in a normal cycle. To pay you otherwise would be preferential treatment and paying preferentially could result in the cooperative losing our tax-exempt status.

Paragraph (d) Payment would be made with a regular company check, not a "certified check". Again, this presents an extra burden. If you want services from us, then you should follow our rules of service.

Sincerely,

GRANT-LAFAYETTE ELECTRIC COOPERATIVE

Richard E. Kolb

Richard E. Kolb
Manager

JUL 18 1991

91-13-13

SOUTHEASTERN ILLINOIS ELECTRIC COOPERATIVE, INC.

P. O. Box 251 • Eldorado, Illinois 62930 • Phone: Area Code 618/273-2611

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N. W., Room 4041
Washington, D. C. 20405

Re: FAR Case 91-13

Dear Sirs:

I recently became aware of a GSA proposed rule on the acquisition of services from utilities which would require cooperatives to establish a distinct and separate bookkeeping system for any and all accounts established with the Federal Government. The Federal Government is indeed a member of the cooperative and is certainly entitled to the return of patronage capital; however, this patronage should be returned on the same basis and same rotation as any other cooperative member. What is being proposed in FAR Case 91-13 is shallow in thought, ill conceived, and if implemented, will result in higher utility bills for all cooperative members, including the Federal Government.

Sincerely,

SOUTHEASTERN ILLINOIS
ELECTRIC COOPERATIVE, INC.

James M. Cummins

James M. Cummins
General Manager

JMC/bp

cc: Greg Cruse

JUL 18

91-13-14

July 15, 1991

General Services Administration, FAR Secretariat (VAS)

18th and F Streets

N.W. Room 4041

Washington, D.C. 20405

Re: FAR Case 91-13

(56 Federal Register 23982) - 52.241-13 Capital Credits

Comments:

The proposed rule changes on Capital Credits between rural electric cooperatives and government agencies will be an accounting nightmare! The paragraphs (b) and (c) are particularly disturbing since they would cause us to handle the government accounts differently than other members. This would result in discrimination and would be unfair to other members!

There is no way that we could state the date payment of capital credits would be made or make payment out of order for one and not for all members!

Please reconsider at least the paragraphs (b) and (c) of 52.241-13 Capital Credits. These paragraphs would cause all kinds of trouble with rural electric cooperative across the nation!

Thanks for your consideration;

Harold Myers

Harold Myers, Manager

Sac Osage Electric Coop., Inc.

91-13-15

SOUTH KENTUCKY RURAL ELECTRIC
COOPERATIVE CORPORATION
P.O. Box 910
Keith Sloan, President
Somerset, Kentucky 42502
Phone (606) 679-4121

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Gentlemen:

RE: FAR Case 91-13

In section 52.241-13 Capital Credits, we agree that the Government is a member of the Cooperative and as any other member is entitled to capital credits consistent with all other members of the Cooperative.

We find that paragraph (b) & (c) are not consistent with the capital credits refunds to all other members and would cause unnecessary time and expense to comply with these two paragraphs.

We also find in paragraph (d) that it would be inconsistent to prepare a certified check to the treasurer while all other capital credits checks are prepared by a computer without this extra burden and expense. Your consideration of these points would be appreciated very much.

Very truly yours,

SOUTH KENTUCKY RECC

Clifford M. Payne

Clifford M. Payne, Director
Admin., DP & Finance

CMP:fb

c: Keith Sloan, President

JUL 18 1991

91-13-16

SOUTHSIDE ELECTRIC COOPERATIVE

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Reference: FAR Case 91-13

Dear Sir:

I am in receipt of the proposed rules in reference to the above-cited case as published in the Federal Register, Volume 56, Number 101, Friday, May 24, 1991. As Executive Vice President of Southside Electric Cooperative, I must take exception to the proposed rule under 52.241-13 Capital Credits. More specifically, the sections that read as follows:

"(b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Office, in writing a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made."

Southside Electric Cooperative's Bylaws specifically spell out the right of the Board of Directors to determine when capital credit payments can be made in a manner that will not place financial hardship on the Cooperative. We do provide a notification approximately 90 days after the close of our fiscal year for the capital credits assigned to that account for that year. The capital credits are accrued by year and not grouped together in order that payment can be made for specific years or part of the year as our financial situation allows. The payment of capital credits is not pre-determined for the year when the assignment is made. It is the goal of the Cooperative to end up on a ten-year rotating cycle; however, financial conditions can vary that cycle in future years.

JUL 18 1991

Headquarters Office: P. O. Box 7 Crewe, VA 23930 (804) 645-7721 VA WATTS Toll Free 800-552-2118
Western District Office: P. O. Box 186 Altavista, VA 24517 (804) 369-5295
Eastern District Office: P. O. Box 56 Dinwiddie, VA 23841 (804) 469-3753

91-13-16

"(c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits."

Southside Electric Cooperative finds this to be in total violation of the principles of a cooperative where each member is refunded their capital credits as the Cooperative is financially able. This would place the United States Government in a preferential position to receive their capital credits before the other members of the Cooperative who must wait until the normal rotation cycle for capital credits. The exception to this is the Board can approve the payment of accumulated capital credits upon the death of any patron (natural person) if a legal representative of the estate applies for such capital credits. This exception was placed in effect simply to assist in the closing of estates and specifically identifies the payment for an "individual," not a business that closes. Once again, this is under the sole discretion of the Board of Directors to make these payments. It certainly appears that the Government would be again violating the principles of a cooperative by requesting preferential treatment.

"(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____, unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued."

Once again, as stated above, the disbursement of capital credits is done on an annual basis as approved by the Board of Directors and may be for one or more years or, in fact, for less than one year. These payments are made on the financial ability of the Cooperative to make those payments at that given time. The Cooperative's account number is usually accompanied by a consumer's identification number which would be the contracting account number with the Federal Government.

These specific items as identified in the published Federal Register proposals give the Cooperative considerable problems simply due to the fact that we see these changes as giving preferential treatment to the Federal Government over the members of the Cooperative that contribute capital on a continuing basis.

I must note at this point that capital credits from "associated organizations" (such as our generation and transmission power

91-13-16

supply cooperative) are returned to the members of the Cooperative on the same pro-rata basis as our operating capital credits, except they are refunded within thirteen (13) months after receipt of payment from these associated organizations.

Thank you for the opportunity to express our opinion on these proposed rules, and we certainly do not feel that the rules should be drafted in order to provide preferential treatment to the Federal Government. Electric cooperatives are unique in the fact that profits made are returned to our members as economically feasible where the independently-owned electrical utilities return their profits to their stockholders. We do not feel the Federal Government should try to take advantage of the other Cooperative members by requesting preferential treatment in their payment of capital credits.

With kindest regards,

John C. Anderson
Executive Vice President

JCA/jlh
C: Mr. Robert Bergland, General Manager, National Rural Electric Cooperative Association
Mr. Michael Oldak, Regulatory Counsel, National Rural Electric Cooperative Association
Southside Electric Cooperative Board of Directors

CENTERIOR ENERGY

91-13-17

Independence OH
216 447 3100

P.O. Box 9466
Cleveland OH 44101-9466

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
Room 4041
18th and F Streets, N.W.
Washington, D.C. 20405

Re: FAR Case 91-13 Proposed Rulemaking
Comments by Centerior Energy Corporation

Greetings:

Centerior Energy Corporation, on behalf of its operating companies, The Cleveland Electric Illuminating Company and The Toledo Edison Company, submit six copies of its comments on the proposed re-write of the FAR, as described in the Federal Register, Vol. 56, No. 101, dated May 24, 1991. Date stamp and return two of the copies to me in the enclosed envelope.

Please direct questions concerning these comments to the undersigned, counsel for Centerior Energy Corporation.

Very truly yours,

Craig I. Smith
Principal Counsel

#204:7-18-91/CIS/MES/CSC:GSALTR

JUL 19 1991

Operating Companies:
Cleveland Electric Illuminating
Toledo Edison

91-13-17

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation:)
Acquisition of Utility Services)
48 CFR Parts 6, 8, 15, 41 and 52)

FAR Case 91-13

COMMENTS BY THE CENTERIOR ENERGY CORPORATION,
ON BEHALF OF ITS OPERATING COMPANIES,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY
AND THE TOLEDO EDISON COMPANY

INTRODUCTION

Centerior Energy Corporation, on behalf of its operating companies, The Cleveland Electric Illuminating Company and The Toledo Edison Company, submit these comments on the proposed rewrite of the Federal Acquisition Rules (FAR), as described in the Federal Register, Vol. 56 No. 101, dated May 24, 1991.

CENTERIOR ENERGY

Centerior Energy Corporation, a public utility holding company, is the parent company of CEI and Toledo Edison Company: Ohio public utilities engaged in the generation, purchase, transmission, distribution and sale of electric energy. CEI serves approximately 737,000 customers in a 1,700 square mile area in northeastern Ohio, including the City of Cleveland.

91-13-17

Toledo Edison provides service within an area of approximately 2,500 square miles in northwestern Ohio, including the City of Toledo, and serves approximately 283,000 customers.

The Centerior operating companies are regulated by the Public Utilities Commission of Ohio as to retail sale of electric energy, and by the Federal Energy Regulatory Commission as to wholesale transactions of electric energy.

THE FAR PROPOSAL

GSA[1] describes its proposal as a major re-write to, in part, further guide contracting officers of public utility services; further define contract terms; and better delineate existing statutory and delegated authority for utility service contracting. Centerior is concerned about the proposal in two respects:

THE PROPOSAL ALTERS GSA'S LONG-STANDING POLICY THAT ENCOURAGES AREAWIDE CONTRACTS.

GSA seemingly veers away from a long-standing policy of preferring areawide contracts for the acquisition of utility service. Areawide contracts, as "master" contracts between the GSA and utilities, benefit the federal government through efficient, full service procurement of utility services from one electric supplier. The proposed rule diminishes the status of

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1. For purposes of these comments, the agencies are collectively known as GSA or, simply, the federal government.

91-13-17

areawide contracts. No longer considered "master" contracts, they merely become one of several means for the federal government to acquire utility services.

Besides ending its preference for areawide contracts, GSA encourages the unbundling of utility services upon the rationale that separately negotiated contracts promote competition. This newly pronounced policy to unbundle services that utilities traditionally provide, and upon which they determine their cost of service, is facilitated by proposed paragraph 41.004-2(a):

> "...If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for <u>certain portions</u> of the requirement." (emphasis added)

The GSA interest in bifurcating the rendition of utility service into separate distinct components is further underscored by the definition of "entire utility service", to include partial services, such as standby or back-up service; the generation, transmission and/or distribution of electric energy; product quality, system reliability, and system operation; as well as the metering and billing for the product (Id.).

GSA's variation from the traditionally perceived rendition of full utility service signals a disturbing change in emphasis. An incremental, piece-meal approach to the acquisition of utility

91-13-17

services destroys the efficiency and reliability advantages of receiving generation, transmission and distribution service from fully-integrated utility systems.

This now divergent emphasis on the part of GSA hardly will end the debate; rather, it brings into focus whether lower costs for the federal government will actually result from less reliance and from the de-emphasis of areawide contracting; and, conversely, it brings into focus whether utilities, knowing that the government will only enter into areawide contracts as a last resort, will have incentives to enter into them at all.

GOVERNMENT PROCUREMENT ACTION TO ENCOURAGE RETAIL WHEELING OF POWER TO ITS FACILITIES IS A POLICY NOT ARTICULATED BY CONGRESS, AND WOULD BE, IN FACT, CONTRARY TO CONGRESS' ENERGY ENACTMENTS AND RUN CONTRARY TO SOUND PUBLIC ENERGY POLICY.

An obscure provision of paragraph 41.004-5(b)(7), requires the contracting officer to document the willingness of the utility "to wheel or otherwise transport utility service". As used in this context, "utility service" would include the transmission of service directly to the federal agency from sources other than the local utility in whose service franchise territory the agency is located.

91-13-155
Addendum

CP&L

Carolina Power & Light Company

P. O. Box 1551 • Raleigh, N.C. 27602
(919) 546-7544

H. RAY STARLING, JR.
Manager - Legal Department
Associate General Counsel

August 5, 1991

Ms. Beverly Fayson
General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13
Proposed Federal Acquisition Regulations for the Acquisition of Utility Services

Dear Ms. Fayson:

In a letter of July 22, 1991 I submitted to you the comments of Carolina Power & Light Company (CP&L) on the proposed Federal Acquisition Regulations on the Acquisition of Utility Services (56 Fed. Reg. 23982 (1991)).

At pages 3 and 4 of our comments we expressed several major concerns about Sections 41.004-5(d) and 52.241-2 of the proposed regulations, and on page 4 we made three recommendations for changes in these sections. Our first recommendation was as follows: "The changes proposed by EEI [Edison Electric Institute] in Section 41.004-5(d) should be adopted." This recommendation was based on an early draft of EEI's comments which had been circulated among EEI's member utilities.

However, when we received a copy of the comments EEI actually filed with the General Services Administration in this case, we found that EEI had chosen not to propose any changes in Section 41.004-5(d). Therefore, we are filing this corrected version of page 4 of our comments. The corrected version makes no substantive change in our comments, but simply deletes the now-meaningless reference to an EEI-proposed modification of Section 41.004-5(d). Please substitute this corrected page for page 4 of our comments as originally filed.

THIS PG SHOULD'VE
BEEN THE 4TH
PAGE BUT SCANNER
SKIPPED IT.
TGTA
1/24/02

AUG 8 1991

91-13-1

Contracting officers broaching during negotiations the subject of wheeling brings to bear the government's immense bargaining power and influence to extract, as part of the quid pro quo of the bargain, a utility's "willingness" to wheel power for retail purposes, even if not in the best interest of its other customers or shareowners. This anomalistic behavior may depend on a utility's perception of its market position. A utility may agree to retail wheeling when not in their best interest to cut losses and retain retail load from other federal government facilities in its service areas.

While overwhelming bargaining power may precipitate instances of retail wheeling, the GSA venture into the realm of retail wheeling oversteps its statutory authority, and pursues ruinous public policy in contradiction to Congress' consistent position that retail wheeling is not a policy to encourage.

Utilities plan, design and construct their transmission systems to meet their obligations to provide reliable and adequate power to their native load customers, including governmental accounts, at reasonable cost. Accurately performed long-term planning and load forecasts are critical to providing reliable service at reasonable costs. Federal accounts that switch at will to other power sources will deprive utilities of the capability to accurately forecast future loads and plan for generation and

91-13-17

transmission capacity additions. This planning process becomes even further complicated for utilities expected to provide back-up services to government accounts.

Since larger customers earn more revenues and profits for utilities, the adverse financial affects of larger customers switching to off-system suppliers through retail wheeling will be felt in terms of stranded investments, rate increases for remaining customers, and lower earnings per share for investors of the utilities. Capacity investments remain as obligations, paid for by customers or shareowners to the extent power is unsold through marketed off-system sales.

Customers leaving the system for economic reasons as a result of retail wheeling do not lower utility fixed costs, nor do they further useful public policy goals. In its most crass form, retail wheeling "cherry picks" profitable customers from a utility service territory; or, stated another way, transfers wealth without associated societal benefits from lowered incremental costs of producing the product.

Federal law does not impose upon a utility the obligation of making available its transmission facilities as a common carrier; that is, utilities do not have the requirement to interconnect and wheel wholesale power. Furthermore, Congress, through federal enactments, have restricted FERC's authority to order mandatory wheeling.

91-13-17

Significantly, Federal Power Act provisions prohibit FERC from issuing an order to wheel "unless the Commission determines that such order would reasonably preserve existing competitive relationships"; prohibits FERC from issuing an order to wheel which "is inconsistent with any State law which governs the retail marketing areas of electric utilities"; prohibits FERC from issuing an order "which provides for the transmission of electric energy directly to an ultimate consumer" (16 USCA Sec. 824(J)(c)(1)(2)(3)(4)); and prohibits ordering of wheeling unless FERC finds the utility will not likely incur a "reasonably ascertainable uncompensated economic loss (16 USCA Sec. 824(a)(1)).

FERC has strictly construed its wheeling authority in a manner to preserve existing competitive relationships "so as to keep the commission out of the economic contest among utilities for customers". Southeastern Power Administration v. Kentucky Utilities Co. (1983) Util. Law Rptr. Fed. CCH Par. 12,794 pg. 17,707, 17,714.

Retail wheeling is a policy disfavored by Congress and should not be pursued by the GSA in the name of promoting full and open competition. Federal statutes[2] on the management of property do not provide GSA with authority to undertake a generic policy that undercuts federal energy policies of Congress and

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2. See 40 USCA Sec. 481, et seq.

91-13-171

implemented by FERC. While GSA is charged with the responsibility to procure public utility services in advantageous ways to the federal government, this generic language does not provide requisite authority in light of the direct language of the other energy statutes embodied in federal statutes and regulations.

Respectfully submitted,

CENTERIOR ENERGY CORPORATION on behalf of THE TOLEDO EDISON COMPANY and THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: _____

Craig I. Smith, Esquire
Centerior Energy Corporation
6200 Oak Tree Blvd., IND-455
Independence, Ohio 44131
(216) 447-3206

#215:7-18-91/CIS/MES/CSC:COMMENTS.FAR

91-13-18

TRI-COUNTY
ELECTRIC MEMBERSHIP
CORPORATION

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Reference: FAR Case 91-13

Dear Sirs,

This is to inform you that the proposed rule on the acquisition of services from utilities (56 Federal Register 23982) will have profound affect on the accounting systems of electric cooperatives. As part of this rule, the GSA is proposing at section 41.007 (j) that the following language be added to all contracts between Federal facilities and cooperative utilities (we find paragraphs (b) and (c) are specifically troubling):

52.241-13 Capital Credits

(a) The Government is a member of the (cooperative name) _____, and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the contractor to pay capital credits and which specifies the method and time of payment.

(b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made.

(c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

JUL 22

91-13-18

(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____, unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

Please delete paragraphs (b) and (c) and let (a) address the issue "as any other member". Also delete the word "certified" from paragraph (d), payment by check should be good enough in this statement.

Sincerely,

JIM SHAFER
General Manager

JS/lk

91-13-19

Mountain View Electric Association Inc

Limon 719-775-2861 • Lat go 719-[illegible]

PO Drawer [illegible] • Limon [illegible]

July [illegible] 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

In the recently published proposed rule on the acquisition of services from utilities (56 Federal Register 23892), the GSA is proposing at Section 41.007 (j) additional language to all contracts between Federal facilities and cooperative utilities.

I interpret this additional language to be in violation of this Association's Adopted Bylaws and Administrative Policies. To the extent that the previous year's margins are available for capital retirement purposes, the Association first retires capital in order of priority according to the year the capital was furnished and credited, on a first-in-first out basis, attempting to maintain a fifteen year retirement rotation period.

A refund to a government agency prior to the designated period would not only constitute retiring patronage out of the order the capital was furnished, but could also delay refunds to other patrons due to the cash outlay necessary to satisfy contractual obligations with the Government.

This seems to favor one group of members and contradicts the cooperative philosophy, plus increases record keeping in the accounting systems of rural electrics across the country.

Sincerely,

MOUNTAIN VIEW ELECTRIC ASSOCIATION, INC.

John A. Rohr, P.E.
General Manager

JAR/ch

JUL 22 [illegible]

91-13-20

Cavalier Rural Electric Cooperative, Inc.

MEMBER

"Do It Electrically"

Dial [illegible]

Serving In Cavalier and Ramsey Counties

P.O. Box 749
Langdon, North Dakota 58249
July 15, 1991

General Services Administration
FAR Secretariat (VRS),
18th and F Streets NW, Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Greetings:

Reference 52.241-13 Capital Credits: Item (a) is agreeable with us.

Item (b) Within 60 days . . . is not agreeable with us and we strongly recommend removal of this paragraph in it's entirety. Simply because we cannot determine these capital credits within sixty days of the close of the Contractor's fiscal year. We Normally do not notify the members until about April 15 of the close of the preceding year

Item (c) Upon termination . . . is not acceptable to us and we strongly recommend removal of this paragraph in it's entirety. Simply because to pay the capital credits to the government upon termination of the contract would demand "preferential treatment" for the government, which "preferential treatment" is not allowed under capital credits.

For these reasons, we strongly urge elimination of items (b) and (c).

Yours truly

Cavalier Rural Electric Cooperative, Inc.

Duane L. Otto, Manager

JUL 22 [illegible]

91-13-21

HIGHLINE ELECTRIC ASSOCIATION

[illegible]
TELEPHONE [illegible]

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington D.C. 20405

Re: FAR Case 91-13

Dear Sirs:

The following comments are in response to the above-referenced publication in the Federal Register Vol.56. No. 101 dated May 24, 1991.

Section 52.241-13 referring to the immediate payment of Capital Credits to the government on termination of contract will be discriminatory to other members of the Association. Presently this Association pays capital credits on an approximate 15-year cycle. This cycle may vary considerably depending upon the margins of each year which in turn is dependent upon rainfall (this Association serves predominantly irrigation loads), the economies of the area, and other uncontrollable variables. It is conceivable that the cycle could extend out to even 25 years. To require payment of capital credits immediately to government agencies would discriminate against other members and corporations of the Association since they would have to wait for the normal time period for payment. Naturally one dollar today is worth considerably more than a dollar 15 to 25 years from now.

Payment of capital credits immediately to the government would also tend to set precedent and could encourage other members and corporations to file suit against the Association for immediate payment of their earned capital credits. This practice would be totally devastating to Cooperative Associations since this capital is used to finance the system operations.

Even if a method of discounting capital credits on a present-value basis were developed the immediate outlay of cash may also cause severe financial strain on most associations.

In conclusion please reconsider this portion of the proposed regulations. The financial impact of this section to Cooperative and member-owned utilities across the nation could conceivably become enormous.

Sincerely,

Donald R. Johnson

Donald R. Johnson, P.E.
Manager

JUL 22 1991

91-13-22

The Midwest Electric
Membership Corporation
P.O. Box 970, Grant, Nebraska 69140
Phone 308 352-4356

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

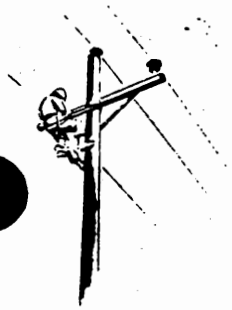
I am writing to ask question regarding the proposed rule change in Federal Register notice 41.007 (j) part 52.241-13 Capital Credits. Why does the government want to add to our paper work by putting these restrictions on us? Your proposed rule 52.241-13 (c) will cause a total re-work of our procedures. Right now we have our payments set up on a once a year payment schedule. If this rule is passed we would be caused to write checks out of our normal sequence which will cause undue cost placed on our customers.

Thank you for your consideration and would appreciate a written explanation of my questions.

Yours truly,

Terry H. Zeigler
General Manager

THZ/cs



Owned by those we serve...

JUL 22 1991

ARECA INSURANCE MANAGEMENT, INC.
703 W. TUDOR ROAD, SUITE 200
ANCHORAGE, ALASKA 99503 - (907) 561-6103
FAX: (907) 561-5547

91-13-23

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and "F" Streets, N.W., Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Dear Sir/Madam:

Enclosed you will find the Alaska Rural Electric Cooperative Association's comments on FAR Case No. 91-13.

Sincerely,

David Hutchens (EB)

David Hutchens
Executive Vice President

JUL 22

91-13-23

COMMENTS ON FAR CASE NO. 91-13
BY
ALASKA RURAL ELECTRIC COOPERATIVE ASSN.

July 16, 1991

The Alaska Rural Electric Cooperative Association represents 15 distribution electric cooperatives in the State of Alaska, and these comments are submitted on behalf of our members.

Regarding 52.241-13, Capital Credits, we support subsection (a). The government should be treated, on a non-discriminatory basis, like every other member of the cooperative. Capital credits should be assigned and paid to the government in accordance with the bylaws of the cooperative. Unfortunately, subsections (b) and (c) are in direct conflict with this policy stated in (a).

It is important to understand that the operating margins of a cooperative are what are allocated to its members as capital credits; and these capital credits, while they are held by the cooperative, are the only equity the cooperative has in its utility system. When these capital credits are to be paid to the members is determined largely by the financial condition of the cooperative.

The electric cooperatives in Alaska are younger than the co-ops in most other states, so it is only in recent years that any of them have achieved the financial strength to be able to pay the previously allocated capital credits on any basis other than the death of a member. Several electric co-ops in Alaska still do not have the financial ability to pay capital credits on a routine basis. It is not possible for most co-ops to tell the government when its capital credits will be paid.

It is grossly unfair to the other members of the co-op for the government to require the co-op (in violation of its bylaws) to retire capital credits upon termination or expiration of a service contract while all other members of the co-op must leave these capital credits in the control of the co-op for several more years for use as its equity. This proposed requirement in (c) would force all the other members to subsidize the service the co-op provides to the government.

It is impossible for most, if not all, co-ops to furnish a list of allocated capital credits within 60 days after the close of the utility's fiscal year. First, the books have to be closed for the year. Second, the audit must be performed. Third, the board of directors for the co-op has to approve the proposed allocation of capital credits for the year. Finally, notice of that allocation can be given to the members. This routine takes about 6 months. What difference could this possibly make to the government? It is not a cash transaction. It is only a notice of information for your records. Notice within six months should be quite satisfactory.

Subsection (d) is also objectionable in its present form. We could use certified checks to pay the government its capital credits, but why should we have to? This is an unnecessary complication in the business routine, costing much more in staff time than in cash outlay to have the certified check issued. We would be very much surprised if the government has ever had a problem in cashing a capital credits check issued by an electric cooperative. Also, the co-op should tell the government, along with its other members, what year or years the capital credits were earned and whether the check represents a partial or final payment for that period. The co-op should not have to research the government's account to give it special notice as to what other years you may have earned capital credits. We give you notice after each year. Keep your own records like everybody else! Perhaps this proposed requirement does bring these proposed regulations under the Paperwork Reduction Act after all.

In conclusion, the proposed section 52.241-13 is so objectionable that our members would have no choice but to serve the government as a non-member. In that case there would be no capital credits for you to worry about.

RURAL ELECTRIC COOPERATIVE

POST OFFICE BOX 609
LINDSAY, OKLAHOMA 73052
TELEPHONE 405 756-3124

91-13-2

REC

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

REF: FAR Case 91-13

The contractor's fiscal year may or may not be the same as Cooperative's (Rural Electric end of the fiscal year is 12-31). The bylaws of our Cooperative states each patron shall be notified within a reasonable time after the close of the fiscal year of the amount of Capital so credited to their account.

Any such retirements of Capital shall be made in order of priority according to the year in which the Capital was furnished and credited. The Capital first received by the Cooperative being first retired. To refund to the Government current Capital would discriminate against other members.

The addition of these clauses to the contracts between rural electric cooperatives and government agencies will add more requirements, which will increase the work load and time spent to the accounting systems of electric cooperatives.

Sincerely,

Mike Treadwell
General Manager

MT:kl

JUL 22 19

91-13-25

PEE DEE ELECTRIC MEMBERSHIP CORPORATION

P O BOX 859 HIGHWAY 52 SOUTH WADESBORO N C 28170 0859

TEL. 704-694-2114 1-800-992-1626 FAX 704-694-9636

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Street, N.W., Room 4041
Washington, DC 20405

Dear Sir:

Re: FAR Case 91-13

This letter is in response to the recently published proposed rule on the acquisition of services from utilities (56 Federal Register 23982). I am particularly concerned with the proposal contained in Section 52.241-13 Capital Credits.

I am in agreement with paragraph (a) which in part reads: The Government is a member..., and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative,.... Indeed, if the Government has the same rights as any other member to accumulate capital credits, it must also be treated as any other member in the notification and refund of capital credits. Anything else is totally un-American.

I must register my objections to paragraphs (b), (c) and (d) as they set up special treatment for a member (the Government), special records requirements, and special methods of payment (certified check).

As I stated earlier, the Government, as a member, is entitled to the same capital credits as any other member, but also must be bound to the same by-law requirements on the refund of those capital credits.

Yours truly,

Emmett S. Patterson, Manager

ESP:lsm

JUL 22 1991

91-13-26

BUFFALO Electric COOPERATIVE

1225 S. Main · P.O. Box 248 · Alma, WI 54610-[illegible]
(608) 685-[illegible]

July 16, 1991

General Services Administration
FAR Secretariat
18th and F Streets, NW
Room 4041
Washington DC 20405

RE: FAR Case 91-13

Gentlemen:

This letter is in reference to Federal Register publication FAR Case 91-13 regarding capital credits to Federal Agencies.

We like most other cooperatives can not allocate capital credits until the year end records have been audited and normally more than 60 days have elapsed by the time the audit has been approved. After the audit has been approved it takes an additional 30 to 60 days to make the allocation.

The cooperative bylaws provide for a first in, first out payment of capital credits and to make payment of any capital credits prior to a normal retirement would be in violation to the cooperative bylaws.

Thank you for your consideration on this case.

Sincerely,

BUFFALO ELECTRIC COOPERATIVE

Dean Baldwin

Dean Baldwin, Manager

TDB:mjl

JUL 22 '99

91-13-27

NORTHWEST KANSAS ELECTRIC
COOPERATIVE ASSOCIATION, INC.
P.O. Box 168 103 W. 4th Street
Bird City, Kansas 67731 913-734-2311

CNRA NWK ELECTRIC Coop
SERVING
Rawlins-Cheyenne Co.

To: General Services Administration
FAR Secretariat (VRS)
18th & F Street
NW Room 4041
Washington, D.C. 20405

July 16, 1991

Subject: FAR Case 91-13

In reviewing the proposed changes in the Federal Register I find it somewhat disturbing that the leaders of our country, for all their infinite wisdom, are so foolish.

One of the primary objectives for Rural Electric Cooperatives from the beginning was an opportunity for all rural members of the same rate class to receive equal treatment at a fair rate without regard to who they were or what their social standing was.

What you are proposing is wrong. The Federal Government should not place itself above the people of Rural America. When the leaders of our country are proclaiming equal rights and non-discrimination a biased proposal such as this is absurd.

Furthermore, if the By-Laws provide for a separate rate class for non-member service, whereas there would be no allocation of capital credits, I suggest that any Federal Government service be under this class. If they feel preferential treatment is warranted then any expenses incurred due to the requirements of such a class of service would be charged back to that class only and would not be a burden on the remainder of our members.

Sincerely,

Roger Maier

Roger Maier
General Manager

22

AEC

91-13-28

ALFALFA ELECTRIC COOPERATIVE, INC.

OWNED BY THOSE WE SERVE

P.O. Box 39 121 E. Main Cherokee, OK 73728 405-596-3333

July 16, 1991

General Services Administration,
FAR Secretariat (VRS)
18th and F Street NW, Room 4041
Washington, D.C. 20405

RE: General Services Administration, Federal Acquisition Regulations for the Acquisition of Utility Services (FAR - Case 91-13)

Gentlemen:

In reference to the above case, Alfalfa Electric Cooperative, Inc. has some serious objections to two sections of the proposed federal regulation.

Under Section 52.241-8 - Connection Charge (e), it appears that under Sub-paragraph (1) (ii) that the government expects a contractor to repay the government for the connection charge even though the government has not met the terms of the contract. At our cooperative, upon the completion of the length of term of the contract, any advance payments will have been returned to the government. By requiring that the cooperative refund these credits even though the government has not met the conditions of the contract will cause an undue financial hardship on the cooperative because the facilities were provided and financed by the Cooperative at the government's request. We strongly object to this procedure.

Under Section 52.241-13 - Capital Credits, Paragraphs B, C, and D would be a direct violation of the Bylaws of Alfalfa Electric Cooperative, Inc. Under Paragraph B it would be impossible for the contractor or cooperative to state the amount of capital credits to be paid to the government and the date of the payment because this is not determined for ten to twenty years after the issuance of the capital credits. The payments of capital credits are currently regulated by the Rural Electrification Administration and depend upon the financial viability of the individual cooperative. Cooperatives pay back capital credits within the guidelines of the Rural Electrification Administration and as they are able to while keeping the cooperative in a strong financial position. Alfalfa Electric has been paying capital credits to its members on a first in, first out basis for over 15 years and in 1991 we re-

JUL 22 19

91-13-28

turned $82,000 of the 1978 margins to our members. Under Paragraph C on termination or expiration of this contact, the Bylaws of Alfalfa Electric Cooperative, Inc. only provide for the payment of capital credits in the case of a death of a natural person and this would not apply to the government. The credits would be paid to the government but on a regular schedule with all other members of the cooperative. We do not feel that it is right for the government to be treated differently than the other members of Alfalfa Electric Cooperative, Inc. in regards to capital credits.

Please carefully consider these comments prior to the final rules on the acquisition of services from utilities.

Sincerely,

Max W. Ott
General Manager

glw

91-13-29

CHERRYLAND ELECTRIC COOPERATIVE
5930 U.S. 31 SOUTH P.O. BOX 298 GRAWN, MICHIGAN 49637

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W. Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Cherryland Electric Cooperative is a consumer-owned cooperative organized on a non-profit basis. Cherryland has in place and properly constituted its Bylaws and certain Rules and Regulations governing electric service to its membership. Cherryland is also regulated by the State of Michigan in the matter of rates and other charges for electric service.

Cherryland has concerns with 52.241-13, Capital Credits paragraphs (b), (c) and (d).

Paragraph (b) states: "within 60 days after the close..." We feel it should read: "within a reasonable time after the close..." It is virtually impossible for a small cooperative utility to furnish a patronage capital statement within 60 days. We have neither the manpower nor equipment available to perform such a feat. Normally this can be accomplished within six (6) months from the close of the fiscal year.

Also in paragraph (b), the last sentence reads: "Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made." This should be stricken. It is impossible to state the amount of capital credits to be paid nor the date of payment of such until the Board of Directors (trustees) determines that such capital credits will be paid and when they will be paid.

Paragraph (c) should be deleted in its entirety. Capital credits are not payable upon cessation of membership and/or service from a cooperative. Capital credits are only payable upon determination of the Board of Directors as to method, basis, priority and order of retirement.

Paragraph (d) presently states: "Payment of capital credits will be made by certified check..." The word certified should be deleted as the check is normally printed by computer and there is no reason for the capital credits check to be certified. To do this would be burdensome and costly to the cooperative.

Sincerely,

Philip Cole

Philip C. Cole
General Manager

cc: Michael Oldak, NRECA Regulatory Counsel

JUL 22 19

91-13-30

DOUGLAS
ELECTRIC COOPERATIVE

1981 N E Stephens P O Box 1327
Roseburg, Oregon 97470 503/673-6616

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F St NW Room 4041
Washington DC 20405

Subject: FAR Case 91-13

This letter is concerning a recently published proposed rule on the acquisition of services from utilities (56 Federal Register 23982). As part of this rule the GSA is proposing at section 41.007(j) that language be added to all contracts between Federal facilities and cooperative utilities. We find paragraphs (b) and (c) of 52.241-13 Capital Credits; particularly troubling.

Comments on Paragraph (b):

The requirement to furnish capital credit information within 60 days of the close of the contractor's fiscal year is too short. We allocate capital credits after our books have been audited and year end financial reports have been approved by the membership at our Annual Meeting. Our bylaws require that our Annual Meeting be held between 75 and 105 days after the end of the calendar year. We suggest 180 days after the conclusion of the contractor's fiscal year.

The requirement to have the contractor state the amount of capital credits to be paid to the Government and the date the payment is to be made should be eliminated. Depending on the financial condition of the Cooperative and the ability to access capital markets such as REA, the Cooperative may or may not actually pay capital credits for any given year.

JUL 22 1991

91-13-30

Comments on Paragraph (c):

This paragraph assumes the Cooperative makes lump sum payments to the government at the termination of a contract. The Cooperative's bylaws prohibit this type of payment. The government may receive payments only when the Cooperative's Board of Director's make a general retirement of capital credits for any given year(s). We suggest you eliminate this paragraph.

Sincerely,

DOUGLAS ELECTRIC COOPERATIVE, INC.

Dave Sabala

Dave Sabala
General Manager

91-13-31

DEPARTMENT OF THE ARMY

HEADQUARTERS UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND
FORT MONROE, VIRGINIA 23651-5000

REPLY TO
ATTENTION OF

16 JUL 1991

ATBO-GFE (420-41d)

MEMORANDUM FOR General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405

SUBJECT: Federal Acquisition Regulation; Acquisition of Utility Services

1. Reference FAR Case 91-13.

2. The following comments are made on the draft Federal Acquisition Regulation; Acquisition of Utility Services:

a. Paragraph 41.004-2(e) authorizes purchase of utility services for a period of one year without a contract under specified conditions but does not address the situation where the utility supplier refuses to sign a contract after the one year elapsed time period.

b. Paragraph 41.004-5(d) limits a definite term contract to ten years but is silent on indefinite term contracts, if allowed.

3. POC for this action at HQ TRADOC is Allan Bettcher, AUTOVON 680-2309 or Commercial (804) 727-2309.

FOR THE DEPUTY CHIEF OF STAFF FOR BASE OPERATIONS SUPPORT:

ANTHONY V. NIDA
Colonel, GS
TRADOC Engineer

JUL 22 1991

U.S. Department of Justice

91-13-32

Washington, D.C. 20530

Ms. Beverly Fayson
FAR Secretariat (VRS)
General Services Administration
18th and F Streets, N.W., Room 4041
Washington, D.C. 20540

Dear Ms. Fayson:

This is in response to your request of May 31, 1991, for comments on Federal Acquisition Regulations (FAR) Cases 91-13, Acquisition of Utility Services, and 91-20, Notification of Ownership Changes. We have reviewed both proposed rules and have no substantive comments. Thank you for the opportunity to review these rules.

Sincerely,

W. L. Vann
Procurement Executive
Justice Management Division

JUL 22 1991

91-13-33

Delaware Electric Cooperative, Inc.
BOX 600 GREENWOOD, DELAWARE 19950 (302) 349-4571
Toll Free 1-800-282-8595

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, DC 20405

RE: FAR Case 91-13

Dear Sir:

I am writing in response to your proposed rule on acquisition of services from utilities (56 Federal Register 23982).

The addition of section 52-241-13, Capital Credits, is unnecessary, not consistent with current practice of electric cooperatives, burdensome and an unnecessary increase in operating costs for the electric cooperatives.

First, paragraph (b) places an unreasonable burden on the cooperative. Final determination of the capital credits for a calendar year is not made until June of the following year. This is caused by the delay in getting the notice of allocation of capital credits from the generation and transmission cooperative supplier. Only after their books are closed and audited, are allocations determined. In our case, our audit year ends March 31st. Our audit is not presented to the Board of Directors until June. Following acceptance by the Board, the notice of allocation of capital credits is given to our members prior to the annual meeting in August each year. It would be impossible to meet the requirement proposed by this rule.

Secondly, the payment of capital credits is determined annually by our Board of Directors. Authorization to make payment is dependant on the financial condition of the cooperative and is subject to limitation established by our loan agreements with the Rural Electrification Administration and private lenders. It is not possible to forecast any dates when payment would be made.

JUL 22 1991

91-13-33

Thirdly, paragraph (c) is unclear as to whether paragraph (a) is controlling. "Consistent with the by-laws of the cooperative" is the operative phase. As paragraph (c) stands it appears to require payment of the capital credits at the expiration of any contract. To do so would both violate the by-laws of the cooperative governing equal treatment of all members and could jeopardize its tax exempt status with the Internal Revenue Service. Premature return of capital credits to a specific class of service would appear to violate the non-discrimination requirements of the cooperative's exemption as well as the loan agreements previously cited.

Fourth, unless there is evidence available of a widespread instances of a violation of these by-laws by cooperatives in relation to GSA contract, why is this additional rule necessary? Why generate additional cost to the other members of the cooperative? Where is the just benefit to the government?

If there is a problem of widespread abuse or violation of cooperative by-laws, why not spend the time and effort to resolve those situations? That approach would appear most cost effective.

Finally, the requirement that a certified check be issued in transmitting capital credit payments is an unnecessary expense. Most cooperatives, like ours, use computers to generate the checks. Requiring special treatment and expense for GSA refunds is an unnecessary expense which the other members of the cooperative would be forced to pay.

The proposed section is unnecessary, burdensome and will generate additional cost to the cooperative without sufficient benefit to either the government or the members who will share the burden of this expense.

Overall, as the saying goes, "if it ain't broke, don't fix it".

We see no reason for a change in the present contracts. The proposals are either unworkable, violate by-laws or are an expense without benefit.

Sincerely,

E. Paul Bienvenue

E. Paul Bienvenue, General Manager

cc: Michael Oldak

PHONE 218 745-4711

P O BOX 108

P. K. M. Electric Cooperative, Inc.

Warren, Minnesota 56762

91-13-34

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets
NW Room 4041
Washington, D.C. 20405

RE: FAR CASE 91-13

Dear Sirs,

I am writing to address the proposed change to contract language between federal facilities and cooperative utilities.

We currently assign capital credits to our government owned accounts on the same basis as we do all other consumers.

It would be a matter of impracticality to notify the Government in writing within 60 days of year end as to what their capital credit balance would be, and when it will be paid out. The Board of Directors determine both these items on a year by year basis consistent to the timing of our annual meeting in June. Currently our equity is below 40%. REA regulations do not allow a general retirement to take place under these circumstances without prior approval from them. This normally takes 60 days.

Upon termination of an electrical service agreement, the capital is currently being retired as described above. The only situation where we pay out capital credits at termination of electrical service is to settle the the estate of a deceased member. Capital credits are not cash to any consumer until directed to be paid out by the Board of Directors, and so cannot be paid out to the Government or anyone else upon termination of electrical service.

If you have any questions, please contact me at the above address. Thank you.

Sincerely,

Michael Schmidt
Manager Administrative Services

MS:dlc

JUL 22 1991

Sulphur Springs Valley
Electric Cooperative, Inc.

Howard D. Bethel
Executive Vice President
and General Manager

P.O. Box 820
Willcox, AZ 85644
Telephone: (602) 384-2221

91-13-35

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
Room 4041
18th and F Streets NW
Washington, DC 20405

Re: FAR Case 91-13

Gentlemen:

We wish to file the following comments on proposed rules which the General Services Administration (GSA) recently published regarding the acquisition of services from utilities (56 Federal Register 23982).

Our comments are in regard to section 41.007 (j) that requires certain language be added to all contracts between federal facilities and cooperative utilities. We are particularly concerned about paragraphs (b) and (c).

Paragraph (b). The repayment of patronage capital is determined by the financial condition of the cooperative at the time the refund is authorized by its Board of Directors. Although goals may be established in the cooperative's equity management plan for repayment of capital credit, an exact schedule cannot be established.

Paragraph (c) will serve to give the government discriminatory and preferential consideration over other members of the cooperative and, if applied, supersedes the contractual relationship established between the cooperative and its members. There is no practical reason the government should receive preferential consideration over any other member/customer of the cooperative.

Paragraph (d). There is no justification to require a certified check in lieu of regular cooperative corporate checks. Other special administrative requirements and handling procedures will only serve to increase the cooperative's administrative cost.

We very strongly oppose paragraphs (c) and (d) as published.

Sincerely,

Howard D. Bethel

Howard D. Bethel
Executive Vice President
and General Manager

HDB:cab

JUL 22 199

91-13-36

Renville Sibley Cooperative Power Association

ROBERT G. WESTBY
GENERAL MANAGER

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N.W.
Room 401
Washington, D.C. 20405

To Whom it May Concern:

I wish to comment on your proposed rule on the acquisition of services from utilities (56 Federal Registerer 23982).

Section 52,241-13 Capital Credits, paragraphs (b) and (c).

At the present time at the end of each fiscal year, we do furnish the all contracting officers in writing with the capital credits they have earned during the preceding fiscal year. However, the date these capital credits are to be paid is dependent on the cooperatives financial abilities and are difficult to determine in advance. We are trying to remain on a 19 year cycle or less. The immediate payment of capital credits could place a cooperative in financial trouble.

The transfer of capital credits from one account to another will have a profound affect on the accounting systems of electric cooperatives.

Thank you for allowing me the opportunity to comment on the proposed change.

Yours truly,

Robert G Westby

Robert Westby
Manager
Renville-Sibley

JUL 22 91

McLean Electric Co-operative, Inc.

91-13-37

Hwy 37 E.
P. O. Box [illegible] Garrison, N.D. [illegible]
Telephone (701) 463-2291

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, DC 20405

RE: General Services Administration, Federal Acquisition Regulations for the Acquisition of Utility Services (FAR Case 91-13)

Dear Sirs:

Please consider the following comments on the proposed rule on the acquisition of services from utilities (56 Federal Register 23982).

In Section 41.007(j) - 52.241-13 Capital Credits - paragraphs (b) and (c) - we do not feel these two paragraphs are justified. The Cooperative does not do this type of estimating, or recording for any of it's other members, and sees no reason to bear the extra expense for the Federal government.

Please delete paragraph (b) and (c) from the proposed rule.

Sincerely,

Robert J. Dippold,
Manager

RJD/raf

"We put Value on the Line"

JUL 22 [illegible]

Continental Divide Electric Cooperative, Inc.

P O BOX 1087
GRANTS NEW MEXICO 87020

TELEPHONE 285 5456

91-13-38

COMMUNITY OWNED
COMMUNITY BUILT
COMMUNITY BUILDER

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW
Room 4041
Washington, D.C. 20405

Re: Comments, FAR Case 91-13, Section 41.007 (5), 52.241-13 Capital Credits

Gentlemen:

Our Cooperative is opposed to the GSA proposed rule that requires specific language be added to contracts between cooperatives and all federal facilities regarding the payment of Capital Credits to Federal Agencies. Federal agencies, as consumers of rural electric energy, are members of cooperatives. As members, they represent only one group. They are many other members such as other state agencies, corporations and individuals. The GSA apparently wants to establish a privileged relationship through specific contract language. The Cooperative structure prides itself on fairness where all members expect and deserve equal treatment. What is good for one class of members should be good for all members, and in turn, apply to them also.

Paragraph A specifies a time and method of payment. This is not possible, since capital credits are paid at a future date after a Board Resolution has been passed, a determination that funds are available, and assurance that REA loan requirements have been met.

The requirements of Paragraph B would not be possible for cooperatives with calendar year closings, such as ours. This would require a capital credit allocation and closing prior to the completion of the annual CPA Audit which deems whether margins are indeed valid. Such a requirement would appear to take precedence over CPA requirements in auditing margins.

Paragraph C and D appear to express "government privilege" in that they expect potential payment at the end of a contract rather than when the Board declares capital credit payment.

All of these requirements would place undue financial hardship on our cooperatives. This would come at a time when our rural economy is experiencing extremely hard times. Added costs of additional recordkeeping would ultimately come to rest as an additional burden on rural rate-payers.

JUL 22 1991

91-13-38

Never in the history of this cooperative has any federal agency been mistreated or shortchanged in the payment of capital credits. It would certainly be unnecessary to develop specific language addressing this one group now. With all due respect, please reconsider this proposal.

Sincerely,

Charles Schimke
Accounting Manager

cc: Fred A. Lackey

91-13-39

CREC central rural electric cooperative

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, DC 20405

Ref: FAR Case 91-13

Gentlemen:

Reference is made to your recently published proposed rule on acquisition of services from utilities (56 Federal Register 23982). As a part of this rule, you propose at Section 41.007 (j) to add language regarding capital credits from cooperative utilities. We find 52.241-13 Capital Credits, specifically (b) and (c) to be in conflict with our by-laws and accounting procedures. We are further constrained by our mortages with the Rural Electrification Administration (Article II, Section 16 of the Common Mortgage) and National Rural Utilities Cooperative Finance Corporation. Please reconsider this proposal as to the effect it would have on the operations of rural electric cooperatives.

Sincerely,

Lynn R. Midgette

Lynn R. Midgette
General Manager

3304 South Boomer Drive / P. O. Box 1809 / Stillwater, Oklahoma 74076 / Phone 405—372-2884

JUL 22

91-13-40

TRI-COUNTY ELECTRIC COOPERATIVE
FILLMORE-HOUSTON-WINONA

210 WEST JESSIE STREET • P.O. BOX 626
RUSHFORD, MINNESOTA 55971
TELEPHONE: 507-864-7783

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
Room 4041
18th and F Streets, N. W.
Washington, D. C. 20405

Re: FAR Case 91-13

Dear General Services Administration:

The proposed contract clauses of 52.241-13 need to be reconsidered because of their adverse impact on the cooperative. Please note the following problems created by the proposal:

1. The assumption made in Paragraph (a) is not correct. Our Bylaws allow for the accumulation of investment in the cooperative in the form of capital credits. There **is not** an obligation to pay capital credits and there is no set time when they must be paid. It is up to the discretion of the cooperative to decide if and when capital credits will be paid.

2. The 60-day notification in Paragraph (b) is not workable because the allocation of capital credits is usually not made by that time. In addition, the decision if, when and how much will be retired in a general retirement of capital credits has not been made.

3. The payment of all capital credits at the end of the contract is not possible under our Bylaws. We can only pay capital credits when there is a general retirement of capital credits to all members. Our only exception is to the estates of a deceased person. We believe it is not fair or reasonable to our members to provide a special retirement of capital credits to a specific group of members. Therefore, we would request that no changes be made and that the government receive capital credit payments at the same time and basis as our other members.

4. Finally, the proposed changes would create a significant change to our accounting procedures and methods to accommodate such a requirement.

JUL 22

91-13-40

Because the federal government does receive these payments when the cooperative chooses to make a retirement, it seems to us that the proposed changes are unnecessary and inappropriate. Please delete this entire section. Thank you.

Cooperatively yours,

Bruce L. Meistad

Bruce L. Meistad
General Manager

BLM/ln

R. B. Everhart
General Manager

91-13-41

Valley Rural Electric CO-OP

"OWNED BY THOSE IT SERVES"

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N.W.
Room 4041
Washington, D.C., 20405

Re: FAR Case 91-13

Gentlemen:

Please be advised that we oppose the proposal of section 41.007 (j) containing language regarding the return of capital credits to a Government Contractor.

Presently our Cooperative refunds Capital Credits on a percentage basis to our membership. We treat all members equally and feel that this ruling would not be acceptable to us.

Cooperatively yours,

R. B. Everhart
Manager

RBE:dh

VALLEY RURAL ELECTRIC CO-OP • BOX 477, HUNTINGDON, PENNSYLVANIA 16652 / 814 643-2650

91-13-42

Carroll Electric
Cooperative Corporation

Box 4000
Berryville, Arkansas 72616
(501) 423-2161

July 11, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Gentlemen:

The GSA proposed rule on the acquisition of services from utilities (56 Federal Register 23982) is proposing at section 41.007(j) that the following language be added to all contracts between Federal facilities and cooperative utilities:

> (b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made.
>
> (c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

In my opinion this would be discriminatory toward all other cooperative members. Our capital credits are paid on a rotating basis with oldest capital credits retired at the earliest possible time by a formula established by the Rural Electrification Administration, which we must follow unless a waiver is granted.

Should we be required to do that which you propose, then our retirement of capital credits rotation would be

JUL 22 1991

91-13-42

skewed and the government agency receiving the capital credits would be receiving an unfair advantage at the expense of fellow members and the general public.

Sincerely,

Don Smothers

Don Smothers
General Manager

DS/np

91-13-43

BUTTE ELECTRIC
COOPERATIVE, INC.
P.O. BOX 137 • NEWELL, SOUTH DAKOTA 57760
TELEPHONE (605) 456-2494

July 15, 1991

General Services Administration
FAR Secretariat(VRS)
18th and F Streets N.W.
Room 4041
Washington, D.C. 20405

Dear Sir:

Reference: FAR Case 91-13

I wish to comment upon the proposed rules regarding the acquisition of services from utilities (56 Federal Register 23982). Paragraph (c) under the section dealing with Capital Credits is not permitted according to the bylaws of our Cooperative. Capital Credits should be paid to the U.S. Government just like they are paid to all of the other members of the Cooperative.

We furnish electrical service to several Government accounts and see no reason to treat those any differently than the people who must continue to recieve service when the Government facilities no longer wish to receive the service.

This would create a hardship for the utility and the remaining members would have to pay the extra bill.

Sincerely,

BUTTE ELECTRIC COOPERATIVE, INC.
Kenneth Wetz, General Manager

JUL 22 1991

91-13-44

WILD RICE
ELECTRIC
COOPERATIVE, INC.

Building Cooperation
A Power Of The Land

Equal Opportunity Employer

502 North Main, P.O. Box 438
Mahnomen, Minnesota 56557
Telephone 218-935-2517

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, DC 20405

RE: General Services Administration, Federal Acquisition Regulations for the Acquisition of Utility Services (FAR Case 91-13)

Dear Sirs:

Wild Rice Electric Cooperative, Inc., is very concerned about Section 52.241-13, Capital Credits of the proposed changes to Vol. 56, No. 101, of the Federal register concerning a contract between the General Services Administration and utility suppliers.

Specifically, paragraphs (b) and (c) are of most concern. The notice of accrued credits within 60 days would be difficult although would be possible. I believe 90-120 days would be a more practical time frame. The most difficult provision would be the requirement to inform the government of the amount and date of future payment of capital credits. In many rural electric cooperatives, that decision is made by the board of directors later in the year. Also, to require payments immediately upon termination or expiration of the contract is a direct variance from normal capital credit payout procedures. Normally the capital credits are paid out through a general retirement via a first in-first out method. Therefore, although it may vary between utilities, the payment cycle will range anywhere from ten to twenty or more years depending upon the financial position of the cooperative. Many cooperatives do allow for a lump sum payment in the case of a death to settle the estate, many times at discounted values to reflect present day values. To impose a special rule provision for government agencies seems inappropriate.

I encourage changes that would allow for more flexible capital credit notices and pay out of funds. Rural utilities are having a difficult enough time to remain financially viable and yet offer continued services. Any additional requirements that would or could affect earlier, or larger, payments would only add more

2 331

91-13-44

burden onto our rural consumers. Given today's rural economy that is certainly not needed.

Thank you.

Sincerely,

Steven J. Haaven
General Manager

SJH:jb

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

Audit Policy
and Oversight

91-13-45

JUL 19 1991

Ms. Beverly Fayson
Federal Acquisition
Regulation Secretariat (VRS)
General Services Administration
Washington, D.C. 20405

Dear Ms. Fayson:

We have reviewed Federal Acquisition Regulation Case 91-13, "Acquisition of Utility Services" and have no comment on the proposed coverage.

We appreciate the opportunity to review the case.

Sincerely,

Michael R. Hill
Assistant Inspector General
for Audit Policy and Oversight

Enclosure

91-13-46-

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N.W.
Room 4041
Washington, DC 20405

RE: GENERAL SERVICES ADMINISTRATION FEDERAL ACQUISITION REGULATIONS FOR THE ACQUISITION OF UTILITY SERVICES (FAR CASE 91-13)

Dear Sir,

The General Services Administration (GSA) recently published a proposed rule on the acquisition of services from utilities (56 Federal Register 23982). As part of this rule, the GSA is proposing at section 41.007(j) that the following language be added to all contracts between Federal facilities and cooperative utilities. We find paragraphs (b) and (c) specifically troubling.

52-241-13 Capital Credits

(a) The Government is a member of the (cooperative name)_____, and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish the Contracting Officer, or the designated representative of the Contracting Officer, in writing, a list of accrued credits by contract number, year and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made.

(c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____, unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

CLINTON COUNTY ELECTRIC COOPERATIVE, INC.

JUL 22 1991

91-13-46

The addition of these clauses to the contracts between rural electric cooperatives and government agencies will have profound affects on the accounting systems of electric cooperatives and will give preference to the government over all other member-owners of the cooperative.

Each year this cooperative mails to every member a card stating the capital credits they are entitled to for that year's service. Because of year-end closing of the books, C.P.A. Audit and computer services, it is not always possible to have this accomplished within 60 days. As far as when capital credits will be paid out, we are currently on a 19-year cycle, but the rotation of capital credits depends on the financial condition of the cooperative, as determined each year by the Board of Trustees. The goal is to reduce the number of years, but this is not always attainable.

As far as paragraph (c), as per our by-laws, capital credits are paid on a first in/first out basis. To pay the government upon termination or contract expiration would not only be treating the government with preference but also be in contradiction to our by-laws. Paragraph (d) also indicates that the government would have us treat them with preference over the rest of our member-owners.

We work very hard to maintain the cooperative principle of business and do not wish to see it eroded by regulations giving preference to one group or individual over another.

Sincerely,

CLINTON COUNTY ELECTRIC COOPERATIVE, INC.

James B. Riddle

James B. Riddle, General Manager

JBR/sl

CLINTON COUNTY ELECTRIC COOPERATIVE, INC.

91-13-47

South Central Arkansas Electric Cooperative, Inc.

1140 Main Street
P. O. Box 476
Arkadelphia, AR 71923-0476
(501) 246-6701

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th an F Streets, N.W.
Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13
52.241-13 Capital Credits

Gentlemen:

This is to voice the objection of South Central Arkansas Electric Cooperative, Inc. to the wording contained in the above-mentioned article in the **Federal Register**.

The Cooperative has always had a very good working relationship with all the Federal entities which it is involved with. However, the refunding of capital credits by South Central Arkansas Electric Cooperative, Inc. is regulated by the mortgage agreements that it has with both the Rural Electrification Administration (REA) and Cooperative Finance Corporation (CFC) which hold mortgages on its system.

In the past, the capital credits of South Central Arkansas Electric Cooperative, Inc. have, for the most part, been retired on a 20 year rotation basis if the Cooperative was in the financial position to retire them. Currently the Cooperative has retired its capital credits up through 1967.

It has always been the practice, at least in recent times, for the Cooperative to notify its membership of the allocation of patronage capital yearly in its centerspread in the **Rural Arkansas** magazine. Along with this, any member is encouraged to contact our office if they desire more specific information on the allocation which their account has received.

On another point, to my knowledge, South Central Arkansas Electric Cooperative, Inc. has never issued a certified check to retire any year's patronage capital assignment. It is my opinion that what this is seeking is for all the government agencies involved to be treated differently than all the other members of our Cooperative. I personally do not feel it is fair to these rate payers, or possibly even to tax payers, for the additional expense which the Cooperative would have to go through to give these government entities special consideration.

JUL 22 1991

91-13-47

Looking at the wording in paragraphs B, C, and D of FAR Case 91-13, it looks to me as if possibly the writing of these regulations could violate the bylaws of not only South Central Arkansas Electric Cooperative, Inc. but other electric cooperatives throughout the nation. It could also force us to possibly violate our mortgage agreements.

It is with this in mind that we sincerely request that the wording be changed in 52.241-13 Capital Credits of FAR Case 91-13.

Sincerely,

Ronald Easley
General Manager

RE:ca

91-13-48

THE CANEY VALLEY ELECTRIC COOPERATIVE ASSOCIATION, INC.

JOHN M SHEPPARD
Manager

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N.W., Room 4041
Washington, D.C. 20405

RE: Comments (FAR Car 91-13)

Dear Sir:

For many years the various agencies of the U.S. Government have used the FAR contracting rules to intimidate and leverage small rural electric cooperatives into relinquishing territory to other utilities and in obtaining unwarranted rate reductions for their agencies. This current case 91-13 appears to improve the Government's bargaining position in these negotiations by again placing unwarranted restrictions on rural electric cooperatives before they can be considered as vendors of electricity and telephone services.

Irrespective of the supplying utility company, cooperative or municipal, the integrity of the state authorized, certificated, and regulated service territory boundaries must not be pre-empted by FAR rules relating to market surveys, competitive bids, or existing power supply contracts. Most rural electric cooperatives have higher electric rates than their competition because of the territory they serve.

At Section 41.007(j) the proposed language in 52.241-13 Capital Credits, paragraphs (b) and (c) appear to be drafted specifically to preclude small rural electric cooperatives from qualifying as vendors. Paragraph (b) provides that the rural electric cooperative has only 60 days to prepare a statement of capital credits earned, after the end of the fiscal year. This rule is proposed without regard to how or when all other consumer/members of the cooperative receive their earned capital credit statements. The rule, as proposed, could either give the Government preferential treatment or place an undue hardship on the cooperative to produce these statements within the 60 day limitation. Paragraph (c), as proposed, provides that the Government will be paid all allocated capital credits upon contract termination or expiration, at their option. All other consumer/members' allocated capital credits are repaid only when the Board of Directors of the cooperative determine that the financial condition of the organization is sufficient to allow the retirement of this capital. The Rural Electrification Administration, through its

Mail Address: P.O. Box 308, Cedar Vale, Kansas 67024 • Telephone: Area Code 316 758-2262

JUL 22 1991 22 199

91-13-48

mortgage covenants, restricts the amount of allocated member equity that can be retired based upon specific financial ratios. For small rural electric cooperatives, a government power contract may represent its largest retail or wholesale customer. Repayment of all allocated capital credits at contract termination could mean financial ruin. The loss of such a load (customer) could be devastating.

If the proposed rule is accepted in the final rule that is issued, all rural electric cooperatives will be able to provide electric service to government agencies. The cost to provide electricity under these rules will be greater for the reasons I have mentioned earlier. In our present regulated environment, these additional costs will have to be borne by the customer classification responsible for these costs. Your rates will be increased to cover the costs associated with complying with your rules.

I understand that the FAR rules were designed to protect the tax payer and provide equal access for small vendors to government contracts. These rules, as proposed, will not meet either goal.

Sincerely,

John Sheppard

John Sheppard
Manager

JS:kc

EAST CENTRAL OKLAHOMA ELECTRIC COOPERATIVE, INC.
Drawer 1178 Okmulgee, Oklahoma 74447 (918) 756-0833

BILL HOLCOMB
Manager

91-13-49

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
Room 4041
18th and F Streets, Northwest
Washington, D. C. 20405

Re: FAR Case 91-13

To Whom It May Concern:

We wish to comment on the proposed rule dealing with Federal Acquisition Regulations, FAR Case 91-13, specifically Section 41.007(j) regarding contracts between Federal facilities and cooperative utilities.

In Section 52.241-13, Capital Credits, part (a), we agree with the Government's statement that it is entitled to capital credits, as is any other member, when the payment of those capital credits is consistent with the Bylaws of the Cooperative. However, there are statements made in parts (b), (c) and (d) that are inconsistent with East Central Electric's Bylaws.

In paragraph (b) the requirement that the Contracting Officer be notified in writing of accrued credits within 60 days of the close of the Cooperative's fiscal year is unreasonable. Capital credits cannot be allocated to our consumers until an audit by an independent auditing firm has been completed. Under REA regulations our auditors have 90 days to perform an audit. It is unlikely that we could get an audit performed and then make our capital credit allocation within 60 days after the close of the fiscal year. Also, paragraph (b) provides that the Cooperative shall state the amount of capital credits to be paid to the Government and the date the payment is to be made. The decision as to whether or not to make a capital credit payment is made by our Board of Directors on an annual basis, based upon a determination by the Board as to whether or not the payment of capital credits can be made without the impairment of the Cooperative's financial condition. This decision is partly based upon the auditor's report, which, as stated earlier, cannot be made within your 60 day time frame.

JUL 22 1991

DONALD A. BEAN
President

J.E. CUMBEY
Sec'y-Treas.

DAVID E. COWAN
Member

BASIL MYERS
Member

LUTHER SHOEMAKE
Vice-President

HOWARD SIZEMORE
Asst. Sec'y-Treas.

RAYMOND PAUL
Member

K.D. BAILEY
Attorney

91-13-49

With regard to part (c), capital credit payments are made to our members on the basis of the Board of Director's determination of whether or not capital credit payments can be made without impairing the financial condition of the Cooperative, not upon the termination or expiration of a particular contract with a particular member.

Concerning part (d), payment of capital credits is made in the name of the member and cannot be transferred. It is therefore not possible for us to make capital credit payments payable to the Treasurer of the United States unless the energy account is carried in the name of the Treasurer of the United States. Also, East Central Electric has been in business for 53 years and has issued thousands of capital credit checks. We therefore feel the requirement that payment be made by certified check is unreasonable.

Sincerely

Fred J. Smith

FRED J. SMITH, Director
Accounting and Finance Department

FS:cs

91-13-50

Lyntegar ELECTRIC COOPERATIVE, INC.

Box 970 Tahoka, Texas 79373

Phone 806 998-4588

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

RE: General Services Administration, Federal Acquisition Regulations for the Acquisition of Utility Services (FAR Case 91-13)

Gentlemen:

We are concerned about the proposed changes to 56 Federal Register 23982, Section 41.007(J), 52.241-13 Capital Credits.

Most of the proposed wording in 52.241-13 would have to be changed to comply with our Capital Credit Plan as provided in the bylaws. Perhaps sufficient change in wording could be made under 41.007(a) on a "substantially the same as" basis if a liberal interpretation were given.

Since any agreement regarding Capital Credits would necessarily have to comply with our bylaws, we suggest 52.241-13 be changed to read as follows:

"52.241-13 Capital Credits

(a) The Government is a member of the (cooperative name) _____, and as such, will be entitled to Capital Credit allocations and refunds as provided for in the bylaws for all members.
(b) Delete
(c) Delete
(d) Delete"

Thanks for the opportunity to comment and for your consideration.

Very truly yours,

Wilton J. Payne
General Manager

WJP:nc

JUL 22 1991

"Owned and Operated by those we serve"

Edgecombe-Martin County
Electric Membership Corporation
P.O. Box 188 • Tarboro, North Carolina 27886
919-823-2171 1-800-445-6486

91-13-51

July 16, 1991

General Services Administration
FAR Secretary (VRS)
18th & F Streets, Room 4041
Washington, DC 20405

Re: FAR Case 91-13

Dear Sirs:

We are in receipt of Volume 56, No. 101 of The Federal Register of May 24, 1991, in which Proposed Rules are published proposing changes in utility contracts. We find the following points highly objectionable for the reason stated.

52.241-6 (b) Annual meter tests, particularly for small electric services places an undue burden on small utilities if this is not their normal practice. Electric meters are highly dependable and the expense at this interval is unwarranted.

52.241-5(d.2) Suspension of the contract minimum charge, which in the case of most rural electric cooperatives is designed to recover ownership costs of specifically provided facilities, shifts this cost unfairly to other members of the cooperative.

52.241-5(b) Cooperatives cannot assign capital credits until their independent audit is complete. Additional time is usually required to schedule the process with the data processing contractor. These items can cause a lag of approximately six months before the assignment is available.

To be required to notify the Contracting officer outside of normal channels (usually via a blanket mailing) will require an additional financial burden on the cooperative and consequently other members.

52.241-5(c) To our knowledge no rural electric cooperative makes a refund of capital credits upon termination of service. These funds are invested in capital projects. It is usually many years after service is received that capital credits are retired by action of the Board of Directors.

JUL 22 1991

91-13-52

91-13-52

Red Lake Electric Cooperative Inc.

One of the Minnesota Power Systems

P.O. Box 430, 412 8th St. S.W.
Red Lake Falls, MN 56750-0430
Phone (218) 253-2168

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Ladies and Gentlemen,

I am offerring my comments on the above referenced proposed rule. I take exception specifically to 52.241-13 Capital Credits, paragraphs B and C.

We allocate capital credits on an annual basis and notify our customers in April of their previous year's capital credit allocation. It would be impossible for us to allocate capital to the United States Government on a fiscal year basis. It would also be very inappropriate to make payment of all capital credits to the government at the time of termination or expiration of any contract. Equity capital is retained by the Cooperative to finance plant additions and replacements and it would be unfair and in violation of our by-laws if we were to pay out the capital credits to the government before they were scheduled to be paid out to the rest of the membership. I encourage you to change your rule. It would give the government special privileges that the rest of our customers do not enjoy.

Thank you for your consideration of my comments.

Yours truly,

Ronnie M. Kennedy

Ronnie M. Kennedy
Manager

RMK/kml

2 2 1991

91-13-53

Sheyenne Valley Electric Cooperative, Inc.

P.O. Box 217 Finley, ND 58230-0217 Phone: 524-1110 or 1-800-247-[illegible]

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Street N. W.
Room # 4041
Washington, D. C. 20405

Dear Sirs,

I am writing to express my disappointment in your proposed rule regarding capital credits in FAR case # 91-13 with relation to our government electrical loads.

We presently are very proud of a 15 year capital credit rotation program with the retirement of 1976 being mailed out in the mail this Friday. The program is subject to the approval of the Rural Electrification Administration however on a year to year basis due to our 21% equity level. The specific plan is certainly not identified in the bylaws as you are assuming in the proposed rule.

The second problem is that you are creating a bookkeeping nightmare. The requirement that the capital credits be paid at the time of the contract termination is not fair to the rest of the membership. Our only provision for retirement before the 15 year plan, if REA continues to approve it which is questionable, is to settle estates after the death of both spouses. Why should the government get their retirement early when the rest of the membership has to wait?

The last concern I have is for cash flow. Since the United States Air Force missile facilities makes up approximately 16% of our revenue base, early retirement would be impossible.

Sincerely,

SHEYENNE VALLEY ELECTRIC COOP.,INC.

Bruce Carlson

Bruce R.Carlson
Manager

JUL 22 1991

"We Put Value On The Line"

91-13-54

ELECTRIC COOPERATIVE, INC

PHONE 605/874-2171

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets NW Room 4041
Washington, DC 20405

Re: FAR Case 91-13

H-D Electric Cooperative appreciates the opportunity to comment on the proposed rule change that was published in the Federal Register on Friday, May 24, 1991 in regard to capital credit retirement between cooperative and federal entities.

Section 52.241-13, Paragraph B states that within 60 days of the close of the contractor's fiscal year, the contracting officer shall be notified of the amount of capital credits to be allocated and the time of payment. Our allocation of capital credits is made after the audit has been performed for that particular year. This audit does not occur until April, with the final results made available in May or June, therefore it is not in keeping with our policy to in this short a period.

By the same token, the date of when the payment will be made in regard to these capital credits, cannot be specified. Determination of capital credit retirement is a decision of the Board of Directors, made on an annual basis, based on the financial condition at that time, if it is deemed that it will not hinder the operations of the cooperative. Capital credit retirements are made providing the conditions are met regarding the mortgage agreements with the Rural Electrification Administration or upon special approval from this organization. For this reason, a specific date cannot be made.

The by-laws also state that any such retirements shall be made in order of priority according to the year in which the capital is furnished and credited, capital first received by the cooperative, being the first retired. Paragraph C under the same heading also states that upon termination of the contract, the unpaid capital credits that have been applied shall be paid. Again, under the present by-laws of the cooperative, expiration of a contract does not permit the retirement of the unpaid capital at termination. Capital is only retired under the rotation that is being exercised at this time, however it does allow for a transfer of the account to some other contract.

JUL 22 1991

"Owned by those we Serve"

91-13-54

The adoption of these rules, as submitted, would have a profound effect on the present accounting system in regard to allocation and retirement of capital credits. For this reason, we urge you consider this in adopting rules regarding this section.

Again, we thank you for the opportunity to provide input on the proposed change.

Sincerely,

H-D ELECTRIC COOPERATIVE, INC.

Gary Cramer
Manager

GC:ga

91-13-55

CARPENTER, CROUT & OLMSTED
Attorneys at Law
Coronado Building, 141 E. Palace Avenue
Post Office Box 669
Santa Fe, New Mexico 87504-0669

[illegible] Carpenter
[illegible]nael R. Comeau
[illegible] D. Maldegen
[illegible]nael W. Brennan
[illegible] Nixon
[illegible]iam P. Templeman
[illegible] Indall

[illegible]
Patricia J. Turner
Rebecca Dempsey
Paula A. Cook
Gre[illegible] W. Handy
Joseph E. Manges

Telephone [illegible]
Facsimile (505) 988-29[illegible]

Harry L. Bigbee
Donnan Stephenson
Retired Partners

G. Stanley Crout
1937-1987

Charles D. Olmsted
1925-1991

Certified Mail
Return Receipt Requested

July 17, 1991

General Service Administration
FAR Secretariat (VRS)
18th and F Streets NW
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Ladies and Gentlemen:

We represent the New Mexico Electric Cooperatives (NMEC), on behalf of which we submit comments pursuant to 56 Fed. Reg. 23982.

The NMEC is a nonprofit corporation representing the views of New Mexico rural electric cooperatives, serving their consumer-owners located over 80% of the State and comprising approximately 25% of its population. The NMEC members are the following non-profit membership corporations owned and operated by and for the benefit of thier consumers: Central New Mexico Electric Cooperative, Inc.; Central Valley Electric Cooperative, Inc.; Columbus Electric Cooperative, Inc.; Continental Divide Electric Cooperative.; Farmers Electric Cooperative, Inc.; Jemez Mountains Electric Cooperative, Inc.; Kit Carson Electric Cooperative, Inc.; Lea County Electric Cooperative, Inc.; Otero County Electric Cooperative, Inc.; Plains Electric Generation and Transmission Cooperative, Inc.; Sierra Electric Cooperative, Inc.; Socorro Electric Cooperative.; Southwestern Electric Cooperative, Inc.; and Springer Electric Cooperative, Inc.

The NMEC is governed by a Board of Directors elected by the membership, each director being a manager or member of the Board of Trustees of a cooperative member. Each cooperative member is governed by a Board of Trustees elected by the consumer-owners, each trustee being a consumer-owner. Each consumer-owner, regardless of size or type of service, is entitled to one vote in electing trustees and passing upon other business at members' meetings, which are held within each cooperative at least annually. The NMEC, through representational democracy, is the oldest and largest utility consumer organization within the State of New Mexico.

Each NMEC member is an electric public utility subject to the general supervision of the New Mexico Public Service Commission (NMPSC), except Plains which furnishes wholesale electric power and energy to its utility-members for resale and is subject to limited regulation by the NMPSC with respect to its wholesale service to its utility-members, pursuant to the New Mexico Public Utility Act (PUA), NMSA 1978, Section 62-3-1 *et seq.*

JUL 22 1991

91-13-55

members, pursuant to the New Mexico Public Utility Act (PUA), NMSA 1978, Section 62-3-1 *et seq.*

Each NMEC member is organized under the New Mexico Rural Electric Cooperatrive Act, NMSA 1978, Section 65-15-1, *et seq.*, which sets forth provisions governing patronage capital refunds and the adoption, amendment and repeal of bylaws, which are binding upon members (*King v. Farmers Elec. Coop.*, 56 N.M. 552, 246 P.2d 1041 (1952)).

Each NMEC member is primarily financed with loans by or guaranteed by the United States of America, acting through the Administrator of the Rural Electrification Administration (REA). The bylaws adopted by the members generally follow the model bylaws promulgated by the REA, including provision that, in order to induce patronage and assure that a cooperative will operate on a nonprofit basis, the cooperative must account on a patronage basis to all its members for amounts received and receivable from the furnishing of utility service in excess of costs and expenses, such margins being received upon the understanding that they are furnished by the members as capital and that the cooperative is obligated to pay the margins by credits to a member's capital account. The model bylaws provide that patronage capital credited is to be properly recorded and reported to a member within a reasonable time after the close of the cooperative's fiscal year, the amounts so credited having the same status as though they had been paid to the member in cash in pursuant to a legal obligation to do so and the member had then furnished the cooperative corresponding amounts for capital. Prior to dissolution or liquidation of the cooperative, outstanding capital credits, are, according to bylaws, to be returned in order of priority according to the year in which the capital was furnished and credited and, with respect to patronage capital credited in more recent years in the case of most cooperatives, in the order the Board of Trustees determines, except most bylaws allow for an out-of-order retirement in event of request for a deceased person's estate, but only in event the Board of Trustees first determines that the financial condition of the cooperative will not be impaired thereby and restrictions upon retirements contained in the mortgage (which covers all assets which the cooperative may have to access in order to retire patronage capital), of which REA is the author and under which the United States is the principal mortgagee, are first met.

Most NMEC members provide service to Federal installations and, generally, NMEC members have limited equity and restricted liquidity available for patronage capital retirements. In most cases, NMEC members are retiring capital credits 15 to 20 years after the member's account was credited, because of mortgage restrictions and the cooperatives' financial conditions.

With this background, we comment with respect to certain of the proposed regulations, our lack of comment concerning the remaining portions not intended to be either acceptance or rejection.

41.004-1(a) This should be revised to exclude the use of clauses otherwise required by 41.007 when the rate or terms of service are fixed or adjusted by a regulatory body. If this change is not made and agencies attempt to procure utility services under terms and conditions contrary to state regulation, the utility will most likely

91-13-55

have to decline service until the regulatory body accedes to the GSA or grants a variance, if a variance is obtainable under state law. In many cases, the Federal agencies would be thereby disadvantaged. Further, failure to recognize state law when inconsistent with the required clauses would violate Section 8093 of the Department of Defense Appropriations Act of 1988, Public Law 100-202.

52.241-1 The PUA, like simuliar laws in other states, requires utilities to adhere to its filed schedules, NMSA 1978, Section 62-8-5, and not to unreasonable discrimination between consumers, NMSA 1978, Section 62-8-6. Therefore, having the contract control in case of inconsistency violates state law.

50.241-2 (d) The last sentence may be inconsistent with rates filed with the NMPSC, so should be omitted or conditioned to be applicable if consistent with applicable law and regulations and filed rates schedules.

50.241-4 (d) The last sentence is contrary to state law and, in most cases, filed schedules and, further, would unlawfully deny the cooperative of its property without compensation and due process.

52.241-5 Applicable NMPSC regulations and filed schedules already cover the subject matter. The proposed regulations should apply only if not inconsistent with applicable law and regulations and filed schedules.

52.241-8 and 52.241-9 To avoid conflict with filed schedules, customarily being extension policy in the form of a service rule, the required clause should be included only when not inconsistent.

52.241-13 As stated *supra*, the bylaws already provide for (a) and for reporting credits to a member seasonably. The 60 day period set forth in (b) may often not provide sufficient reporting time for cooperatives, and should be 120 days instead. A cooperative will generally be unable to state when capital credits will be retired, because the rotation period changes and, at the time of retirement, the Board of Trustees must first make a financial determination of non-impairment and mortgage conditions must first be met.

The out-of-order retirement provided for in (c) is contrary to the bylaws and, due to the meager equity capitalization and limited liquidity, could cause severe hardship to a cooperative. Especially when other members demand and may be granted equal treatment when service is discontinued, the REA purpose may be frustrated, the ability of the cooperative to repay REA-loans or REA-guaranted loans could be threatened, the corporate existence could be at stake and the extent and quality of service may be necessarily curtailed. Because state law often recognizes a member's patronage capital interest as a property right and, at least arguable, until retirement occurs in accordance with the bylaws the cooperative may have a property right to use the capital provided by a member (as recognized by the bylaws), forced early retirement may also contravene the Fifth Amendment to the Constitution of the United States.

91-13-5

The requirement of payment to the United States of capital credits by certified check is unnecessary , and only serves to disadvantage the remaining ratepaying members: it should be deleted.

Individual members of the NMEC and the National Rural Electric Cooperative Association may submit additional comments, with which the NMEC generally concurs.

Thank you for your consideration.

Very truly yours,

Richard N. Carpenter

RNC:stg

91-13-500

Sangre De Cristo Electric Association, Inc.

2[illegible] North Highway 24, P. O. Box 2[illegible]
Buena Vista, CO 81211
Telephone: (719) 395-2412
FAX: (719) 395-8742

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N. W., Room 4041
Washington, D. C. 20405

RE: FAR Case 91-13

Ladies & Gentlemen:

These comments are in response to a May 24, 1991 Federal Register Notice of Proposed Rulemaking, Section 52.241-13, Capital Credits.

Sangre De Cristo Electric Association is an electric distribution cooperative serving about 6,000 consumers in five counties of Colorado, including some federal government accounts.

Our concerns about the proposed rule are in regards to paragraphs (b), (c), and (d), as follow:

(b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing a list of accrued capital credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made.

--- Our normal procedure is to notify our consumers within 90 to 120 days following the end of the year of their capital credit allocation for the previous year. Shortening the notification period to 60 days would place an undue burden on us.

--- Each consumer is issued a member (capital credit) number, and the capital credits are combined in one amount for notification purposes, regardless of how many delivery points a consumer might have during the year. It would be unjustifiably costly to reprogram our data processing equipment to accrue and accumulate the capital credits by delivery point.

--- We are a borrower from the Rural Electrification Administration (REA), which is an agency of the federal government. Our mortgage with the REA contains certain restrictions on how and when we can pay capital credits. These restrictions make it impossible to state a date certain when the capital credits can be paid.

JUL 22 1991

91-13-56

--- Our capital credit notices each year are accumulative; that is, they show a previous balance, the current year's allocation, and the current balance. To itemize the allocations by year would, again, result in costly reprogramming charges, and serve no purpose.

(c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

--- As mentioned above, our mortgage with REA restricts the amount of capital credits we can refund, based upon criteria set forth by REA. In addition, our bylaws outline the procedures by which capital credits may be refunded. Our bylaws dictate that the refunds must be made on a first-in/first-out (FIFO) or an equal percentage basis. We cannot discriminate by refunding capital credits to the federal government in any amount disproportionate to refunds to our other consumers.

(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____, unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

--- When refund checks are issued, they indicate for which period of time the accrued refund is being made. To identify the refund by contract number would again be unjustifiably costly.

In summary, this proposed rule will create major changes in our accounting system. I do not feel that the cost of these changes is justifiable, and the cost will have to be born by all of our consumers. The proposed rule is also discriminatory, in that it requires refunding capital credits to federal agencies out of the normal order of retirements.

Please contact me if you have any questions regarding our position in this matter.

Sincerely,

SANGRE DE CRISTO ELECTRIC
ASSOCIATION, INC.

Raymond J. Sandoval
General Manager

RJS/aj

cc: Bob Bergland, General Manager, NRECA
Ray Clifton, CREA

91-13-57

ORCAS POWER & LIGHT COMPANY

Main Office: P.O. Box 187, Eastsound, WA 98245-0187
Telephone: (206) 376-2252

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets N.W., Room 4041
Washington D.C. 20405

Re: FAR Case 91-13

Gentlemen:

We have reviewed your proposed rules on the acquisition of utility services as proposed under FAR Case 91-13. We do not find these proposed rules to be reasonable nor is it possible for us to operate under their requirements. We offer the following specific comments:

1. Section 52.24-13 (a) While our bylaws provide for the handling of capital credits, the determination of the method and time for payments is specifically reserved for the Board of Directors. The only obligation of our cooperative to pay capital credits is when "the financial condition of the cooperative will not be adversely affected".

2. Section 52.24-13 (b) It is not possible for our cooperative, nor others of which I am aware, to provide for patronage capital notice of allocation within 60 days of the close of the fiscal year. In most years our audit is not complete by that time. The earliest date by which we could guarantee the patronage capital allocated is June 1st. The form of notification of capital credits for the government will be the same as for the other members of our cooperative. It is not possible for us to indicate the information you request on our patronage capital notice form. As a practical matter, our patronage capital system combines the information from all accounts into a summary for each individual member. Thus, information relating to a specific account is lost.

   Since the determination of when to pay capital credits is reserved to the Board of Directors, it is not possible to specify the date when payment of the allocated capital

JUL 22 1991

91-13-57

credits will be made. Many cooperatives use a 20 year rotation cycle. I don't believe that it is possible or reasonable to expect a Board of Directors to commit to a date 20 years in the future for the return of patronage capital. The Board of Directors of Orcas Power and Light Company is not returning patronage capital at this time because the financial condition of our cooperative would be adversely affected.

In December of 1990 our system was struck by two devastating storms which, together, cost nearly $1,000,000 to repair. The Board has determined that the first priority of our cooperative is to financially recover from the impact of these storms. These storms could not have been anticipated 20 years ago.

3. Section 52.241-13(c) It would not be possible for our cooperative to pay capital credits to the government when service is terminated. It is necessary that the government be treated in the same manner as the other members of our cooperative. We would not be willing to discriminate against the other members of our cooperative by making early payments of capital credits to the government.

4. Section 52.241-13(d) As indicated under Section (b), it is not possible for our patronage capital checks to indicate a specific account or contract number that patronage capital was accrued under. The amount of paper work involved in keeping track of this would far exceed any benefit to our members. As a cooperative, if we offered this service to the government we would be required to offer it to our other members. This would necessitate a complete overhaul of our patronage capital system which would be an expensive project for our cooperative to undertake.

In general, I find the proposed rules require our cooperative to treat the government different than the remaining members of our cooperative. Notwithstanding an obligation to serve, we would not serve a member who came in and demanded these kind of rules. Our cooperative has a set of bylaws, approved by the members, a duly constituted Board of Directors, and a reasonable set of operating policies. These policies are applied consistently to all of our members and I don't feel that it is in our cooperatives best interests or our members best interests to have a separate set of rules that applies to one specific member. If

91-13-5
91-13-57

you desire service from our cooperative, the government, as any other member must agree to abide by the rules and regulations of our cooperative. Membership in our cooperative is not mandatory unless you wish to purchase power from us. Those that do want to purchase power from us must agree to be bound by the cooperative's bylaws, rules and regulations. This applies to the United States government as it applies to any other entity seeking service from us.

Sincerely,

W. Douglas Bechtel
General Manager

WDB/cm

91-13-58

91-13-58

Corn Belt Electric
Cooperative Inc.

P.O. Box 816
Bloomington, Illinois 61702-0816
Telephone: (309) 662-5330

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, DC 20405

Re: FAR Case 91-13

Dear Sir:

Please be advised that Corn Belt Electric Cooperative is opposed to the language in section 41.007(j) of (56 Federal Register 23982.) We find paragraphs (b) and (c) particularly troublesome for the following reasons:

1. To pay unpaid capital credits upon termination or expiration of the GSA contract would be discriminatory to one particular segment of our membership. This would give priority of paying capital credits to one class of our membership, which is against our by-laws.

2. There is no guarantee that the cooperative would be in a financial position to pay capital credits at the time of termination of the contract. Disasters, such as ice storms, could rid the cooperative of its cash reserves.

3. The cooperative has a binding contract with GSA which states that GSA is a member of the cooperative being bound by the by-laws of the cooperative. The by-laws do not provide for individual member priority for payments of capital credits.

For these reasons we are opposed to the above mentioned proposed rule.

Sincerely yours,

CORN BELT ELECTRIC COOPERATIVE INC.

J. D. Reeves

J. D. Reeves
Manager

/dl

JUL 22 1991

91-13-59

Y-W ELECTRIC ASSOCIATION, INC.

BOX Y • 250 MAIN • AKRON • COLORADO 80720 • TELEPHONE 345-2291

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets NW, Room 4041
Washington, D.C. 20405

Subject: FAR 91-13 - Acquisition of Utility Services

The proposed rule changes by General Services Administration on the acquisition of services from utilities (56 Federal Register 23982) are discriminatory in favor of the federal government over all other cooperative members.

The main problems lie in section 41.007(j), referencing paragraphs (b) and (c) of subpart 52.241-13. Paragraph (a) sums up everything that needs to be stated addressing capital credits to <u>all</u> <u>members</u> of a Rural Electric Cooperative.

Complying with the provisions of paragraph (b) pertaining to the 60 days notice would cause timing problems for all cooperatives. The delivery of notification of capital credits is normally covered by by-law provisions already voted upon by the Membership. The date that payment of capital credits will be made cannot be determined at that time. Payment date is restricted and controlled by REA mortgage provisions and Membership controlled By-laws.

Paragraph (c) cannot be complied with by the cooperative without treating the Federal Government in a very favorable way over all other members. It would open up the cooperative to litigation. Premature retirements would adversely affect the Cooperative's financial condition even to the point of defaulting on some loan requirements.

Very simply put, the conditions proposed are asking for preferential treatment. Payment of capital credits must be made in the same manner to each and every member.

Y-W requests that the proposals be reviewed and that paragraphs (b) and (c), be deleted from the proposed revisions.

Sincerely,
Y-W Electric Association, Inc.

Delbert L. Hardy, P.E.
General Manager

CC: Bob Bergland, General Manager-NRECA

JUL 22 1991

Crawford Electric
Cooperative, Inc.

Post Office Box 10
Bourbon, Missouri 65441
Telephone: (314) 732-4415

91-13-60
91-13-60

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Gentlemen:

The proposed rules as published by General Services Administration for services from utilities (56 Federal Register 23982) Section 41.007(j), places a burden on Crawford Electric Cooperative which it cannot comply with for the following reasons:

1) by mortgage agreement Crawford Electric can not retire more than 25% of prior years margin without prior R.E.A. approval.

2) the Cooperative bylaws provide that capital credits shall be refunded only after the Board of Directors has determined that the financial condition will not be impaired. The bylaws do not specify the method or time of payment. For a bylaw to change this provision would require revision of the other sections of the bylaws and would have to have been done by a vote of the entire membership.

3) it would be impossible for the Cooperative to notify within the 60 day time frame as published because the prior

JUL 22 1991

91-13-60

years margin is not determined until after the books have been audited.

If, for no other reason, the proposed rules are unreasonable and without merit.

Sincerely,

Larry B. Austin
Manager

LBA:bw

cc: Michael Oldak
N.R.E.C.A Regulatory Counsel

91-13-61

SOUTHWEST Electric COOPERATIVE

J-7 District Office
Route 70 Box 7692
Roach, Missouri 65787
Telephone (314) 347-2760

Main Office
PO. Box 150
Bolivar, Missouri 65813
Telephone (417) 326-5244

Preston District Office
Route 1, Box 144
Preston, Missouri 65732
Telephone: (417) 722-4491

July 17, 1991

General Services Administration
FAR Secretariat(VCS)
18th and F Streets, N.W. Room 4041
Washington, D.C. 20405

Dear Director:

In reference to FAR Case 91-13, two sections, b and c, are potentially devastating for rural electric cooperatives.

Southwest Electric currently refunds capital credits on a rotating basis which is determined from a thorough review of the cooperative's financial position. Using this review process, it is impossible to determine at what time future capital credits will be refunded.

Furthermore, making such determinations could prove detrimental to sound accounting practices.

On behalf of Southwest Electric, I respectfully request that the language in sections b and c of 52.241-13 Capital Credits be deleted because of the potential harm to rural electric cooperatives nationwide.

Sincerely,

Jerry Divin
General Manager

JUL 22 1991

Owned by Those WE SERVE

Willie Wiredhand

91-13-62

Harmon Electric Association, Inc.

Phone (405) 688-3342 114 North First Hollis, Oklahoma 73550

Dwight Bowen, Manager

July 17, 1991

General Services Administration
FAR Secretarist (VRS)
18th and F Street, N.W.
Room 4041
Washington, D. C. 20405

Re: FAR Case 91-13

Gentlemen:

In response to the proposed rule on the Acquisition of Utility Services, we anticipate a number of problems if section 52.241-13 Capital Credits of the proposed rule is adopted. Part (b) of this section would place requirements upon capital credit allocations that are inconsistent with cooperative bylaws and produce limitations upon CPA audit time periods. Also, exact dates for payment of capital credits would not be possible due to equity level requirements, cash requirements, and REA approval needed to make capital credit retirements. Part (c) again is inconsistent with cooperative bylaws as capital credits are retired on a first-in first-out basis. This section would give preferred treatment to a specific member. Part (d) would require special treatment of a capital credit retirement by not allowing payment to be made on general retirement checks as all other capital credit retirements.

Addition of these clauses to contracts would create a profound effect on the accounting systems of electric cooperatives and also cause the need to amend bylaws of the cooperative as they currently exist. Please consider these problems before adoption of Section 52.241-13 Capital Credits in FAR Case 91-13.

Sincerely,

Dwight Bowen

Dwight Bowen
General Manager

JUL 22 1991

91-13-63

Moreau-Grand Electric Cooperative, Inc.

P.O. Box 8
Timber Lake, SD 57656

Phone 865-3511 (local) Toll Free 1-800-952-3158

July 17, 1991

General Services Administration
FAR Secretarial (VRS)
18th & F Streets, N.W.
Room 4041
Washington DC 20405

Gentlemen:

RE: 56 Federal Register 23982 - FAR Case 91-13

I have read this proposed rule and find parts of it particularly troublesome and I am, therefore, strongly objecting to them.

One of your proposed rules states that within 60 days after the close of our fiscal year, we will furnish the government with a notice of the amount of their capital credits earned during the immediate past year. We prefer to wait until such time as we have our annual audit performed so that the allocations do not have to be adjusted. We would need 120 days to get this accomplished.

You are also asking that we furnish you with a statement telling you when the payment for capital credits will be made. This is a decision made by our Board of Directors on an annual basis and must be based on sound management principles. In addition, the Rural Electrification Administration imposes certain limiting factors pertaining to the payment of capital credits.

Another troublesome area is the statement that upon termination or expiration of a contract, unless the government directs that unpaid capital credits are to be applied to another contract, the cooperative shall make payment to the government for the unpaid capital credits. That would, in effect, be giving the government preferred treatment in relation to the rest of our customers. That is not permitted by our bylaws. It also violates what we would view as fairplay.

We also object to billing any meters conjunctively. We are more than happy to provide the government with the electrical service they need. If you want more than one meter installed at a location, we'll install it but we won't bill them conjunctively. This is not available to the rest of our customers and we should not have to make a special exception for the government.

If it appears that there is a problem with a meter, we will have it tested at your reqeust. If the meter tests within the limits allowed by state law, we would expect you to pay the costs associated with the meter test. However, if the meter does not test within these limits, we will pay the costs associated with the meter test and we will adjust your bill accordingly. I think this is a more fair way to handle meter tests than your proposal.

JUL 22

91-13-62

We do serve several government installations and we sincerely appreciate the governments' business. However, we must resist any effort to give the government preferential treatment over the rest of our customers.

Thank you for your consideration in this matter.

Sincerely,

MOREAU-GRAND ELECTRIC COOPERATIVE, INC.

Bart Birkeland

Bart Birkeland, Manager

BB/sas

91-13-64

Hunt-Collin Electric Cooperative, Inc.

POST OFFICE BOX 428 / HWY 69 SOUTH / CELESTE, TEXAS 75423
TELEPHONE (903) 455-5515 1 (800) 545-4513

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW, Room 4041
Washington, DC 20405

RE: FAR Case 91-13

To Whom It May Concern:

The proposed addition by GSA to all contracts between Federal facilities and cooperative utilities as outlined in FAR section 41.007(j), paragraph 52.241-13 of the above referenced Federal Acquisition Regulations are inconsistent with our cooperative's Bylaws and would be detrimental to all our membership.

Hunt-Collin cannot support the proposed changes to Federal Acquisition Regulations.

Sincerely,

H. N. Wommack
Executive Vice President

HNW:mm

JUL 22 1991

Kandiyohi Co-op Electric Power Association

1311 Hwy 71 N.E.
Willmar, Minnesota 56201-9804
Telephone (612) 235-4155

91-13-65

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th And F Streets, NW
Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

May I respectively recall the grass roots portion of the Rural Electrification Act. Rural electric cooperatives were formed to provide electric service to rural communities because other utilities felt this was not economically feasible.

When our local Cooperative was formed, the only equity we had were the membership fees. All financing was done through the Rural Electrification Administration (REA). The capital credits earned had to be retained in order to meet principal payments on mortgages. The remaining portion was used to build utility plant.

To enter into a contract with the government, whereby the cooperative would refund capital credits to the government annually; would create an undo hardship as the initial cost to provide electric service would have been paid for through general funds or loan funds. The capital credits (or margins) from this account could have been used to repay the principle or replenish general funds to build additional services.

Also, refunding capital credits each year would be putting undo burden on the remaining members; because, the account in the name of the government would not have paid its fair share of the cooperative's financing capital.

The reimbursement to the government of capital credit allocation within 60 days of the close of the cooperative's fiscal year would also put undo burden on the cooperative. The cooperative's books cannot be audited in that short a period of time. The audit by an independent auditor must be completed before the allocation of capital credits.

Under REA loan provisions, capital credits cannot be refunded if the cooperative has equity of less than 40% without REA approval. If a cooperative served a large government installation, it is possible that the refund of capital credits could create a drain on the cooperative's

JUL 22 1991

91-13-65

cash flow and lower equity to a point where it would be violating REA loan provisions.

The present system has worked well so far, even though there are those who think modification s could be looked at. But, the annual reimbursement of capital credits to the government does not look at the whole capital credit reimbursement issue. It appears to be parochial in nature and a form of hidden tax in that our members, the tax payers, would pay high rates to maintain cash flows.

Another area that may be affected is the cooperative's General Funds. Making annual capital credit payments to government accounts, could force the cooperatives to borrow more money to keep the remaining capital credit retirements on the prescribed schedule.

This brings us to the By Laws of the cooperative. This Cooperative, and I assume all other cooperatives, address capital credit retirements in the organization's By Laws. Any changes in how we retire capital credits would require a change in the By Laws which can only be done by vote of the membership of the cooperative. Preferential treatment of governmental accounts, I fear, would not be well received by the membership.

It is the position of this Cooperative that the GSA's proposed rules for section 41.007(j) of all contracts between Federal facilities and cooperative utilities be dropped.

Sincerely,

David J. George
General Manager

DJG/lms

Inland
Power & Light Company

320 East Second Avenue
P. O. Box 4429
Spokane, Washington 99202-0429
Telephone (509) 747-7151 FAX (509) 747-7987

91-13-66

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D. C. 20405

Re: FAR Case 91-13

Dear Sir:

The General Services Administration recently published a proposed rule on the acquisition of services from utilities (56 Federal Register 23982). As part of this rule, the GSA is proposing at Section 41.007(j) that the following language be added to all contracts between Federal facilities and cooperative utilities:

52.241-13 Capital Credits.

(a) The Government is a member of the (cooperative name) _____, and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing, a list of accrued credits by contract number, year and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date payment is to be made.

(c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____ unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

Let me offer the following comments regarding these proposed changes:

(1) The date for notification of capital credits should be August 15 of the year following the close of the Contractor's fiscal year. The amounts

JUL 22 1991

91-13-66

of capital credits allocated would not be available until at least June 30 of each year and the August 15 date would be consistent with Internal Revenue Service regulation (T.D.6014 1953-1CB.110) regarding capital credits.

(2) The date for payment of capital credits is dependent upon the financial condition of the cooperative. Decisions on if capital credits will be paid and, if so, the amount that will be made are made on a yearly basis by the Board of Trustees. Rural Electrification Administration regulations and loan covenants may not allow capital credits to be repaid if the financial condition of the cooperative would be jeopardized.

(3) Rural Electrification Administration and Internal Revenue Service regulations do not allow the selective repayments of capital credits that may be required by Section (c) above. The refund of capital credits to all members must be done on the same basis. Refunds cannot be made to selected members ahead of schedule.

In conclusion, I would like to make two points.

(1) The addition of these clauses to the contracts between rural electric cooperatives and government agencies will have a profound affect on the accounting systems of electric cooperatives. In fact, it may be impossible for rural electric cooperatives to comply with many of the provisions of the suggested changes.

(2) Increasing regulations and requirements for early retirement of capital credits will lead to higher electric rates. The GSA should be working toward rules to cut "red tape" rather than increasing it. Because of this, I strongly urge you to reconsider these onerous changes and to eliminate these requirements from your rule.

Thank you for your consideration of these comments.

Sincerely,

INLAND POWER & LIGHT COMPANY

Richard Heitman

Richard Heitman
Manager

C:MGR/GSA.RH/sc
cc: Tom Foley
Brock Adams
Slade Gorton
Bob Bergland

320 E. SECOND AVENUE P.O. BOX 4429 SPOKANE, WASHINGTON 99202-0429 PHONE (509) 747-7151 FAX 747-7987

Clay Electric Cooperative, Inc.
P.O. Box 308
Keystone Heights, Florida 32656-0308
(904) 473-4911

91-13-67

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
Room 4041
18th and F Street, N.W.
Washington, D. C. 20405

Re: FAR Case 91-13

Dear Sir:

The first paragraph of the GSA Proposal concerning contracts between federal facilities and various electric cooperatives as proposed in FAR Case 91-13 is not based on sound business practices and is in conflict with other governmental agencies such as REA and the Internal Revenue Service. In order to accomplish what is being requested, cooperatives would have to go on some kind of margins stabilization program that would guarantee margins each year and in an amount equal to enough to refund the year that had been guaranteed.

The Cooperatives have a mandate from the Internal Revenue Service to allocate Capital Credits annually, however, we are in no position to specify method and time of payment due to unknown future financial circumstances. Your paragraph A, where the government states that the cooperative will sign a contract which specifies method and time of payment, is in conflict with accounting capabilities to determine future financial circumstances ten to fifteen years down the road without some kind of margin stabilization accounting which appears to be contrary to the desires of the Internal Revenue Service and REA, as well as many other accounting standards.

Paragraph B, which requires written notification of accrued credits by contract number and year and delivery point within sixty (60) days, would create an additional burden on the cooperatives due to the fact that so many other governmental requirements and corporate requirements are taking place at that same time. During the first sixty (60) days after the close of a physical year, most cooperatives are going through their corporate audit which ties up enormous amounts of time for their accounting personnel. In addition to that, there are many other governmental requirements that are having to be met such as pension audits, tax returns, labor reports, and employee reports. The sixty-day requirement for notice simply is not realistic. A more practical time span for such notification would be 120-150 days after the close of the year. The requirement of the amount of Capital Credits to be paid and the date the payment is to be made, which is included in that paragraph under Current Accounting

22 1991

91-13-67

Methods, is an impossibility. Capital Credits returned and method of payment are determined annually as a result of current earnings for previous Capital Credits that have been assigned. Economic conditions and growth changes make predictability of such a payment impossible to determine ten to fifteen years in advance.

Paragraph C in your proposed rule where upon termination of a contract the government directs that unpaid Capital Credits be made as a payment immediately to the government in one form or another is a clear violation of ethical rules involving fair and equitable distribution of Capital Credit payments. The government's right to Capital Credits should be no greater than a citizen or corporate body who has to wait for equitable refunds. Such a rule as proposed would require a utility to administer an impossible task to forecast cash flows and budgets required for sound physical operating purposes.

Your Paragraph D, where the government is requesting that Capital Credits be made by certified check to the Treasury of the United States, is asking for special handling of governmental accounts and would constitute an unnecessary cost for the utility. Utilities consider all of their consumers as equal participants in the cooperative and one group or class should not receive unequal treatment in services or participation in margins and methods of receiving margin refunds.

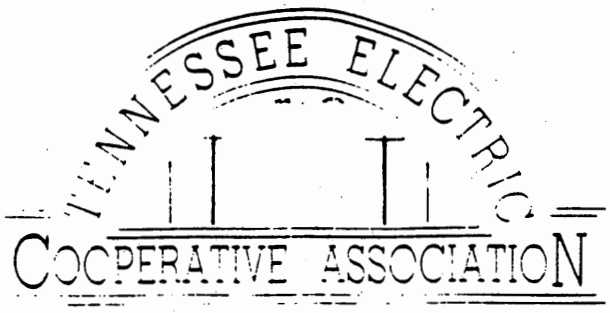
If the government insists on implementing such inequitable rules, cooperatives may find themselves in the position of not wanting government business and may certainly find themselves reluctant to sign any contracts that create unequal treatment among their members.

Sincerely,

William C. Phillips

William C. Phillips
General Manager

/nw



91-13-68

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, DC 20405

Dear Sir:

Re: FAR Case 91-13

The electric cooperatives of the State of Tennessee must oppose the implementation of the Capital Credits Section 52.241-13 of the General Services Administration proposed rule for the following reason.

The Tennessee Valley Authority, an agency of the Federal Government and the regulatory agency for Tennessee cooperatives, has not allowed the payment of Capital Credits to members of the cooperative. TVA is given regulatory authority under the provisions of the Public Utility Regulatory Policies Act. TVA contends that in lieu of capital credits, the cooperative must reduce the rate charged to the class of customer.

To protect the tax exempt status of the cooperative, the ability to calculate the equity of the member is provided for in the accounting procedures of the cooperative satisfactory to answer the requirements of the Internal Revenue Service. This accounting procedure is in the event that the cooperative should ever be dissolved or if the policy should ever be changed to allow for payment of capital credits.

Sincerely,

Frank C. Perkins

Frank C. Perkins
General Manager

mf

JUL 22 1991

710 Spence Lane • P.O. Box 100912 • Nashville, Tennessee 37224 • (615) 367-9284

WILLIAM E. GLADDEN
Attorney at Law
P O BOX 217
HOUSTON MISSOURI
65483
TELEPHONE 967 3520
AREA CODE 417

91-13-69

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Street, N.W.
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Gentlemen:

I represent Intercounty Electric Cooperative Association, Licking, Missouri, a rural electric cooperative.

This letter is to advise you of the position of Intercounty Electric Cooperative with reference to the recently published proposed rule on the acquisition of services from utilities (56 Federal Register 23982).

In particular I refer to Section 52.241-13 Capital Credits and Paragraphs (b) and (c) under that Section. The addition of the clauses to the contracts between rural electric cooperative and government agencies as provided in Paragraphs (b) and (c) above referred to would be very burdensome on and cumbersome to the accounting systems of electric cooperatives including Intercounty Electric Cooperative. It is the position of Intercounty Electric Cooperative that it is opposed to the proposed rule because of the burdensome and profound affect that the rule would have on the accounting system of Intercounty Electric Cooperative.

For the reasons above stated, Intercounty Electric Cooperative respectfully requests that the portion of the above rule above mentioned, to-wit: Section 52.241-13 Capital Credits, Paragraphs (b) and (c), be modified or deleted from the proposed rule.

Very truly yours,

William E. Gladden

William E. Gladden

WEG/cb

JUL 22 1991

WESTERN MONTANA ELECTRIC

GENERATING & TRANSMISSION COOPERATIVE, INC.

[illegible]
Missoula, MT 59801-5601

406 721-0945
FAX (406) 721-3738

91-13-

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW
Room 4041
Washington, D.C. 20405

RE: FAR CASE 91-13

By this letter we are providing comments on the proposed rule under FAR Case 91-13 as published in the Federal Register Notice of May 24, 1991.

If an agency of the Federal government applies for and is granted membership in an electric distribution cooperative, and thereby becomes a member-consumer, such agency should be granted the same rights and privileges as any other member.

Specifically, under Section 52.241-13 Capital Credits, we suggest eliminating subsections (b) and (c). Imposition of such contract terms are in conflict with how other consumers are treated, and would prove to be an onerous and expensive administrative task.

Sincerely,

Ronald H. Wilkerson

Ronald H. Wilkerson
Manager

RHW:wsh

cc: Member System Managers
Allan Cooper, Lincoln EC

JUL 22 1991

NESPELEM
VALLEY
ELECTRIC
COOP-INC.

POST OFFICE BOX 31 • NESPELEM WASHINGTON 99155 PHONE 509 634-4557

91-13-7
91-13-71

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Gentlemen:

Your agency recently published a proposed rule on the acquisition of services from utilities (56 Federal Register 23982 that is very troubling to me. I am referring to the portion of the rule pertaining to capital credits.

Section 52.241-13 (a) allows 60 days after the close of the fiscal year in which to furnish information on capital credits earned, and (b) requires payment of accrued capital credits upon termination of the contract.

In many years we are unable to determine actual capital credit amounts for each individual member as early as 60 days after the close of our fiscal year.

According to our bylaws, capital credits can only be refunded by a general refund on the first-in first-out basis. And this is only done when our board of trustees determine the financial position of the cooperative warrants such payment.

Requiring payments to be made to specific members and at specific times would be an unnecessary hardship on our cooperative and many times would be simply impossible to do.

Please reconsider and amend your proposed rule. As it is currently written it would exert a needless burden on our cooperative and many others like us.

Sincerely,

John D. Hofman
Manager

11 22 1991

91-13-72

KIWASH ELECTRIC COOPERATIVE, INC.

[illegible] WEST FIRST STREET P. O. BOX [illegible] CORDELL, OKLAHOMA [illegible]

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F. Streets, N. W., Room 4041
Washington, D. C. 20405

Ref: General Services Administration, Federal Acquisition Regulations for the Acquisition of Utility Services (FAR Case 91-13) (52.241-13 Capital Credits)

Gentlemen:

We are writing you in regard to the proposed change in payment of Capital Credits to be paid to the Government.

We strongly oppose paragraph (b) of article 52-241-13 Capital Credits.

Kiwash Electric would be unable to meet the sixty days after the close of our fiscal year and also would would be unable to give the date of payment because that is determined by the financial condition of the Cooperative and would have to be in compliance with the by-laws of the Cooperative.

Under (c) Upon Termination or Expiration of the Contracts; the Cooperative's by-laws state that Capital Credits will be paid to a natural person and this change of course would have to be submitted to the Cooperative's membership for a change in the by-laws. Currently, Kiwash Electric is not refunding Capital Credits because of the financial condition of the Cooperative, and they will only be refunded by the discretion of the Board of Trustees and with approval of the Rural Electrification Administration and the Central Finance Corporation. Therefore, we oppose any change in the Government contracts as proposed under the above reference.

Sincerely,

KIWASH ELECTRIC COOPERATIVE, INC.

Paul Lenaburg

Paul Lenaburg, General Manager

PL:ml

JUL 22 19

UNITED POWER

UNITED POWER, INCORPORATED
P.O. BOX 929, BRIGHTON, CO 80601
TELEPHONE (303) 659-0551 • ENTERPRISE 222
FAX (303) 659-0551 x 261

91-13-73

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D. C. 20405

SUBJECT: FAR Case 91-13

52.241-13 Capital Credits

United Power, Inc., is fully supportive of the government receiving utility service on the same basis as any other cooperative member, consistent with the bylaws of the cooperative.

We wish to point out that paragraphs (b) and (c) are not consistent with our bylaws, but demand preferential treatment in relation to other cooperative members.

Attached is a copy of United's bylaws which vest with the Board of Directors the authority to allocate and retire capital credits on the basis of their judgment regarding the financial condition of the cooperative. The bylaws further provide that all retirements shall be on the basis of priority according to the year in which the capital was furnished and credited, the capital first received by the cooperative being the first retired. (Section 7.02 d) Any earlier retirement, such as that occasioned by the termination of electric service by the government, would be prohibited under the bylaws.

Accordingly, to be consistent with United's bylaws to afford equal treatment with other co-op members, the following amendments should be undertaken to your proposed rule:

(b) Delete the second sentence which states that contractor shall state the amount of capital credits to be paid and the date payment is to be made.

(c) Delete this paragraph in its entirety.

We are anxious to provide electric service to the government, and are willing to comply with all reporting and disclosure requirements to the extent they are not inconsistent with the bylaws of the cooperative. Thank you for this opportunity to respond.

Very truly yours,

UNITED POWER, INC.

Dave Dunnell
General Manager

JUL 22 1991

DD:ilp

cc: Bob Bergland, NRECA

A CONSUMER OWNED UTILITY

91-13-74

Electric Cooperative

The Powerful Alternative

July 15, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Gentlemen:

In regard to the proposed rule regarding Capital Credits, 52.241-13 referenced above, we have the suggestions on the following paragraphs:

(b) "Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing a list of accrued credits by contract number, year, and delivery point. Also the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made".

Our cooperative does not notify the consumer and issue capital credits until approximately nine months after the close of the fiscal year. We would suggest the above paragraph be changed to read (b) "Within one year...."

(c) "Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits."

We would suggest that this be conducted according to the Bylaws of the individual cooperative.

Should you have any questions regarding the above suggestions, please do not hesitate to contact me.

Sincerely,

Hollis E. Joslin
General Manager/CEO

JUL 22 1991

3309 N. Main / P.O. Box 16 / Cleburne, TX 76033 / (817) 556-4000 / Metro 430-8232 Alvarado 783-3861 Granbury (817) 326-5232 / Metro 430-439:

The Cooperative Light & Power Association of Lake County

4th St & 15th Ave

TWO HARBORS, MINNESOTA 55616

Phone 834-[illegible]

91-13-75

[illegible]
18th & F Streets NW - Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Dear Sirs:

I am writing in response to a request for comments concerning 48 CFR, Part 52, Solicitation Provisions & Contract Clauses, found in the Federal Register, Volume 56, No. 101, on Friday, May 24, 1991. Specifically, I am resonding to part - 52.241-13 - Capital Credits, Paragraph B and C. Our current Bylaws do not contain any stipulations that indicate a certain number of days within which a member needs to be informed of the amount of capital credits payable to him after the year-end.

The 60 day notification period specified in Paragraph B is an unworkable number by virtue of the fact that a myriad of tasks need to be accomplished to close the books for the previous year.

It is also very difficult, as is mentioned in Paragraph B, to indicate when the capital credits will be paid because this is a direct function of the financial well being of the cooperative and it changes from year to year. Capital Credits may be paid one year and not another.

Paragraph C states that if the contract between the Government and the Cooperative is terminated that the cooperative will have to make payments to the Government for the unpaid credits. This is in direct violation of our Articles of Incorporation and Bylaws which states that the membership will be paid on a first-in, first-out basis. To accelerate the payment schedule to the Government would simply remove cash from the cooperative that would otherwise have been paid to our other members. Also if the contract is applicable to a large load, the magnitude of the dollars that may be payable on a one time basis may be very difficult for the cooperative to meet financially.

It is my suggestion, therefore, that Paragraphs B and C be stricken from 48 CFR Par 52.241-13, Capital Credits.

Sincerely,
THE COOPERATIVE LIGHT & POWER ASSOCIATION

Steven Wattnem

STEVEN M. WATTNEM, Manager
SMW:jml

JUL 22 199

91-13-716

Arrowhead Electric Cooperative Inc.

LUTSEN, MINNESOTA 55612

[redacted]

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets N.W. - Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Dear Sirs:

I am writing in response to a request for comments concerning 48 CFR, Part 52, Solicitation Provisions & Contract Clauses, found in the Federal Register, Volume 56, No. 101, on Friday, May 24, 1991. Specifically, I am responding to part 52.241-13 - Capital Credits, Paragraph B and C. Our current Bylaws do not contain any stipulations that indicate a certain number of days within which a member needs to be informed of the amount of capital credits payable to him after the year-end.

The 60 day notification period specified in Paragraph B is an unworkable number by virtue of the fact that a myriad of tasks need to be accomplished to close the books for the previous year.

It is also very difficult, as is mentioned in Paragraph B, to indicate when the capital credits will be paid because this is a direct function of the financial well being of the cooperative and it changes from year to year. Capital Credits may be paid one year and not another.

Paragraph C states that if the contract between the Government and the Cooperative is terminated that the cooperative will have to make payments to the Government for the unpaid credits. This is in direct violation of our Articles of Incorporation and Bylaws which states that the membership will be paid on a first-in, first-out basis. To accelerate the payment schedule to the Government would simply remove cash from the cooperative that would otherwise have been paid to our other members. Also if the contract is applicable to a large load, the magnitude of the dollars that may be payable on a one time basis may be very difficult for the cooperative to meet financially.

It is my suggestion, therefore, that Paragraphs B and C be stricken from 48 CFR Part 52.241-13, Capital Credits.

Sincerely,
ARROWHEAD ELECTRIC COOPERATIVE, INC.

Steve Wattnem

Steve Wattnem, Manager

JUL 22 1991

SW/jkm

Craighead
Electric Cooperative

525 Northeast Drive
PO Box 7503
Jonesboro, Arkansas 72403-7503
(501) 932-8301

91-13-77

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Re: FAR Case No. 91-13

Gentlemen:

We offer the following comments regarding the proposed rule on the acquisition of services from cooperative utilities (56 Federal Register 23982) section 41.007(j):

52.241-13 Capital Credits

(a) The cooperative bylaws provide for the systematic allocation and payment for capital credits to all members on a equitable basis.

(b) The cooperative's books are not closed to auditor's adjustments within 60 days after the close of the fiscal year. Any assignments of capital credits would be preliminary and subject to the effect of any audit adjustment(s).

The cooperative's bylaws do not provide for a specific date for the retirement of capital credits. The REA/CFC common mortgage agreement requires that no general refund of capital credits be made until the member equity is at least 40% of the cooperative's assets.

(c) The payment of any unpaid capital credits at the termination or expiration of the contract would result in a profound affect on the cooperative's accounting system as well as an inequity in method of payment.

General comments:

The assignment of capital credits and the payment of capital credits on Government services should be made in a manner consistent with the assignment and payment of capital credits to all other members, as provided for in the cooperative's bylaws and in the REA/CFC common mortgage.

Respectfully submitted,

Wayne Honeycutt

Wayne Honeycutt
General Manager

WH:gm

JUL 22 1991

91-13-78

Boone Electric
COOPERATIVE

TELEPHONE [illegible] • 1413 RANGE LINE • P O BOX [illegible]

COLUMBIA MISSOURI 65205-0797

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N. W.
Room 4041
Washington, D. C. 20405

REGARDING: FAR Case 91-13 Capital Credits

Dear Sir,

Your recently published rule on Capital Credits accruing to government electric contracts is in conflict with our Cooperative By-laws.

The notification requirement of 60 days within the close of our fiscal year is unreasonable. Notification notices are not mailed until after the Annual Audit is performed and completed. It is our practice to mail the capital credit notices by April 15th of each year. Our IRS Form 990 filing deadline is May 15th. These dates would be more reasonable.

The other rule pertains to a contract when it terminates or expires, the Contractor shall make payment of the Capital Credits. This rule is discriminatory and unfairly accelerates payments to the Government above the normal rotation cycle that applies to other members.

I respectfully request that the above referenced language be eliminated or amended to treat capital credits earned by the government the same as for any other member of a cooperative.

Sincerely,

Robert M. Alderson
General Manager

RMA/pb

cc: Bob Bergland

JUL 22 1991

91-13-79

Swisher Electric Cooperative, Inc.

Fax 806/995-2249

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Street, N.W.
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Dear Sir: 91-13

Please be advised that Swisher Electric Cooperative, Inc. opposes the language addressing retirement or payment of capital credits as being proposed in rule (56 Federal Register 23982) Section 41,007. The federal government should be treated not any different than the other rate-payers or member owners of the coopertive. Your rule, particularly paragraphs B & C would make it impossible to refund on a specific timetable or "FIFO". Please be responsive to our member needs.

Sincerely,

Charles M. Castleberry
General Manager

CMC/tlw

JUL 22 1991

Fairfield Electric
Cooperative, Inc.

Winnsboro, SC 29180
Telephone (803) 635-4621
FAX (803) 635-9614

91-13-80

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Gentlemen:

We object to the changes proposed in the latest General Service Administration's (GSA) proposed rule on the acquisition of services from utilities relating to refunds of capital credits.

In proposed (56 Federal Register 23982) Section 41.007(j) 52.241-13 Capital Credits Paragraph (b) states " Within 60 days after the close of the Contractors fiscal year, the Contractor shall furnish to the Contracting Officer, or designated representative of the Contracting Officer, in writing a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made and Paragraph (c) Upon termination or expiration of this contract, unless the Government directs that the unpaid capital credits be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits."

The manner of payment prescribed in these rules is not consistent with the treatment of capital credits in the past nor is it fair to your potential fellow members or the cooperative. Fairfield Electric Cooperative's By-laws provide for the Board of Directors to review and determine that the financial condition of the cooperative will not be impaired by the retirement of capital credits and that any such retirement of capital credits shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the cooperative being the first retired. These proposed rule changes give no consideration to the financial stability of the cooperative and they set a payment schedule completely independent of all other members of the cooperative.

JUL 22 1991

91-13-80

Cooperatives were started by their membership to provide a necessary service that could not be acquired from any other source. Operating as a not-for-profit corporation with service territories that can be large but sparsely populated offers challenges aplenty for most cooperatives. These proposed rules changes relating to capital credits place an unnecessary burden on a system that works and would do so at the expense of treating our membership unfairly.

Sincerely,

FAIRFIELD ELECTRIC COOPERATIVE, INC.

E. L. Ayers, General Manager

/jhb

JAMES VALLEY ELECTRIC
COOPERATIVE, INC.
Rural Route 2, Box 22
Edgeley, North Dakota 58433
Service-Our Only Product
Telephone 493-2281

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets
NW Room 4041
Washington, DC 20405

RE: General Services Administration, Federal Acquisition Regulation for the Acquisition of Utility Services (FAR Case 91-13)

TO WHOM IT MAY CONCERN:

We are writing to give comment to a proposed rule on the acquisition of services from utilities (56 Federal Register 23982).

We understand GSA is proposing at section 41.007(j) that language be included with reference to contracts between federal facilities and cooperative utilities. In reviewing the language at clause 52.241-13 Capital Credits, James Valley Electric Cooperative would find it impossible to comply with the conditions outlined in 52.241-13 particularly paragraph (b) and (c) in which the Government would direct that unpaid capital credits be paid to the Government upon termination or expiration of a contract.

Obviously the writer of the rule did not understand capital credits of cooperatives. They are not a savings account, and do not represent cash in the bank but rather are an owners share of equity (accumulated margins) in the Cooperative. In order for that equity to be returned to a consumer of the Cooperative the Cooperative must be financially able to return equity to its consumers. This is done on a rotation basis as new margins become available to replace that equity. It is simply not possible for the Government to insist that upon termination of a contract that all unpaid capital credits be refunded to the Government. This would be a discriminatory practice in that other consumers do not have immediate access to their capital credits on demand and would put the Government in a position of receiving payments ahead of any other electric consumers. I think it is important that you understand capital credits of rural electric cooperatives do not represent cash which is available to be repaid at a moments notice.

We appreciate having the opportunity to comment on these regulations.

Sincerely yours,

Scott Braeger

Scott Braeger
General Manager

JUL 22 1991

Tri-County Electric Association Inc.

91-13-82

CLARENCE MOSHIER, JR. PE. MANAGER

Co-operative

PLANKINTON, SOUTH DAKOTA 57368

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets NW, Room 4041
Washington, DC 20405

Re: FAR Case 91-13

Dear Sirs:

I would like to offer a few comments regarding the above referenced proposed rule. In particular, I would like to comment on Section 52.241-13 Capital Credits.

Capital Credits

(a) This paragraph is satisfactory.

(b) Capital credits at our Cooperative are allocated and booked in August of each year (December 31 fiscal year end). We therefore find the "60 days after the close of the fiscal year" unworkable and objectionable. Also, we do not know what year the current capital credits will be paid out; capital credit retirement is based on the financial condition of the Cooperative, REA guidelines, & mortgage requirements.

(c) Our Cooperative <u>does not</u> make payment of capital credits upon the termination or expiration of service for any individual or organization. This would be a violation of our By-Laws. All organizations and individuals must wait until the normal retirement cycle. We would not make an exception for the Government.

(d) We object to paying capital credits by certified check. All of our other members accept the Cooperative's check and we would not make an exception for the Government.

Thank you for this opportunity to offer our comments.

Sincerely yours,

Clarence Moshier Jr.

Clarence Moshier Jr.
General Manager

CWM/cn

Rec'd
JUL 22 1991

Plateau Electric Cooperative

91-13-83

18 July 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, DC 20405

Dear Sir:

Re: FAR Case 91-13

Plateau Electric Cooperative opposes the implementation of the Capital Credits Section 52.241-13 of the General Services Administration proposed rule for several reasons.

First, the Tennessee Valley Authority (TVA), which has been granted regulatory authority over the Tennessee cooperatives under the provisions of the Public Utility Regulatory Policies Act (PURPA), has consistently held the position that the cooperatives must reduce resale rate levels as opposed to paying capital credits.

Secondly, regulations requiring the payment of capital credits to federal accounts immediately upon the termination or expiration of a contract would be discriminatory to the other members of the cooperative who would have to wait until the cooperative was financially able to declare capital credits for that particular period of time.

Lastly, it would appear that the proposed rule might impose an additional hardship on an already-weakened rural economy by unfairly singling out the predominantly-rural cooperatives to repay capital credits based upon an arbitrary timetable.

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JUL 22 1991

The overall impact of this rule would be to deprive the cooperative of a source of low-cost capital that would ultimately result in higher electric rates. While we can appreciate the intent of such a proposal, we believe that the actual implementation of these regulations would place an undue burden on rural America.

Sincerely,

PLATEAU ELECTRIC COOPERATIVE

John B. Seale, Jr.
Manager

:ll

pc The Honorable Albert Gore, Jr.
The Honorable James Sasser
The Honorable Jim Cooper

91-13-84

OKANOGAN COUNTY ELECTRIC COOPERATIVE

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F St. NW, Room 4041
Washington, D.C. 20405

re: FAR Case 91-13

I would like to comment on Federal Acquisition Regulations 52.241-13 Capitol credits

(A) Our bylaws provide for the Board to determine method of payment and time of payment. This also interprets to mean no payment if the Co-op has financial difficulty .

(B) Refer to (A) above.

(C) This Co-op does not pay any capitol credits on termination of contracts except to estates and then on a discounted basis.

(D) The Government is a member or customer and entitled to payments of capitol credits in the same manner as all members and customers with no special considerations.

Please review these comments and your proposed rules, you should see that the rules would violate our bylaws and are asking for special considerations.

Your Truly

Warren E. Pringle

Warren E. Pringle
WEP/bd

RECEIVED

JUL 22 1991

phone 509 996-2228

People's Electric Cooperative

"The Right Choice!"

91-13-85

July 18, 1991

General Service Administration
FAR Secretariat (VRS)
18th & F Streets, N.W.
Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Gentlemen:

This letter is in response to your proposed rules as referenced above. As you know, "capital credits" only affect electric utilities who are owned by the customers they serve, known as cooperatives. Investor owned utilities (IOUs) will not have a problem with the rules since any "profits/capital credits" are paid in dividends to their stockholders at the discretion of their corporate board of directors and <u>not</u> returned to their customers.

First, we are troubled with your provision which requires the "contractor" to furnish the "contracting officer" a written list of accrued capital credits within 60 days of the contractor's fiscal year. This provision presents a problem for People's Electric Cooperative (PEC) since our annual audit is not completed until approximately 90 days from year end. Subsequently, our Board of Directors approves the audit and the proper method of allocating capital credits as provided in our corporate bylaws. We normally notify our customers of the allocation formula within 120 days of year end through our monthly newsletter. In addition, each distribution of capital credits will list the balance outstanding on the check received by our customer.

PEC's next problem with your proposal is the requirement that upon termination/expiration of an electric agreement/contract, it appears the contractor may be forced to pay the government immediately for any unpaid capital credits. This provision is in conflict with PEC's bylaws. Currently, PEC is paying capital credits to its members based upon a 22 year pay out method. Many cooperatives are prevented from paying any capital credits due to their poor financial condition. PEC bylaws, as do most cooperatives, provides for payment of capital credits based upon its financial condition as determined by both its lender and its corporate Board of Directors. In addition, PEC has loan agreement covenants which prevent payment of capital credits when required financial ratios are not met.

RECEIVED

P O. Box 429 - Ada, Oklahoma 74820 - (405) 332-3031 - FAX ext. 49

JUL 22 1991

91-13-85

For these reasons, we believe these two requirements in your proposed rules to be unfair and should be removed. Your consideration of our comments will be appreciated.

Sincerely,

Carlton Tilley
Manager of Administration

mk

Indiana Statewide Association of
Rural Electric Cooperatives, Inc.

P.O. Box [illegible]
Indianapolis, IN 46224
[illegible]

91-13-86

July 22, 1991

FAR Case 91-13
General Services Administrator
FAR Secretariat (VRS)
18th and F Streets. N.W., Room 4041
Washington, D.C. 20405

Dear Sirs:

The May 24 Federal Register, Vol. 56, No. 101, pp. 23982-23990, contained proposed rules from the General Services Administration. These proposed rules dealt with federal facilities' acquisition of services from utilities, among other matters. In particular, the proposal at 48 CFR 41.007(j), has raised concerns among the rural electric cooperatives in Indiana. The Indiana Statewide Association of Rural Electric Cooperatives, Inc., a trade association of rural electric cooperative systems, commenting on behalf of our member-systems, appreciates the opportunity to provide the following observations.

Part 41.007(j) proposes that federal facility contracts with cooperative electric utilities contain a clause substantially the same as the clause at 52.241-13, Capital Credits. This clause contains provisions which would violate the principles by which cooperatives operate, and the provision would also hold the potential to do financial harm to the electric cooperative.

The clause threatens to violate the cooperative principles of operation, because it calls (in paragraphs (b) and (c)) for government facilities to receive discriminatory, preferential treatment in recovery of capital credits. Cooperatives are run by democratically elected boards of directors, who establish the criteria for if-and-when capital credits may be distributed to member-consumers. The boards of directors establish capital credit policies which are intended to treat all consumers equally in receiving capital credits. For the federal government to try to establish contractual requirements for preferential treatment -- in which case federal facilities would receive capital credits in advance of other consumers -- violates this foremost principle of equal treatment for all consumers.

In addition, such preferential treatment may not be legal under the regulatory guidance which prevails in many states. State rate regulations prohibit discriminatory actions which benefit one class of customers at the expense of another. To pay capital credits to federal facilities in advance of payment of credits to consumers who also earned capital credits at the same time may well be prohibited as a discriminatory act.

JUL 25 1991

91-13-86

Such early payment of capital credits is also likely to inflict financial hardship upon rural electric cooperatives who serve federal facilities. Statements of capital credits are not reflections of cash savings which the cooperative has accrued on behalf of consumers; capital credits reflect money which is invested in the plant equity of the cooperative's electric distribution system and equipment.

As such, capital credits are not a reflection of readily accessible financial reserves. For a federal facility to seek payment of capital credits upon expiration of a contract would be likely to force a cooperative to have to turn to borrowed funds in order to meet the contractual obligation, especially in the event that the federal facility is either a large power consumer or is a relatively large portion of the electric demand of that electric cooperative. As such, payment of capital credits upon termination of a contract would impose borrowing costs on a cooperative.

Traditionally, cooperatives' boards of directors allocate payment of capital credits over time, if payment is made at all. We would encourage the General Services Administration to withdraw the proposed 48 CFR 41.007(j), and to allow federal facilities to receive treatment of capital credits as is decided by cooperative boards of directors.

Thank you for the opportunity to offer these observations on this matter.

Sincerely,

Jeffrey L. Quyle
Director of Government Relations

cc: Indiana Congressional Delegation
NRECA

WILLIAM T. GOODMAN
LARRY R. DUFF
ALAN GOODMAN

LAW OFFICE
Goodman and Duff
CHARTERED
[illegible] 5TH STREET
BOX [illegible]
RUPERT, IDAHO 83350

91-13-87

July 18, 1991

General Service Administration
FAR Secretarial (VRS)
18th and F Street, N. W., Room 4041
Washington, D. C. 20405

Re: GSA Federal Acquisition Regulations for Acquisition of Utility Services
(FAR Case 91-13)

Gentlemen:

We submit the enclosed comments on the proposed rule on acquisition of service from utilities (56 Federal Register 23982) on behalf of Rural Electric Company, a non-profit cooperative electrical distribution company of Rupert, Idaho.

We are extremely concerned with the proposed section 41.007(j) and our ability to comply with subsection (c) under Idaho law as well as the practical ability to comply with the time frame of subsection (b).

Please file our comments on the above matter.

Very truly yours,

GOODMAN & DUFF

Larry R. Duff

LRD:ma
Enclosure

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91-13-87

COMMENTS OF RURAL ELECTRIC COMPANY, RUPERT, IDAHO
ON G.S.A FEDERAL ACQUISITION REGULATIONS
FOR ACQUISITION OF UTILITY SERVICE
(FAR Case 91-13)

Rural Electric Company is a small non-profit rural electrical distribution company located in Southern Idaho with its offices in Rupert, Idaho.

Rural Electric Company was incorporated in 1917 to provide electrical power to farmers who the private companies would not serve. The original organizers built the first lines themselves. Rural Electric is not now, nor has it ever been an REA borrower. Its funds for expansion have come from the membership and from private lending institutions.

The company serves between 2,500 and 3,000 customers in parts of Cassia and Minidoka County. The members are financially conservative and have adopted a policy of reinvesting the patronage equities (capital credits) back into the company for capital improvements rather than borrowing for these improvements. This allows the company to be able to charge a lower rate than if it borrows the funds for capital improvements. While the patronage equities are not revolved back to the members in cash refunds, they do receive the rebate in the form of a lower rate for the power they use. Memberships are appurtenant to the land where the service is received and are owned by the land owner.

The Company does maintain an accurate record of each member's equities (capital credits). Allocations are made each year however, because allocations cannot be completed until the yearly operation financial information (Statement of Income and Expenses) has been audited and the audit accepted. Computations are not made within 60 days after the close of the fiscal year. Allocations are normally completed within 120 days of the end of the fiscal year.

Idaho law governing non-profit cooperatives requires that each member be treated equally. If patronage equities (capital credits) are revolved (paid) to one member for a particular year, it must be paid to all members who have a credit for the year revolved.

The General Services Administration's (GSA) proposed rule on the acquisition of services from utilities (56 Federal Register 23982), proposes at section 41.007(j) that the following language be added to all contracts between Federal facilities and cooperative utilities:

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91-13-87

52.241-13 Capital Credits

(a) The Government is a member of the (cooperative name)_____, and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing, a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made.

(c) Upon termination or expiration of this contract, unless the Government directs the unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____, unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

Rural Electric submits that it will be unable to comply with provisions of subsections (b) and (c).

The provisions of subsection (b) providing for notice within 60 days should be amended to allow 180 days. Capital credits are not revolved (paid) by any cooperative utility in the year following the year for which they are allocated. Because 10 or more years (usually more) elapse between the year of allocation and payment, this change would have no effect on Government and would avoid an undue time of completion hardship on the cooperative.

Capital credits when revolved or paid by cooperative utilities are paid out of current year earnings and much like a dividend from a private, for profit corporation are only to be paid if there is sufficient income above expenses to pay the same. Because of this, when patronage equities (capital credits) are allocated, no date of revolving of the patronage equity is determined at that time. It is therefore not possible for the notice of allocation of capital credits (accrual of capital credits) to include a date they will be revolved (paid) to the member. In Rural Electric's case the credits will not be revolved until the membership decides on a different method of handling of the patronage equity (capital credit) unless the company is sold.

91-13-87

Rural Electric therefore requests that the requirement of stating "the date the payment is to be made" be deleted from the last sentence of subsection (b).

The provisions of subsection (c) are contrary to the By-Laws of Rural Electric and Rural Electric submits it cannot comply with this subsection and stay in compliance with the laws of the State of Idaho. Capital credits (patronage equities) are revolved based on funds available for payment, and even though policies and by-laws on payment vary from one cooperative utility to another, and all such utilities in Idaho are required to treat each member equally. The proposed regulation is impossible to comply with because of the financial impact on the utility of being required to revolve all members equity up to the date of the government terminating service.

Rural Electric submits that the revolving of the capital credits of the government should be on the same basis as any other member of the cooperative utility. If members are required to wait until income is sufficient to revolve the equity, then so should the government. In the case of Rural Electric Company where the membership remains appurtenant to the real property served, the credits become part of the value of the property which it can compensated for if the government sells the property in the same manner as any improvement made by the government to the property.

Regulations adopted by federal agencies should not be such as to create a hardship on the affected companies and individuals because the time frame for compliance is unreasonably short, nor should they require that the Federal agencies have rights and benefits that other entities in the same class, receiving the same services at the same cost do not receive.

Rural Electric Company submits that subparagraph (c) should be deleted in its entirety and a new section drafted that provides the capital credits will be revolved and paid to the government in the same manner and at the same time as other members of the cooperative utility.

Respectfully Submitted

RURAL ELECTRIC COMPANY

By: Larry R. Duff, for Rural Electric Company

RICHARD A. BENJES
ATTORNEY AT LAW
P.O. BOX 856
HUTCHINSON KANSAS 67504-0856
25 NORTH WALNUT
FAX 316 669-8773
TELEPHONE 316 669-8043

91-13-88

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13
Proposed Rule on Federal Acquisition Regulations;
Acquisition of Utility Services

Gentlemen:

I represent the Ark Valley Electric Cooperative Association, Inc., with principal offices in Hutchinson, Kansas, and have been asked on behalf of the Cooperative, to provide comment and express its concerns to proposed regulations in FAR Case 91-13.

In particular, the Cooperative is concerned with the proposed regulations 52.241-13 Capital Credits, subparts (b) and (c).

The Cooperative does provide each customer, including the government, information on an annual basis, concerning allocation of capital credits, for the prior year. Therefore, each year, the government is advised of the immediately prior year's capital credits. Providing additional information, including an accumulation of capital credits, and description by delivery points, would result in burdensome paperwork, and time, on the part of the Cooperative. Further, estimating a date of payment would be impossible, in part, because repayment of capital credits is limited by the terms of the Cooperative's by-laws, and, by restrictions contained in mortgages to lenders, including REA.

Subpart (c) of the proposed regulations, would be contrary to by-law provisions of the Cooperative, and, would place the government, as a member of the Cooperative, in a position, uniquely different than any other member. Because of the financial position of the Cooperative, capital credits are not paid to members upon termination. Capital credits are paid,

JUL 22 1991

91-13-88

except in the event of a discounted payment to individual decedent's estate. on a rotation basis, with capital credits presently being paid through the year 1961. The by-laws of this Cooperative, as many other cooperatives, provide that retirements of capital credits must be made in order of priority according to the year in which the capital was furnished or credited. Therefore, payment to the government would be in violation of the by-laws, would be preferential, and, would discriminate against all other members, since those other members are not entitled to payment of capital credits, upon termination.

Therefore, the Ark Valley Electric Cooperative Association, Inc. would request that subparts 52.241-13 (b) and 52.241-13 (c) be eliminated from the proposed regulation.

Sincerely,

Richard A. Benjes

RAB:bsb

cc: The Ark Valley Electric
Cooperative Association, Inc.

Dan Glickman

91-13-89

GUERNSEY-MUSKINGUM ELECTRIC COOPERATIVE, INC.

17 S. LIBERTY ST. NEW CONCORD, OHIO 43762

July 18, 1991

General Services Administration
FAR Secretariat
18th and F Streets, NW
Room 4041
Washington, D.C. 20405

RE: FAR Case No. 91-13

General Services Administration (GSA) recently published a proposed rule on the acquisition of services from utilities (56 Federal Register 23982).

Under Section 41.007J, the proposed rule indicates that the contracting officer will insert a clause identified as 52.241-13 Capital Credits when the Federal Government is a member of a cooperative and is entitled to capital credits. Paragraph "a" of clause 52.241-13 states "The Government is a member of the (cooperative name) _____, and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the contractor to pay capital credits and which specifies the method and time of payment." I agree that the Government, as a member of the cooperative, is entitled to capital credits consistent with the by-laws of the cooperative and consistent with treatment of all other members of the cooperative. I disagree, however, with the statement that it is the obligation of the cooperative to pay capital credits and that by-laws specify the method and time of payment.

Typically, a cooperative's code of regulations provides for payment of capital credits at the discretion of the board of trustees of the cooperative and outlines the method of payment in the event the board, in its discretion, authorizes such payment. Typically, codes of regulations do not specify time of payment.

Cooperatives do notify their members annually of the "accrued credits" earned for a given fiscal year, however, paragraph "b" of this capital credit clause is inappropriate since the cooperative is unaware at that time of the amount of capital credits to be paid to the Government and the date payment is to be made.

JUL 22 19

NEW CONCORD 614-826-7661 | CAMBRIDGE DIRECT LINE 614-432-4167 | ZANESVILLE DIRECT LINE 614-454-0770 | ALL OTHER MEMBERS 1-800-521-9879

91-13-89

Similarly, paragraph "c" of this clause is inappropriate since payment to the Government of unpaid capital credits at termination or expiration of the contract is in violation of the typical code of regulations (or by-laws) of the cooperative, would constitute preferential treatment of the Government, and is not consistent with payment made to other members of the cooperative.

Sincerely,

John M. McBride/ks

John M. McBride
General Manager

ks

cc Michael Oldake, Regulatory Council
NRECA

SUN RIVER ELECTRIC
COOPERATIVE, INC.

P.O. BOX 217 PHONE 467 2526 FAIRFIELD, MONTANA 59436

91-13-90

General Services Administration
FAR Secretariat (VRS)
18th & F St. NW, Room 4041
Washington, DC 20405

re: FAR Case 91-13

Gentlemen:

Responding to comment requests on Case 91-13, specifically V-52.241-13, the capital credit section.

Response:

Paragraph (b) The time frame of 60 days is far to short due to the timing of system audits. Capital credits are usually allocated after all audits have been completed. A time frame of 120 days would be more realistic.

Paragraph (c) Currently to comply with this paragraph would be in violation of our bylaws and a contradiction to paragraph (a) which states "Capital credits consistent with the bylaws of the Cooperative". This would include method of payment. Under our current bylaws and policy, we could pay capital credits early only on a discounted basis.

At the same time Sun River Electric Cooperative is not required to pay any capital credits until 40% equity is reached. Under bylaw provision, until 40% equity is reached payment of capital credits is at the discretion of the board.

Under current bylaws Sun River Electric Cooperative could not comply with these suggested additions to government contracts.

Respectfully,

James R. Eskridge
General Manager

JRE/vf

JUL 22 1991

91-13-91

Todd-Wadena Electric Cooperative

EAST HIGHWAY 10 • P.O. BOX 431 • WADENA, MINNESOTA 56482
TELEPHONE 218-631-3120 or 800-321-8932

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets NW
Room 4041
Washington, DC 20405

Gentlemen:

I am responding to General Services Administration, Federal Acquisition Regulations for the Acquisition of Utility Services (FAR Case 91-13), (56 Federal Register 23982).

Todd-Wadena Electric Cooperative is requesting that payment of capital credits be made at the same schedule that all members of our Cooperative are paid. It would be an accounting nightmare if the Government agencies are handled differently than all other accounts. Capital Credit rotation can be different for each electric cooperative. It is the Board of Directors responsibility to set the capital credit rotation so that the cooperative remains financially sound. Capital Credit rotation also has an direct impact on rates to the member/consumer.

Please review your proposed rule. I'm sure you will find the change detrimental to the cooperative principles. The benefit to Federal agencies is at the expense of the cooperative. Contracts between Federal facilities and cooperative utilities do not need changes!

Respectfully submitted,

Dale Hendrickson

Dale Hendrickson
General Manager

cgd

JUL 22 1991

BERKELEY
ELECTRIC COOPERATIVE INCORPORATED

P. O. Box 1234 • Moncks Corner, South Carolina 29461 • (803) 761-8200

91-13-92

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D. C. 20405

REFERENCE: FAR CASE 91-13

As the General Manager and Executive Vice President of Berkeley Electric Cooperative, consisting of over 51,000 owner/consumers, I feel compelled to offer our comments on the above referenced case, in particular on your proposed "Part 52.241-13 Capital Credits".

As a cooperative organized and operating under the Rural Electrification Act, we have returned Capital Credits to our members on an impartial basis as the funds were available, and as our mortgage agreement would allow us.

We have committed a large amount of resources, such as labor and computer costs, to enable us to accomplish this in a cost efficient manner.

Our bylaws, modeled after REA and legal council recommendations and approved by our members at their annual meeting, preclude a preferential payment of Capital Credits.

The amount of Capital Credits returned to our members each year is limited to a percent of our prior years' margins by our mortgage agreement. This amount is unknown in advance and only becomes a finite number after completion of our annual audit.

In conclusion we contend that the proposed rules as set forth in part "52.241-13 Capital Credits" would economically award preferential treatment to a few members and materially punish the other 51,000 members.

We also contend that increasing the costs to change our system would burden our other members by diluting their ownership in the assets of the Co-op while enhancing the value of a few members' Capital Credit accounts in direct proportion to those costs.

JUL 22 1991

DISTRICT OFFICES
P. O. Box 128 • Johns Island, South Carolina 29455 • (803) 559-2458
P. O. Box 969 • Goose Creek, South Carolina 29445 • (803) 553-5020
3745 N. Hwy. 17 • Awendaw, South Carolina 29429 • (803) 884-7525

BERKELEY
ELECTRIC COOPERATIVE INCORPORATED

91-13-92

We also contend that the proposal would not only violate our mortgage requirements and our bylaws, but would also violate no less than our basic philosophy and purpose for being.

Most important of all, we feel that our members would never agree to such terms as set forth in the proposed rules, nor could I ever recommend that they do so.

Sincerely,

E. E. Strickland
Executive Vice President and
General Manager

EES/ms

91-13-93

UPA

United Power Association

P.O. Box 500 • Elk River, MN 55330-0500 • (612) 441-7121

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW
Washington, DC 20405

RE: Comments on FAR Case 91-13
Proposed Acquisition Regulation:Acquisition of Utility Services, 56 Fed. Reg. 23982 (1991)

Dear Sirs:

As a generation and transmission electric cooperative, we supply electricity to fifteen electric distribution cooperatives who serve member consumers in Minnesota and Wisconsin. There may well be an occasion when our member systems would be called to serve Federal agencies covered by the proposed regulations.

We are concerned and wish to comment on the following:

o **Part 52.241-13 Capital Credits**

Of primary concern to United Power Association (UPA) are parts (b) and (c) of proposed Part 52.241-13 Capital Credits. UPA agrees with subsection (a) which indicates that the government, as any other member of a cooperative:

> "is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the (cooperative) to pay capital credits and which specifies the method and time of payment."

However, UPA believes that compliance with the requirement of subsection (b), i.e., to state, within 60 days after the close of the fiscal year, the amount of capital credits to be paid to the government and the date the payment is to be made, would be difficult, if not impossible. While some indication of the amount of capital credits may be ascertainable at the close of the fiscal year, depending upon the by-laws of the cooperative and its financial condition, these credits will be held by the cooperative for a period determined by the cooperative and applied uniformly to all members. If during that period, which typically runs several years, the

91-13-93

cooperative experiences some circumstance such as storm damage, it might be necessary to withhold payment of those capital credits. Additionally, as discussed below, the cooperative is prohibited from paying capital credits unless the cooperative has met the financial standards established by the United States Department of Agriculture, Rural Electrification Administration (REA) and anyone else who is a co-mortgagee with REA.

Additionally, our distribution cooperatives are member-owners of UPA, and are entitled to receive capital credits from UPA. It would be totally impracticable to determine the appropriate capital credits due the distribution cooperative from UPA, and consequently the distribution cooperative's own member-owners, within 60 days after the close of the distribution cooperative's fiscal year.

More importantly, UPA believes that subsection (c) would require the cooperative to violate its own by-laws, articles of incorporation and consequently violate state laws governing cooperatives. Under subsection (c), cooperatives would be required, upon termination or expiration of a contract, to pay the government for all unpaid capital credits. As indicated in subsection (a) quoted above, the government is entitled to be paid for capital credits in the method and at the time provided for in the cooperative's by-laws. Provisions requiring payment at the expiration or termination of a contract may be inconsistent with the very terms and conditions which subsection (a) recognizes as controlling the provision of service from a cooperative to one of its members, the government. Such actions on the part of the cooperative would also seem to violate applicable state laws which govern the operation of cooperatives within Minnesota and Wisconsin.

Capital credits are unique to "not-for-profit" cooperatives and of necessity must be treated in a manner which is consistent with their by-laws, as well as all applicable federal and state laws. In a cooperative, there are no "profits" to be disbursed to investors. Rather, to the extent that income exceeds costs, these "margins" accumulate as capital credits. They are, in accordance with the cooperative's by-laws, returned to the member-owners in direct proportion to their use of electricity. Return of capital credits to a cooperative's members are made in a manner which must be consistent with the requirements of the cooperative's by-laws. As a member of the cooperative, the government is entitled to be paid its capital credits, consistent with the cooperative's by-laws, it is not entitled to become a privileged class of customer. Provision of capital credits to the government in a manner which is inconsistent with the cooperative's by-laws could be in affect providing the government with a preference over other cooperative members. This treatment could be inconsistent with the requirement of

91-1393

the United States Internal Revenue Service for cooperative status, that the cooperative operate on a "cooperative basis."

Additionally, rural electric system, as generally small "not-for-profit" entities, have limited sources of capital. The majority of capital requirements are met by the REA. In order to be eligible for these loans, rural electric systems are required to develop and maintain certain equity levels as required by REA. Disbursing capital credits may be restricted or prohibited by REA depending upon the equity level of the borrower. Thus, repaying the capital credits as required in Part 52.241-13 would be in violation of the terms and conditions contained within the government's own mortgage requirements, could cause the cooperative to default on its mortgage with REA or other lenders, or at a minimum prevent the cooperative from competing to serve the government's load where such competition is consistent with state laws.

- **Part 52.241-8 Connection Charges**

Part 52.241-8 Connection Charge, also creates a procedure that is inconsistent with the way in which cooperatives operate as not-for-profit member-owned systems. Under the proposed rules, the cost of providing connection facilities for the government would be shifted from the government to other cooperative members. While not only unfair to other cooperative members, most probably this is also a violation of the cooperative's by-laws and the state statutes which govern the way cooperatives operate within the state.

Part 52.241-8 provides in relevant part that the government shall pay a connection charge to cover the contractor's cost of furnishing and installing new connection facilities. Then, on each monthly bill for service furnished, the government receives a credit until the accumulation of credits equals the amount of such connection charge. While this section is appropriate for contractors which are for-profit entities, and represents an expense which is appropriately credited against profits, this is inappropriate where the contractor is a not-for-profit cooperative and the provision of a credit would require other cooperative members to bear the cost of facilities constructed to meet the requirements of the government, as well as their own.

In a cooperative utility, rates are based upon the actual cost of doing business. There are no shareholders or other investors who obtain a profit on their investment, nor, more importantly, profits against which the cost of connections can be expensed as a cost of doing business. Providing the government with a credit for connection facilities which were built to serve the government's own load would mean that those costs would have to be borne by the cooperative's other members. This would not only be unfair to those other members

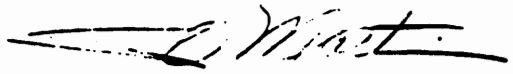
91-13-93

who are already paying the cost of facilities built to meet their loads, but would probably be in violation of the cooperative's by-laws as well as state statutes which govern the way in which cooperatives operate. Such action could also be considered as an unlawful disbursement of capital credits, as discussed previously.

UPA would be pleased to discuss or answer questions on these comments.

Respectfully submitted,

UNITED POWER ASSOCIATION



Philip O. Martin
Executive Vice President
and General Manager

POM:JRW:jwh

Radiant Electric Cooperative, Inc.
[illegible] • P.O. BOX [illegible] • FREDONIA KANSAS [illegible] • [illegible]

91-13-94

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW, Rm 4041
Washington, DC 20405

Gentlemen:

In Ref: Federal Register publishing FAR Case 91-13

Exception is taken to a portion of your proposed ruling, 52.241-13 Capital Credits as follows:

Item (a) references consistency in by-laws in the administration and payment of capital credits by specifing method of time payment as the bylaws would direct.

The above, item (a) is an acceptable condition.

Item (b) specifically changes item (a) by directing a specific time by which notice shall be made and ordering that a specific named time stated for the refund to be made.

The above (b), is NOT an acceptable condition and is in conflict with rules of Internal Revenues Service which has already specified a time for issuing notice of Capital Credits and the rules of Rural Electrification Administration, U.S. Department of Agriculture place limitations on when a refund may be made. The proposal is in conflict with item (a) which allows by-laws to provide orderly management of Capital Credits.

Item (c) contains a demand statement requiring immediate payment of Capital Credits or application to a specified account.

The above (c) also is NOT acceptable as it also is in conflict with item (a) which provides for orderly management of Credits under presently existing rules of Rural Electrificaiton Administration, U.S. Department of Agriculture. It also attempts to establish authoritarian rule of a U.S. Government agency to give preferential treatment over other owners of capital credits.

JUL 22 1991

Radiant Electric Cooperative, Inc.
[illegible] 15TH • P.O. BOX [illegible] • FREDONIA KANSAS [illegible]

91-13-94

Item (d) further specifies the a "certified check" be issued in payment of the capital credits.

The above (d), issuing of certified check is NOT an acceptable practice as it is a more costly procedure and will create an undue cost burden upon the cooperative utility issuing the check.

Cordially,

Carl Sederlund

Carl Sederlund
Manager

CS/af

91-13-95

Baker Electric Cooperative, Inc.

FAX NO (701) 968-3319
PHONE (701) 968-3314

P O BOX 608
CANDO, NORTH DAKOTA 58324

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N.W.
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Gentlemen:

It has come to our attention that the General Services Administration has published a proposed rule (56 Federal Register 23982) on the acquisition of electric service from cooperative utilities. Especially troubling is Section 52.241-13 Capital Credits, particularly paragraphs (b) and (c).

Paragraph (b) states that within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing a list of accrued credits by contract number, year, and delivery point. We have no problem furnishing information relative to the contract for the current year's operations, but would find it burdensome to have to report the prior period's accrued credits each year. That information is and will be available upon request, but is seems an excessive requirement to repetitively report the same information year after year.

Paragraph (b) also states that the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made. We presently furnish the member with the amount of capital credits to be paid, but we are unable to report the date payment will be made. Baker Electric Cooperative's mortgage agreements with the Rural Electrification Administration (REA) and the National Rural Utilities Cooperative Finance Corporation (NRUCFC) require prior approval from them for the retirement of patronage capital. There is no way that Baker Electric Cooperative would be able to commit in advance to the retirement of patronage capital without the Rural Electrification Administration's approval. Such a requirement would be an example of one agency of the Federal Government making requirements of a contractor that another agency of the Federal Government will not allow the contractor to fulfill.

JUL 22 1991

91-13-95

Paragraph (c) states that upon termination or expiration of the contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits. I would refer you again to the mortgage requirements that exist between cooperative utilities and the Rural Electrification Administration. Those mortgage agreements require the prior approval by REA of any general patronage capital refunds.

It is also stated in the Baker Electric Cooperative By-Laws that any retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Cooperative being first retired. For the Federal Government to require the retirement of patronage capital on any schedule other than that used for all members, would put the Government in an unfair advantage, and could require additional equity contributions to be made by others to make up for that refunded to the Government.

Thank you for your considerations.

Very truly yours,

BAKER ELECTRIC COOPERATIVE, INC.

Robert A. Spencer
General Manager

91-13-96

North Dakota Association of Rural Electric Cooperatives

P.O. Box 727 • Mandan, N.D. 58554-0727 • (701) 663-6501 • (800) 234-0518 • FAX (701) 663-0727

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Street NW, Room #4041
Washington, D.C. 20405

RE: FAR Case 91-13

To those in charge,

I am writing on behalf of North Dakota's rural electric cooperatives to express our opposition to the proposed rule regarding capital credit payments to the federal government. Our statewide trade association, which represents each of North Dakota's locally-owned distribution cooperatives that serve some 76,000 consumers, opposes this proposed rule on the grounds that it is unfair.

The plan is unfair because it violates a founding principle of doing business as a cooperative. That principle is this: All members of the cooperative are treated equally.

For the government to say that it deserves special recognition or treatment is just not right. Why should the other members of the cooperative essentially bear a greater financial burden just because the government wants its capital credits paid immediately upon termination of any contract. We've lost thousands of farmers and ranchers over the past twenty years in this state. But just because these people have been forced out of business and are no longer customers does not mean they receive immediate payment of capital credits. In cooperatives, local boards make the decision as to when capital credits should be paid.

The other reason we oppose this plan has to do with federal policy. In your proposed rule, you essentially ask that we make immediate payment of capital credits upon termination of a contract. But our primary banker, the Rural Electrification Administration (REA)--within the United States Department of Agriculture--is sending the word down that it is going to clamp down on capital credit retirements until such time as local cooperatives build equity levels that average 40 percent. So even if we wanted to honor your request, REA would tell our cooperatives it's not possible. I would strongly encourage you to visit with REA officials to get a better understanding of when and how they approve capital credit retirements.

When you visit with REA, you could also ask about the spotless repayment record of North Dakota's cooperatives. We've repaid every dollar we've borrowed on time--some even ahead of schedule. Each of those payments was made on a business check. None have bounced. Your request for a certified check is burdensome.

Based on these reasons, North Dakota's 20 electric cooperatives respectfully ask

JUL 22 1991

91-13-96

that you rescind this proposed rule. The federal government has been paid every capital credit dollar that it's due. Our boards and management will continue to do well into the future, as the boards and REA approve such retirements.

Sincerely,

Dennis Hill,
Executive vice president
and general manager

cc: Managers, North Dakota's 20 RECs

91-13-97

Empire Electric Association, Inc.

501 N. Broadway P.O. Drawer K Cortez, CO 81321-0676 (303) 565-4444

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets N.W. Room 4041
Washington, D.C. 20405

RE: Comments FAR Case 91-13

My name is Neal E. Stephens and I am the General Manager of Empire Electric Association, Inc., a rural electric cooperative association based in Cortez, Colorado. Empire Electric Association is an electric utility providing service to approximately 11,000 members in a 3000 square mile area in the southwest corner of Colorado.

The General Services Administration (GSA) recently published a proposed rule on the acquisition of services from utilities (56 Federal Register 23982.) As part of this rule, the GSA is proposing at Section 41.007(j), language to be added to all contracts between Federal facilities and cooperative utilities that we find troubling.

The following language is proposed:

52.241-13 Capital Credits:

(a) The Government is a member of the (cooperative name) _____, and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing a list of accrued credits by contract number, year,

JUL 22 1991

91-13-97

and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made.

(c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____, unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicated whether the check is partial or final payment for all capital credits accrued.

Under paragraph (a), the proposed language states the Government is entitled to capital credits consistent with the bylaws of the cooperative. I am enclosing a copy of Empire Electric's by-laws which explains the capital credit entitlement to the Government. Briefly, at the end of each fiscal year, the amount of capital, if any, furnished by each patron to operate on a non-profit basis, is clearly reflected and credited in an appropriate record to the capital account of each patron. The patron will be notified within a reasonable time after the close of the fiscal year of the amount of capital credited to his/her account. The capital is returned in cash on a normal cycle to all members and non-members alike on a FIFO (first in first out) rotation cycle. Currently Empire Electric returns credits in cash on a 15 to 17 year cycle.

Paragraph (b) obligates the cooperative to notify the Government within 60 days of the close of the fiscal year the amount of capital credits and the date the payment is to be made. This is not consistent with the by-laws included which allows for a reasonable time, not 60 days, and does not commit the cooperative to a date the credits will be paid. As I explained, the current cycle is from 15 to 17 years and payment is made on the basis of financial performance of the cooperative in the year the credit is returned in cash. There is no way to pre-determine financial performance 15 to 17 years from now. For this reason alone, paragraph (b) should be eliminated.

Paragraph (c) again states the Government is to be afforded special treatment not afforded to other members of Empire Electric. It states that upon termination or expiration of the contract, unless otherwise directed, the Contractor is to make payment for the unpaid credit. As I explained before, this is not consistent with the by-laws of Empire Electric. In fact, Empire

91-13-97

does not pay deceased patron estates in cash. They are paid on the same rotation cycle as every other patron. Paragraph (c) should be eliminated for this reason.

Paragraph (d) requires the current or last contract number to be printed on the refund check. Empire Electric provides electric service to several agencies of the Government including but not limited to the Bureau of Reclamation, Western Area Power Administration, The National Park Service, The Bureau of Land Management, The National Forest Service, and White Sands Missile Range. Electric service ranges from electric service to an outhouse to wheeling contracts. Some are under specific contract, some are not. To implement a requirement stated in this paragraph is not realistic and is unduly burdensome. It would also require a substantial investment to set up software to administer it. Again, Paragraph (d) is not consistent with Empire's laws and should be eliminated.

It is painfully obvious that the author of 52.241-13 Capital Credits conducted no research and penned the language from some desk in Washington, D.C. The language clearly violates cooperative principles and is discriminatory because it affords the Government special treatment not afforded to other equal members of cooperatives. Where paragraph (a) states the Government is entitled to capital credits consistent with the by-laws of the cooperative they try to define a version of consistency in paragraphs (b), (c), and (d) which clearly is inconsistent with paragraph (a) and further inconsistent with the enclosed bylaws of Empire Electric Association.

Take action and stop this proposed discriminatory and burdensome practice by eliminating paragraphs (b), (c), and (d). Paragraph (a) accomplishes the goal by itself, that the Government is entitled to capital credits consistent with the bylaws of the cooperative like any other member of the cooperative.

Contact me anytime if the GSA wishes to discuss these comments in more detail.

Sincerely,

EMPIRE ELECTRIC ASSOCIATION, INC.

Neal E Stephens

Neal E. Stephens
General Manager

NES/dp

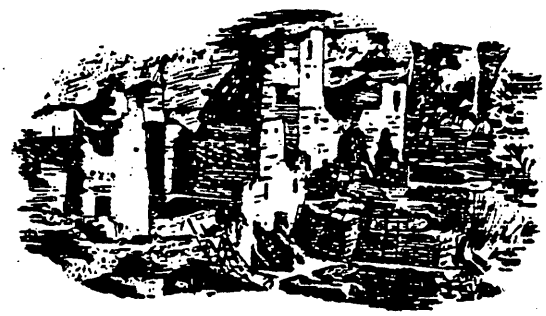
91-13-97

EMPIRE ELECTRIC ASSOCIATION, INC.
EEA
A RURAL ELECTRIC COOPERATIVE

BY-LAWS

As Amended
April 28, 1990

91-13-97



91-13-97

INDEX TO BY-LAWS

ARTICLE I — MEMBERS Page

Section 1: Qualifications and Obligations 1
Section 2: Membership Fee 2
Section 3: Purchase of Electrical Energy 2
Section 3A: Purchase of Electrical Energy by Non-Members 2
Section 4: Non-Liability for Debts of the Cooperative 2
Section 5: Expulsion of Members and Surrender of Share Certificates 2
Section 6: Withdrawal of Membership 3
Section 7: Transfer and Termination of Membership 3
Section 8: Removal of Directors and Officers 4

ARTICLE II — MEETINGS OF MEMBERS

Section 1: Annual Meeting 5
Section 2: Special Meetings 5
Section 3: Notice of Members' Meetings 5
Section 4: Quorum 6
Section 5: Voting 6
Section 6: Order of Business 7

ARTICLE III — DIRECTORS

Section 1: General Powers 8
Section 2: Qualifications and Tenure 8
Section 3: Voting Districts 9
Section 3A: Nomination of Directors 9
Section 3B: Election of Directors 10
Section 4: Vacancies 10
Section 5: Compensation 11
Section 6: Rules and Regulations 11
Section 7: Accounting System and Reports 11
Section 8: Change in Rates 12

ARTICLE IV — MEETINGS OF DIRECTORS

Section 1: Regular Meetings 12
Section 2: Special Meetings 13
Section 3: Notice 13
Section 4: Quorum: 13

91-13-97

INDEX TO BY-LAWS Continued

ARTICLE V — OFFICERS

Section 1: Number 13
Section 2: Election and Term of Office 14
Section 3: Removal 14
Section 4: Vacancies 14
Section 5: President 14
Section 6: Vice-President 15
Section 7: Secretary 15
Section 8: Treasurer 16
Section 9: Manager 16
Section 10: Bond of Officers 16
Section 11: Compensation 16
Section 12: Reports 17
Section 13: Indemnification or Directors 17

ARTICLE VI — CONTRACTS, CHECKS AND DEPOSITS

Section 1: Contracts 18
Section 2: Checks, Drafts, Etc. 18
Section 3: Deposits 18

ARTICLE VII — MEMBERSHIP CERTIFICATES

Section 1: Certificates of Membership 18
Section 2: Issue of Membership Certificates 19
Section 3: Lost Certificate 19

ARTICLE VIII — NON-PROFIT OPERATION

Section 1: Interest on Dividends on Capital Prohibited 19
Section 2: Patronage Capital in Connection with Furnishing Electrical Energy 19
Section 3: Patronage Refunds in Connection with Furnishing Other Services 21
Section 4: Notification of Patronage Capital Credits 21

ARTICLE IX — WAIVER OF NOTICE 21

ARTICLE X — DISPOSITION OF PROPERTY 22

ARTICLE XI — FISCAL YEAR 22

ARTICLE XII — MEMBERSHIP IN OTHER ORGANIZATIONS 23

ARTICLE XIII — SEAL 23

ARTICLE XIV — AMENDMENTS 23

91-13-G17

EMPIRE ELECTRIC ASSOCITION, INC.

BY-LAWS

As Amended April 28, 1990

ARTICLE 1

MEMBERS

Section 1

QUALIFICATIONS AND OBLIGATIONS

Any person, firm, corporation or body politic may become a member in the cooperative by:

(a) Paying the membership fee hereinafter specified;

(b) Agreeing to purchase from the Cooperative electric energy hereinafter specified, and

(c) Agreeing to comply with and be bound by the certificate of incorporation and these by-laws and any amendments thereto and such rules and regulations as may from time to time be adopted by the board of directors.

Provided, however, that no person, firm, corporation or body politic shall become a member unless and until he or it has been accepted for membership by the Board of Directors or the members. At each meeting of the members held subsequent to the expiration of a period of six (6) months from the date of incorporation of the Cooperative all share subscriptions and applications for membership (hereinafter called "application for membership") received more than ninety days prior to such meeting and which have not been accepted by the Board of Directors shall be submitted by the Board of Directors to such meeting of members, and subject to compliance by the applicant with the conditions set forth in subdivisions (a), (b), and (c) of this section, such application for membership may be accepted by a vote of the members at such meeting. The Secretary shall give any such applicant at least ten (10) days prior notice of the date of the members' meeting to which his application will be submitted and such applicant may be present and heard at the meeting. No person, firm, corporation or body politic may own more than one (1) membership in the Cooperative.

A husband and wife may jointly become a member and their application for a joint membership may be accepted in accordance with the foregoing provisions of this section provided the husband and wife comply jointly with the provisions of the above subdivisions (a), (b), and (c).

91-13-97

Section 2

MEMBERSHIP FEE

The par value of a share of stock (hereinafter called the "membership fee") shall be $5.00, the payment of which shall make the member eligible for electric services.
(As Amended March 22, 1980)

Section 3

PURCHASE OF ELECTRICAL ENERGY

Each member shall, as soon as electric energy shall be available, purchase from the Cooperative all electric energy used on the premises specified in his application for membership, except energy generated on the premises for consumer's own use, and shall pay therefor monthly, at rates which shall from time to time be fixed by the Board of Directors. It is expressly understood that amounts paid for electric energy in excess of the cost of service are furnished by members as capital, and each member shall be credited with the capital so furnished as provided in the By-Laws. Each member shall pay to the Cooperative such minimum amount per month, regardless of the amount of electric energy consumed, as shall be fixed by the Board of Directors from time to time. Each member shall also pay all amounts owed by him to the Cooperative as and when the same shall become due and payable.
(As Amended March 20, 1982)

Section 3-A

PURCHASE OF ELECTRICAL ENERGY BY NON-MEMBERS

The Cooperative may furnish electric energy to non-members. Payment of a $5.00 fee in lieu of membership shall make the non-member eligible for electric service. (As Amended March 22, 1980)

Section 4

NON-LIABILITY FOR DEBTS OF THE COOPERATIVE

The private property of the members of the Cooperative shall be exempt from execution for the debts of the Cooperative and no member shall be individually liable or responsible for any debts or liabilities of the Cooperative.

Section 5

EXPULSION OF MEMBERS AND SURRENDER OF SHARE CERTIFICATES

The Board of Directors may, by the affirmative vote of not less than two-thirds (2/3) of the members thereof, expel any member and cause his share certificate (hereinafter called "membership certificate") to be surrended if such member shall have violated or refused to comply with any of the provisions of

91-13-91

the Certificate of Association of the Cooperative, or these By-Laws or any rules or regulations adopted from time to time by the Board of Directors. The membership certificate, so surrendered, shall be canceled by the Board of Directors. Any member so expelled, and whose membership certificate has been surrendered, may be reinstated as a member by vote of the members at any annual or special meeting. The action of the members with respect to any such reinstatement shall be final.

Section 6

WITHDRAWAL OF MEMBERSHIP

Any member may withdraw from membership upon payment in full of all debts and liabilities of such member to the Cooperative and upon compliance with such terms and conditions as the Board of Directors may prescribe.

Section 7

TRANSFER AND TERMINATION OF MEMBERSHIP

(a) Membership in the Cooperative and a certificate representing the same, shall not be transferable except as hereinafter otherwise provided, and upon the death, cessation of existence, explusion or withdrawal of a member, the membership of such member shall thereupon terminate, and the certificate of membership of such member shall be surrendered forthwith to the Cooperative. Termination of membership in any manner shall not release the member from the debts or liabilities of such member of the Cooperative.

(b) A membership may be transferred by a member to himself or herself and his or her spouse, as the case may be, jointly upon the written request of such member and compliance by such husband and wife jointly with the provisions of subdivisions (b) and (c) of Section 1 of this article. Such transfer shall be made and recorded on the books of the Cooperative and such joint membership noted on the original certificate representing the membership so transferred.

(c) When a membership is held jointly by a husband and wife, upon the death of either, such membership shall be deemed to be held solely by the survivor with the same effect as though such membership had been originally issued solely to him or her, as the case may be, and the joint membership certificate may be surrendered by the survivor and upon the recording of such death on the books of the Cooperative, certificate may be reissued to and in the name of such survivor; provided, however, that the estate of the deceased shall not be released from any membership debts or liabilities to the Cooperative.

91-13-97

Section 8

REMOVAL OF DIRECTORS AND OFFICERS

Any member may bring one or more charges for cause against any one or more directors and may request the removal of such director(s) by reason thereof by filing with the Secretary such charge(s) in writing together with a petition signed by not less than ten (10%) percent of the then-total members of the Cooperative, which petition calls for a special member meeting the stated purpose of which shall be to hear and act upon such charge(s) and, if one or more directors are recalled, to elect their successor(s), and which specifies the place, time and date thereof not more than forty-five (45) days after the filing of such petition or requests that the matter be acted upon at the subsequent annual member meeting if such meeting will be held no sooner than forty five (45) days after the filing of such petition. Each page of the petition shall, in the forepart thereof, state the name(s) and address(es) of the member(s) filing such charge(s), a verbatim statement of such charge(s) and the name(s) of the director(s) against whom such charge(s) is(are) being made. The petition shall be signed by each member in the same name as he is billed by the Cooperative and shall state the signatory's address as the same appears on such billings. Notice of such charge(s) verbatim, of the director(s) against whom the charge(s) have been made, of the member(s) filing the charge(s) and the purpose of the meeting shall be contained in the notice of the meeting, or separately noticed to the members not less than ten (10) days prior to the member meeting at which the matter will be acted upon: PROVIDED, that the notice shall set forth (in alphabetical order) only twenty (20) of the names of the members filing one or more charges if twenty (20) or more member's file the same charge(s) against the same director(s). Such director(s) shall be informed in writing of the charge(s) after they have been validly filed and at least twenty (20) days prior to the meeting of the members at which the charge(s) are to be considered, and shall have an opportunity at the meeting to be heard in person, by witnesses, by counsel or any combination of such, and to present evidence in respect of the charge(s); and the person(s) bringing the charge(s) shall have the same opportunity, but must be heard first. The question of the removal of such director(s) shall, separately for each if more than one has been charged, be considered and voted upon at such meeting, and any vacancy created by such removal shall be filled by vote of the members at such meeting without compliance with the foregoing provisions with respect to nominations, except that nominations shall be made from the floor: PROVIDED, that the question of the removal of a director shall not be voted upon at all unless some evidence in support of the charge(s) against him shall have been presented during the meeting through oral statements, documents or otherwise. A newly elected director shall be from or with respect to the same Directorate District as was the director whose office he succeeds and shall serve the unexpired portion of the removed director's term.

(As Amended April 20, 1985)

91-13-97

ARTICLE II

MEETINGS OF MEMBERS

Section 1

ANNUAL MEETING

The annual meeting of the members shall be held at such place in the Colorado or Utah Certified Service Area of the Cooperative and at such time as may be selected by the Board of Directors of Empire Electric Association, Inc., and at such meeting all business properly coming before the stockholders shall be transacted, including the election of directors and the consideration of reports of the officers of said company. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Cooperative.
(As Amended September 27, 1986)

Section 2

SPECIAL MEETINGS

Special meetings of the members may be called by at least six (6) Directors or upon a written request signed by at least 10 per centum (10%) of all the members and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the members may be held at any place within the Colorado or Utah Certified Service Area of the Cooperative specified in the notice of the Special meeting.
(As Amended March 20, 1982)

Section 3

NOTICE OF MEMBERS' MEETINGS

Public notice of the time and place of the holding of each meeting shall be published not less than ten (10) nor more than thirty (30) days previous thereto in the newspaper printed in the county where the principal office of the Cooperative is located, and if there be no such newspaper printed in the county where the principal office of the Cooperative is located, then a newspaper printed in an adjoining county. Written or printed notice stating the place, day and hour of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called shall also be delivered not less than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, or by the persons calling the meeting, to each member; and no business shall be transacted at such special meeting except as shall be mentioned in the notice. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the member at his address as it appears on the records of the Cooperative, with postage thereon paid. The failure of any member to receive notice of an annual or special meeting of the members shall not invalidate any action which may be taken by the members at any such meeting.
(As Amended March 26, 1977)

91-13-97

Section 4

[illegible]

The quorum requirements at all meetings of the members shall be at least one hundred [illegible] members in person for the transaction of all business, [illegible] the By-laws and the Certificate of Incorporation [illegible] less [illegible] at any meeting a majority of those present in person [illegible] from time to time without further notice. There shall [illegible] quorum requirement for election of directors.

(As Amended September 27, 1986)

Section 5

VOTING

Each member shall be entitled to only one (1) vote upon each matter submitted to a vote at a meeting of the members. All questions shall be decided by a vote of a majority of the members voting thereon in person except as otherwise provided by law, the Certificate of Incorporation or these By-laws.

Each member of the Cooperative shall be entitled to vote either at a meeting held for such purpose or by mail. Mail voting shall be in writing on ballots provided by the Cooperative and shall be received by the Cooperative not less than five (5) days prior the the scheduled membership meeting.

The Secretary shall be responsible for mailing with the notice of the meeting, or separately, but at least fifteen (15) days before the date of the meeting, the official ballot for voting on said issue(s). Such mailing shall be to all members of the Cooperative and may be with or part of the ballot for the election of directors.

The mail ballot shall be voted by the member, placed in a special envelope provided for the purpose so as to conceal the marking of the ballot, deposited in a return envelope, which must be properly signed or executed by the voting member, and mailed back to the Cooperative. Envelopes containing mail ballots shall remain sealed and uncounted until the scheduled membership meeting.

The presence of a member at the meeting of the members shall revoke a mail vote theretofore executed by such member and such member shall be entitled to vote at such meeting in the same manner and with the same effect as if such member had not voted by mail. Voting by proxy or cumulative voting shall be prohibited.

Manner of voting on all issues including election of directors: Natural persons may vote their membership by mail or by being personally present at the meeting. A partnership may vote its membership by any general partner, limited partnerships may vote by the vote of any general partner.

Corporations, associations, churches, school districts, and government subdivisions may vote their membership by mail by properly executing a certification which shall be on the return envelope. These entities may vote said ballot in person by the presence of an officer of the entity, provided there is a properly executed and signed resolution from the entity authorizing the holder of the same to withdraw the mail ballot for purposes of voting at the meeting.

Trusts and Estates: A personal representative for an estate or a trustee for a trust may vote the estate or trust membership by executing a written ballot in

91-13-97

the proper name of the estate or the trust. That same personal representative or trustee may withdraw the written ballot if that person is present at the meeting. Said person shall be entitled to vote at such meeting in the same manner and with the same effect as if such member had not voted by mail.

In the case of a mail ballot and its subsequent revocation, or in the case of a member appearing in person for the meeting, the Cooperative reserves the right to request proper identification of any individual so voting or to request such evidence as is necessary to establish the authority of a natural person's right to vote the membership of any entity not a natural person.

If a joint membership is held, such membership shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members. (As Amended April 23, 1988)

Section 6

ORDER OF BUSINESS

The order of business at the annual meeting of the members and, so far as possible, at all other meetings of the members, shall be essentially as follows, except the Board of Directors or the members themselves may from time to time establish a different order of business for the purpose of assuring the earlier consideration of an action upon any item of business the transaction of which is necessary or desirable in advance of any other item of business provided that no business except election of directors and adjournment of the meeting to another time and place may be transacted until and unless the existence of a quorum is first established.

1. Report on the number of members present in order to determine the existence of a quorum.
2. Reading of the notice of the meeting and proof of the due publication or mailing thereof, or the waiver or waivers of notice of the meeting, as the case may be.
3. Reading of the unapproved minutes of previous meetings of the members and the taking of necessary action thereon.
4. Presentation and consideration of reports of officers, directors and committees.
5. Election of Board members. The Election Committee shall tabulate the ballots, certify the election results and give public notice of the results within five (5) days following the election.
6. Unfinished business.
7. New business.
8. Adjournment.

(As Amended September 27, 1986)

91-13-97

ARTICLE III

DIRECTORS

Section 1

GENERAL POWERS

The business and affairs of the Cooperative shall be managed by a Board of ten (10) Directors which shall exercise all of the powers of the Cooperative including the authority in its sole discretion to place any issue on the ballot at any regular or specially called membership meeting, except such as are by law or by the Certificate of Incorporation of the Cooperative or by these By-laws conferred upon or reserved to the members. (As Amended April 23, 1988)

Secton 2

QUALIFICATIONS AND TENURE

At the general election of stockholders to be held February 27, 1960, there shall be elected ten directors of this Association by ballot, by and from the members, to serve, until their successors shall have been elected and shall have qualified, subject to the provisions of these by-laws with respect to removal of Directors, from the districts as set forth in Section 3 of Article III. At the organization meeting of the Board of Directors to be held following the said annual meeting of February 27, 1960, the directors shall then select from their membership three persons to serve as director for a term of four years, three directors to serve for a term of three years, two directors to serve for a term of two years, and two directors to serve for a term of one year. Commencing with the annual meeting in February, 1961, there shall be elected two directors to serve for a term of four years; in the next succeeding election in February, 1962, there shall be two directors elected to serve for a term of four years; in the annual meeting of 1963, there shall be elected three directors to serve for a term of four years, and in the annual meeting of February, 1964, there shall be elected three directors to serve for a term of four years and at each annual meeting held thereafter, there shall be an election to fill the offices of those directors whose terms have expired that year. Said persons to be elected for a term of four years. No member shall be eligible to become or remain a director, or to hold any position of trust in the Cooperative who is not a member of the Association, and a bona fide resident of the particular district which he is to represent, or who is in any way employed by or financially interested in a competing enterprise or business selling electric energy or supplies to the Cooperative, or a business primarily engaged in selling electrical or plumbing appliances, fixtures or supplies to the members of the Cooperative. When a membership is held jointly by a husband and wife, either one, but not both, may be elected a Director, provided however, that neither one shall be eligible to become or remain a Director or to hold a position of trust in the Cooperative unless both shall meet the qualifications above set forth. Nothing in this section contained shall, or shall be construed to, affect in any manner the validity

91-13-97

of any action taken at any meeting of the Board of Directors.

Upon establishment of the fact that a board member is holding the office of Director in violation of any of the foregoing provisions, the board shall remove such board member from office. (As Amended March 17, 1973)

Section 3

VOTING DISTRICTS

The territory served or to be served is hereby divided into 10 districts, and each district shall be represented by one director.

Not less than one hundred twenty (120) days before any meeting of the members at which directors are to be elected, the Board of Directors shall review the composition of the several districts and if it should be found that inequalities in representation have developed which can be corrected by a redelineation of districts, the Board of Directors shall reconstitute the districts so that each shall have as nearly as possible equality of representation. In case of extensions into territory not included in any district members thereof shall be deemed to reside in that number District the boundary line of which is closest to such member's premises.

The Board of Directors shall cause an updated map of revised Director Districts and a written description of such Director Districts to be available for public review at the offices of Empire Electric Association, Inc., 801 North Broadway, Cortez, Colorado.

(As Amended September 27, 1986)

Section 3-A

NOMINATION OF DIRECTORS

Nominations for Director to serve on the Board of Directors shall be by written petition only. Any petition for nomination shall be in writing and be signed by not less than fifteen (15) members of the Association who reside in the District for which the nomination is made. The Association will furnish official petition forms for this purpose. The official petition shall designate the name of the nominee, the term for which the nominee is being nominated and the Director District for which the nomination is made.

All nominating petitions shall be filed at the office of the Cooperative with the Secretary at least forty-five (45) days but not more than ninety (90) days before the meeting at which Board Members are to be elected.

The Secretary shall post all nominations thus made at the principal office of the Cooperative at least forty-five (45) days before the meeting.

Nominations by petition will be the exclusive method of nominaton.

(As Amended September 27, 1986)

91-13-9n

Section 3-B

ELECTION OF DIRECTORS

Each member of the Cooperative shall be entitled to vote in the election of directors either at a meeting held for such purpose or by mail. Mail voting shall be in writing on ballots provided by the Cooperative and shall be received by the Cooperative not less than five (5) days prior to the election of board members.

The Secretary shall be responsible for mailing with the notice of the meeting, or separately, but at least fifteen (15) days before the date of the meeting, the official ballot for election of board members with the names and addresses of candidates nominated and the director district for which nominated. Such mailing shall be to all members of the Association.

The mail ballot shall be voted by the member, placed in a special envelope provided for the purpose so as to conceal the marking of the ballot, deposited in a return envelope which must be signed by the voting member, and mailed back to the Association. Envelopes containing mail ballots shall remain sealed and uncounted until the meeting held for the purpose of electing the Board of Directors.

The presence of a member at a meeting of the members shall revoke a mail vote theretofore executed by such member, and such member shall be entitled to vote at such meeting in the same manner and with the same effect as if such member had not voted by mail.

Voting for directors on the Board of Directors by proxy or cumulative voting shall be prohibited.

(As Amended April 23, 1988)

Section 4

VACANCIES

Subject to the provisions of the By-Laws, with respect to the removal of directors, vacancies occurring in the Board of Directors shall be filled by a majority vote of the remaining directors, and directors thus elected shall serve until the next annual meeting of the members or until their successors shall have been elected and shall have qualified. The members selected to fill a vacancy on the Board of Directors must reside in the same district as the director to whose office he succeeds. (As Amended April 6, 1944)

91-13-97

Section 5

COMPENSATION

Directors as such shall not receive any salary for their services, but by Resolution of the Board of Directors a fixed sum and expenses of attendance, if any, may be allowed for attendance at each meeting of the Board of Directors, and such reasonable expenses entailed in attending State, Regional, and National meetings. Except in emergencies, no Director shall receive compensation for serving the Cooperative in any other capacity, nor shall any close relative of a Director receive compensation for serving the Cooperative unless such compensaton shall be specifically authorized by a vote of the members. (As Amended February 26, 1965)

Section 6

RULES AND REGULATIONS

The Board of Directors shall have power to make and adopt such rules and regulations, not inconsistent with law, the Certificate of Incorporation of the Cooperative or these By-Laws, as it may deem advisable for the management, administration and regulation of the business and affairs of the Cooperative.

Section 7

ACCOUNTING SYSTEM AND REPORTS

The Board of Directors shall cause to be established and maintained a complete accounting system, which, among other things, subject to applicable laws and rules and regulations of any regulatory body, shall conform to such accounting system as may from time to time be designated by the Administrator of the Rural Electrification Administration of the United States of America. The Board of Directors shall also, after the close of each fiscal year, cause to be made by a Certified Public Accountant a full and complete audit of the accounts, books and financial condition of the Cooperative. A report of such audit shall be submitted to the members at the following annual meeting. (As Amended March 17, 1973 and March 26, 1977)

91-13-9n

Section 8

CHANGE IN RATES

Written notice shall be given to the Administrator of the Rural Electrification Administration of the United States of America, National Rural Utilities Cooperative Finance Corporation or any other lender of the Cooperative not less than ninety (90) days prior to the date upon which any proposed changes in the rates charged by the Cooperative for electric energy becomes effective except that written or public notice shall be given to consumers not less than thirty (30) days prior to the date upon which any proposed change in rates, extension policies or rules and regulations are to become effective.

(As Amended September 27, 1986)

ARTICLE IV

MEETINGS OF DIRECTORS

Section 1

REGULAR MEETINGS

A regular meeting of the Board of Directors shall be held without notice, immediately after certification of the election results, for the purpose of electing officers as provided for in these bylaws. A regular meeting of the Board of Directors shall also be held monthly at such time and place within the Colorado or Utah Certificated Area of the Cooperative as designated by the Board of Directors, upon notice to be given as hereinafter provided.

All meetings of the Cooperatives are declared to be open meetings and open to the members, consumers and news media at all times; but the Cooperative, by a two-thirds affirmative vote of the board members present, may go into executive session for consideration of documents or testimony given in confidence, but the Cooperative shall not make final policy decisions or adopt or approve any resolution, rule, regulation, or formal action, any contract, or any action calling for the payment of money at any session which is closed to the members, consumers and news media.

Prior to the time the Board of Directors convenes in executive session, the Board shall announce the general topic of the executive session.

Any action taken contrary to the provisions of this session shall be null and void and without force or effect.

(As Amended September 27, 1986)

91-13-97

Section 2

SPECIAL MEETINGS

Special Meetings of the Board may be called by the President or any three (3) Directors, and it shall thereupon be the duty of the Secretary to cause notice of such meetings to be given as hereinafter provided. The President or Board members calling the meeting shall fix the time and place of the meeting.
(As Amended March 17, 1973)

Section 3

NOTICE

Written notice of the time, place and purpose of any meeting of the Board of Directors shall be delivered to each board member either personally or by mail, by or at the direction of the Secretary, or upon a default by the Secretary, by the President or the board member calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the board member at his address as it appears on the records of the Cooperative, with postage thereon prepaid, at least five (5) days before the date of the meeting.

Notice of the time and place of a meeting of the Board of Directors and a copy of the agenda for such meeting shall be posted in every service office maintained by the Cooperative at least ten (10) days before the meeting. The agenda shall specifically designate the issues or questions to be discussed, or the actions to be taken, at the meeting. Copies of said agenda shall be available at each service office for members and consumers Notwithstanding this paragraph, special meetings are authorized to address emergency situations beyond the control of the Board of Directors.
(As Amended September 27, 1986)

Section 4

QUORUM

A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided, that if less than a majority of the directors is present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

ARTICLE V

OFFICERS

Section 1
NUMBER

The officers of the Cooperative shall be a President, Vice-President, Secretary and Treasurer. The offices of Secretary and of Treasurer may be held by the same person.

91-13-97

Section 2

ELECTION AND TERM OF OFFICE

The officers shall be elected by ballot, annually, by and from the Board of Directors at the meeting of the Board of Directors held immediately after certification of the election results following the annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until the first meeting of the Board of Directors following the next succeeding annual meeting of the members or until his successor shall have been elected and shall have qualified. A vacancy in any office shall be filled by the Board of Directors for the unexpired portion of the term.

(As Amended September 27, 1986)

Section 3

REMOVAL

Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Cooperative will be served thereby.

Section 4

VACANCIES

Except as otherwise provided in these By-Laws, a vacancy in any office may be filled by the Board of Directors for the unexpired portion of the term.

Section 5

PRESIDENT

The President:

(a) Shall be the principal executive officer of the Cooperative and shall preside at all meetings of the members and of the Board of Directors

(b) shall sign, with the Secretary, certificates of membership the issue of which shall have been authorized by Resolution of the Board of Directors, and may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board of Directors to be executed except in cases in which the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed and

(c) in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

91-13-97

[illegible]

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Section 7

SECRETARY

The Secretary shall be responsible for:

(a) Keep the minutes of the meetings of the members and the Board of Directors in one or more books provided for that purpose;

(b) See that all notices are duly given in accordance with these By-Laws or as required by law;

(c) Be custodian of the Corporate records and of the seal of the Cooperative and see that the seal of the Cooperative is affixed to all certificates of membership prior to the issue thereof and to all documents, the execution of which on behalf of the Cooperative under its seal is duly authorized in accordance with the provisions of these By-Laws;

(d) Keep a register of the post office address of each member which shall be furnished to the Secretary by such member;

(e) Sign with the President certificates of membership, the issue of which shall have been authorized by resolution of the Board of Directors

(f) Have general charge of the books of the Cooperative in which record of the members is kept;

(g) Keep on file at all times a complete copy of the By-Laws of the Cooperative containing all amendments thereto, which copy shall always be open to inspection of any member, and at the expense of the Cooperative forward a copy of the By-Laws and all amendments thereto to each member; and

(h) in general perform all duties incident to the offices of Secretary and such other duties as from time to time may be assigned to him by the Board of Directors.

(As Amended March 26, 1977)

91-13-97

Section 8

TREASURER

The Treasurer shall be responsible for:

(a) Have charge and custody of and be responsible for all funds and securities of the Cooperative;

(b) Receive and give receipts for moneys due and payable to the Cooperative from any source whatsoever, and deposit all such moneys in the name of the Cooperative in such bank or banks as shall be selected in accordance with the provisions of these By-Laws; and

(c) In general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Directors.

(As Amended March 26, 1977)

Section 9

MANAGER

The Board of Directors may appoint a manager who may be, but who shall not be required to be, a member of the Cooperative. The manager shall perform such duties as the Board of Directors may from time to time require of him and shall have such authority as the Board of Directors may from time to time vest in him.

Section 10

BOND OF OFFICERS

The Board of Directors shall require the Treasurer or any other officer of the Cooperative charged with responsibility for the custody of any of its funds or property, to give bond in such sum and with such surety as the Board of Directors shall determine. The Board of Directors in its discretion may also require any other officer, agent or employee of the Cooperative to give bond in such amount and with such surety as it shall determine.

Section 11

COMPENSATION

The compensation, if any, of any officer, agent or employee who is also a Director or close relative of a Director, shall be determined by the members, as provided elsewhere in these By-Laws, and the powers, duties and compensation of any other officers, agents and employees shall be fixed by the Board of Directors.

91-13-9n

Section 12

REPORTS

The officers of the Cooperative shall submit at each annual meeting of the members reports covering the business of the Cooperative for the previous fiscal year and showing the condition of the Cooperative at the close of such fiscal year.

Section 13

INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES

Each director, officer and employee of the Association now or hereafter serving as such, shall be indemnified by the Association against any and all claims and liabilities, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) to which he/she has or shall become subject by reason of any action alleged to have been taken, omitted, or neglected by him/her, while serving as such, if he/she acted in good faith and in such a manner that he/she reasonably believed to be in, or not opposed to, the best interests of the Association, and with respect to any criminal action of proceedings, he/she had no reasonable cause to believe his/her conduct was unlawful; every director, officer or employee shall be indemnified against all expenses, court costs, expert witness fees, attorney fees, judgments, fines and amounts paid in settlement or satisfaction of judgment actually or reasonably incurred by him/her in connection with such action, suit or proceeding, provided such director, officer or employee was acting within the scope of his/her employment at the time the claim arose.

The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer or employee, against any liability asserted against him/her in any such capacity as stated in the immediately preceding paragraph indemnification by the Association will cover all amounts above and beyond policy coverage or items not included in coverages.

The right of indemnification herein-above provided for shall not be exclusive of any rights to which any director, officer or employee of the Association may be entitled by law. (As Adopted September 27, 1986)

91-13-97

ARTICLE VI

CONTRACTS, CHECKS AND DEPOSITS

Section 1

CONTRACTS

Except as otherwise provided in these By-Laws, the Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

Section 2

CHECKS, DRAFTS, ETC.

All checks, drafts or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Cooperative shall be signed by such officer or officers of the Cooperative and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 3

DEPOSITS

All funds of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such bank or banks as the Board of Directors may select.

ARTICLE VII

MEMBERSHIP CERTIFICATES

Section 1

CERTIFICATES OF MEMBERSHIP

Membership in the Cooperative shall be evidenced by a certificate of membership which shall be in such form and shall contain such provisions as shall be determined by the Board of Directors not contrary to, or inconsistent with, the certificate of incorporation of the Cooperative or these By-Laws. Such certificate shall be signed by the President and the Secretary of the Cooperative and the corporate seal shall be affixed thereto.

91-13-90

Section 2

ISSUE OF MEMBERSHIP CERTIFICATES

No membership certificates shall be issued for less than the membership fee fixed in these By-Laws, nor until such membership fee has been fully paid for in cash, and such payment has been deposited with the treasurer.

Section 3

LOST CERTIFICATE

In case of a lost, destroyed or mutilated certificate, a new certificate may be issued therefor upon such terms and such indemnity to the Cooperative as the Board of Directors may prescribe.

ARTICLE VIII

NON-PROFIT OPERATION

Section 1

INTEREST ON DIVIDENDS ON CAPITAL PROHIBITED

The Cooperative shall at all times be operated on a cooperative non-profit basis, for the mutual benefit of its patrons. No interest or dividends shall be paid or payable by the Cooperative or any capital furnished by its patrons.

Section 2

PATRONAGE CAPITAL IN CONNECTION WITH FURNISHING ELECTRIC ENERGY

In the furnishing of electric energy, the Cooperative's operations shall be so conducted that all patrons, members and non-members alike, will, through their patronage, furnish capital for the Cooperative. In order to induce patronage, and to assure that the Cooperative will operate on a non-profit basis, the Cooperative is obligated to account on a patronage basis to all of its patrons, members and non-members alike, for all amounts received, and receivable from the furnishing of electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric energy. All such amounts in excess of operating costs, and expenses at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the patrons, members and non-members alike, as capital. The Cooperative is obligated to pay, by credit to a capital account for each patron, all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such manner that at the end of each fiscal year, the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron, and the Cooperative shall, within a reasonable time after the close of the fiscal year, notify each patron of the amount of capital so credited to his account. All such amounts credited to the capital account of any

person shall have the same status as though they had been paid to the patron in cash, in pursuance of a legal obligation to do so; and the patron had then furnished the Cooperative corresponding amounts of capital.

In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credit shall be retired without priority on a pro-rata basis before any payments are made on account of property rights of members. If, at any time, prior to the dissolution or liquidation, the Board of Directors shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to patrons' accounts may be retired in full or in part. Any such retirement of capital shall be made in order of priority, according to year in which the capital was furnished and credited, the capital first received by the Cooperative being first retired. In no event, however, may any such capital be retired unless, after the proposed retirement, the capital of the Cooperative shall equal at least the amount required by the Rural Electrification Administration as total assets of the Cooperative.

When retirement of capital is made pursuant hereto, the Association shall have the right to apply all or any part of the capital to be retired against any outstanding indebtedness of the patron.

Capital credited to the account of each patron shall be assignable only on the books of the Cooperative, pursuant to written instructions from the assignor and only to successors in interest, or successors in occupancy in all or part of such patron's premises served by the Cooperative, unless the Board of Directors, acting upon policies of general application shall determine otherwise. In the event that a non-member patron shall elect to become a member of the Cooperative, the capital credited to the account of such non-member patron shall be applied by the Cooperative toward the payment of a membership fee on behalf of such non-member patron.

Notwithstanding any other provisions of these By-Laws, the Board of Directors, at its discretion, shall have the power at any time upon the death of any patron, who was a natural person, if the legal representatives of his estate shall request in writing, that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of these By-Laws, to retire capital credited to any such patron, immediately upon such terms and conditions as the Board of Directors, acting under policies of general application, and the legal representatives of such patron's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby.

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Certificate of Incorporation and By-Laws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patron are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of this Article of the By-Laws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's office. (As Amended February 29, 1964 and March 26, 1977)

91-13-90

91-13-90

Section 3

PATRONAGE REFUNDS IN CONNECTION WITH FURNISHING

OTHER SERVICES

In the event that the Cooperative should engage in the business of furnishing goods or services other than electric energy, all amounts received and receivable therefrom which are in excess of costs and expenses properly chargeable against the furnishing of such goods or services shall, insofar as permitted by law, be prorated annually, on a patronage basis and returned to those patrons, members, and non-members alike, from whom such amounts were obtained. (As Amended March 1, 1952)

Section 4

NOTIFICATION OF PATRONAGE CAPITAL CREDITS

Commencing with the year 1957 and yearly thereafter on or before the first day of July of each year, the Association shall notify each patron of this Association by United States Mails, addressed to such patron at his post office address as shown on the official records of the Assocation, the amount of his, hers or its patronage credits accrued as of January 1 of each year; provided that if such notice is returned to the Association, due to the patron having moved, being unclaimed or because or insufficient address, then and in such event such Capital Credit may be declared forfeited by the Board of Directors and under such terms and conditions as they may elect.

(Added March 1, 1957)

ARTICLE IX

WAIVER OF NOTICE

Any member or director may waive, in writing any notice of meetings required to be given by these By-Laws.

91-13-97

ARTICLE X

DISPOSITION OF PROPERTY

The Cooperative may not sell, mortgage, lease or otherwise dispose of or encumber any of its property other than:

(a) Property which in the judgement of the Board of Directors neither is nor will be necessary or useful in operating and maintaining the Cooperative's system and facilities; provided, however, that all sales of such property shall not, in any one (1) year exceed in value ten per centum (10 per cent) of the value of all the property of the Cooperative;

(b) Services of all kinds, including electric energy; and

(c) Personal property acquired for resale; unless such sale, mortgage, lease or other disposition or encumbrance is authorized by the affirmative vote of at least two-thirds (2/3) of the members, and the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice; provided, however, that notwithstanding anything herein contained the Board of Directors, without authorization by the members, shall have full power and authority to borrow money from the National Rural Utilities Cooperate Finance Corporation, United States of America, Reconstruction Finance Corporation, or any agency or instrumentality thereof, and in connection with such borrowing to authorize the making and issuance of bonds, notes or other evidences of indebtedness and, to secure the payment thereof, to authorize the execution and delivery of a mortgage or mortgages, or a deed or deeds of trust upon, or the pledging or encumbrancing of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Cooperative whether acquired or to be acquired and wherever situated, all upon such terms and conditions as the Board of Directors shall determine. (As Amended February 27, 1971 and April 28, 1990)

ARTICLE XI

FISCAL YEAR

The fiscal year of the Cooperative shall begin on the first day of January of each year and end on the thirty-first day of December of the same year.

91-13-9n

ARTICLE XII

MEMBERSHIP IN OTHER ORGANIZATIONS

The Cooperative shall not become a member of any other organization without an affirmative vote of the members at a meeting called as provided in these By-Laws, and the notice of said meeting shall specify that action is to be taken upon such proposed membership as an item of business.

The words "any other organization" as used in the preceding paragraph are hereby defined to mean "any other competing electrical utility". (As Amended February 24, 1962)

ARTICLE XIII

SEAL

The corporate seal of the Cooperative shall be in the form of a circle and shall have inscribed thereon the name of the Cooperative and the words "Corporate Seal, Colorado".

ARTICLE XIV

AMENDMENTS

These By-Laws may be altered, amended or repealed by a majority of the members voting thereon by mail or at the meeting, provided the notice shall have contained a copy of the proposed alteration, amendment or repeal. (As Amended April 28, 1990)

BEABER PRINTING CO.

91-13-98

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.
12076 GRANT STREET P.O. BOX 33695 DENVER, COLORADO 80233 (303) 452-6111

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Tri-State Generation and Transmission Association, Inc. respectfully submits two copies of comments in response to a request for comments published in the May 24, 1991, Federal Register at page 23892 concerning the above case.

Tri-State Generation and Transmission Association, Inc. is a Colorado generation and transmission cooperative formed in 1952 to provide safe and reliable electric power at the lowest possible cost to its member cooperatives. In such capacity Tri-State foresees significant problems that will affect its Members in the proposed Section 41.007 (j) regarding additional language to all contracts between Federal facilities and cooperative utilities.

Although this proposed rule does not appear to have a direct impact upon Tri-State, Tri-State believes the language to be violative of each of our Members' Bylaws. Each Member retires capital in order of priority according to the year the capital was furnished and credited, on a first-in-first out basis, maintaining a multiple year rotation period according to its Bylaws.

Tri-State itself, as a cooperative, maintains a similar capital credit retirement program for its Members, the distribution cooperatives. To prepay credits would not only violate Tri-State's Bylaws but would destroy the fundamental fairness of equality which is one hallmark of a cooperative. The same consequence would occur with each of our Members if they were required to pay a government agency out of turn.

Tri-State supports no change in capital credit retirement policy for government agencies. Each agency would still receive its credits but upon the same schedule as all

JUL 22 1991

91-13-98

other members the year in which they were earned - 10 or 15 years later. Equality in the Member/customer class would thus be preserved.

Yours truly,

Frank R. Knutson
General Manager

FRK/df

R.S.R. ELECTRIC COOPERATIVE, INC.
HIGHWAY 13 WEST · P.O. DRAWER 158
MILNOR, NORTH DAKOTA 58060
(701) 427-5241

91-13-99

July 19, 1991

General Services Administration
FAR Secretariot (VRS)
18th and F Street, N.W. Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13
Section 52.241-13
Section 52.24-8

Dear Sirs:

The proposed method of processing capital credits disregards common accounting practice and procedures.

(a) The board of directors of an electric distribution cooperative at each year end determines the amount if any of refunds of capital credits. Determining factors such as cash flow, budget projections capital credit rotation goals and the Rural Electric Administration (REA) rules governing payments of capital credits must be considered each fiscal year end. The section "which specifies the method and time of payment" would be unknown when a service contract was being drafted.

(b) "Within 60 days" should be extended to within 90 days. The fiscal year end closing of the accounting record, having on C.P.A. audit and then having the results of a year end C.P.A. audit reported to the board of directors would require more than 60 days.

The statement "date the payment is to be made" disregards those conditions identified under section (a) above.

(c) Capital credits are accumulated on one membership irregardless of the number of meter locations the member has. The capital credit refunds are made when the board of directors determine that it is in the best interest of the cooperative and after R.E.A. has approved such cash payouts for capital credits.

(d) For a 50 year period our cooperative has made payments to various governmental agencies with a general fund check which will be the case in the future. No need is understood for a certified check.

JUL 22 1991

91-13-99

The proposed handling of 52241-8 connection charges is contrary to reasonable business practices.

There are cooperative members who have had the same service for many years. Why should the cost to connect a new member be born by all the existing members?

The monthly electric rates at this cooperative, because of the limited number of new members do not include the expense associated with a new connect. I suggest that you contracting officers be allowed to negotiate with each cooperative utility so that they can learn about the unique problems associated with providing electric power when we have about one member consumer per mile of power line.

Sincerely,

E.L. Brauer, General Manager
R.S.R. Electric Cooperative

ELB/pc

91-13-100

BRIDGER VALLEY ELECTRIC ASSOCIATION

P.O. Box 399, Mountain View, Wyoming 82939
(307) 786-2800
FAX (307) 786-4362

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Bridger Valley Electric Association, Inc. is an electric distribution cooperative serving rural areas of Uinta and Sweetwater counties in Wyoming and Daggett and Summit counties in Utah. We serve several U.S. government agencies with electric utility service. We are very concerned with the proposed rule change currently under consideration as FAR Case 91-13. We hereby submit the following comments regarding the proposed rule.

We believe rules mandating contracts covering electric utility service are not needed and therefore a waste of time and money. There are at least two reasons why this is so.

1) In our case the rates charged and the terms of the service provided are governed by the public service commissions of the states in which we serve. The rates and terms of service are the same for Federal Government agencies as for any other consumer of the same class. In most cases a contract is simply of no value because the rates and service conditions are dictated by the state public service commission.

2) The Federal Government agencies we serve are located within the exclusive service territory as delineated by the state public service commissions. We are the only supplier authorized to provide electric utility service in these areas. There is absolutely no need for a contract because we are only supplier available.

The costs of drawing up, executing, and administrating a contract for utility service in these circumstances is totally unwarranted. These unnecessary costs impact the Federal Government as well as the local utility.

We would also like to direct some comments to section 41.007(j) of the proposed rules which provides for specific contract language regarding capital credits when the Federal Government is a member of a cooperative. Paragraph (a) of the clause at 52.241-13 states that the "Government is a member of the (Cooperative name) and as any other member is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method

JUL 22 1991

91-13-10

and time of payment." We agree that the by-laws of the cooperative should govern the method and time of payment of capital credits. Most rural electric cooperative by-laws state the cooperative's obligation to allocate capital credits, but leave the determination of when and how they are paid to the policies as established by the cooperative's board of directors.

Paragraph (b) would be nearly impossible for Bridger Valley Electric to comply with. We cannot determine within 60 days after the end of our fiscal year the amount of accrued capital credits due to each of our consumers. In addition, at that time it is not known when the capital credits will be paid. We simply could not furnish the information regarding when the capital credits will be paid as proscribed by this paragraph.

Paragraphs (c) and (d) are the most troubling of any of the proposed rules. Paragraph (a) states that the Government should be treated the same as any other member of the cooperative in its entitlement to capital credits. Paragraphs (c) and (d) then state that the Government should receive specific preferential treatment in the payment of capital credits since no other business or agency receives a capital credit refund upon termination or expiration of the contract. These two paragraphs would subvert the by-laws of the cooperative in determining how and when capital credits are paid.

The provisions contained in these paragraphs are not good public policy and may be in violation of state regulatory guidelines because of the preferential treatment they would give to Federal Government agencies. It is simply not fair for the government to receive a capital credit payment that all other consumers must wait ten or twenty years to receive.

We strongly urge that Paragraph (b), (c), and (d) of clause 52.241-13 be deleted from this rule. Let the allocation and payment of capital credits be governed by the by-laws of the cooperative as stated in Paragraph (a). If these provisions are left in the final rule the result may that we would refuse to sign contracts to provide electric service to the Federal Government.

Dated this 19th day of July, 1991

By: F. Danny Eyre
F. Danny Eyre
Finance Manager
BRIDGER VALLEY ELECTRIC
ASSOCIATION, INC.

91-13-101

NORTHERN LIGHTS, Inc.

1423 Dover Highway • P.O. Box 310 • Sandpoint, Idaho 83864 • 208-263-5141

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Dear Sir or Madam:

Careful review of the proposed rules found at 23982 Federal Register/Vol. 56. No. 101/Friday, May 24, 1991, appear to be nothing more than an attempt to circumvent federal law which requires "that none of the funds appropriated by the Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and elective utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements," by requiring contract clauses that would require many cooperatives to violate their own By-laws, Articles of incorporation, state law, and/or provisions in their mortgage agreements with the Rural Electrification Administration, National Rural Utilities Cooperative Finance Corporation and/or others.

Starting at 23982 and running through 23987, there are many references to Area Wide Contracts, Standard Specification Formats, Standard Annual Review Formats, Authorization Forms, Standard Form (SF) 26 Award/Contract. However, there are no samples or specifications included, so it is impossible to anticipate just how time consuming this paperwork will be. no final rules should be published until after interested parties have had an opportunity to comment on these items.

The proposed rules state that "The paperwork reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public. This is a direct contradiction of the requirements under 41.004-5 which has a detailed list of items that will be required, many of which will require detailed analysis.

22 1991

91-13-101

Section 41.005 also requires a substantial amount of paperwork of both the agency desiring service and the utility that will supply that service, again in direct conflict with the statement made concerning the Paperwork Reduction Act.

There are a number of items under Part 52-Solicitation Provisions and Contract Clauses that would force us to refuse to be a party to any contract that contained them. They are:

1. Service Provisions
   (a) Measurement of Service
   (1) "and read by the contractor at its expense." We are a rural electric cooperative serving a large area with low density. To hold down costs, our members read their own meters and supply them to us. This provision would force us to give preferential treatment to government installations and would increase the costs to our other members.

   (2) "The contractor shall read all meters at periodic intervals of approximately 30 days, etc." Again, we are a low density rural electric cooperative and require our members to read their meters and supply us with them. As pointed out above, this provision would require preferential treatment for government installations at the expense of other members.

   (b) Meter Test
   (1) "test contractor-installed meters at intervals not exceeding one year, etc." Electric meters are probably the most accurate and dependable measuring device used in a trade or business today. Requiring annual testing is absolutely not cost-effective. It will only add to the already high costs of system operations and provide no benefit.

   (2) (3) These two items are part of the operating requirements of every electric utility that I am familiar with and are not needed in a contract.

   (d) Continuity of Service
   (1) "or other variation of service shall aggregate more than one hour during any period hereunder, an equitable adjustment shall be made in the monthly billing, etc." Billings for electric service are based on the amount of power actually used. During outages, no power would be used so there would be no bill for power used. For this reason, this clause is unnecessary and excess verbiage.

91-13-101

(2) This section poses a problem in that it could transfer costs from the government to the other members on an inequitable and discriminatory basis. Depending on the circumstances, it could provide for preferential treatment of the government at the expense of the other members.

52.241-7 Change in Terms and Conditions of Service for Unregulated Suppliers. This entire clause is unacceptable as written. It would confer on the government rights and privileges not available to any other members of the cooperative. It would require that the cooperative incur additional costs for the benefit of the government at the expense of the other members.

Also under item (c), it refers to a Disputes clause, but I can find nothing in these proposed rules to indicate what might be required to settle a dispute. Until the proposed procedures for settling a dispute are published and we have an opportunity to comment on them, no final rule should be published.

52.241-B Connection Charge. This section again gives preferential treatment to the government at the expense of the remaining members of the cooperative and, therefore, would be totally unacceptable.

52.241-13 Capital Credits.

(b) This section would be impossible to comply with. We would be unable to ascertain the amount of capital credits to be allocated until after the year-end audit is completed and the Board of Directors authorizes the allocation of capital credits. This would normally be somewhere between 120 to 180 days after the close of the fiscal year. Also at this time, we would have serious problems trying to list out accrued capital credits by contract number, year, and delivery point. At the time of the allocation, it would be impossible to give a date that the capital credits would be refunded. We are currently retiring capital credits accumulated in the early 1970s and attempting to maintain a 20-year cycle. However, the retirement of capital credits is at the discretion of the Board of Directors after an analysis of the financial condition of the cooperative and a determination that such a retirement will not impair the financial integrity of the cooperative. This is done annually.

91-13-101

(c) This clause must be eliminated completely as it would require us to violate our By-laws, Articles of Incorporation, Idaho State law, Montana State law, provisions of our Mortgage Agreements with the Rural Electrification Administration and provisions of our Mortgage Agreement with National Rural Utilities Cooperative Finance Corporation.

(d) This clause must also be eliminated completely as it would require us to give preferential treatment to the government at the expense of the rest of our members.

Sincerely,

NORTHERN LIGHTS, INC.

LaVerne Stolz,
Director of Finance & Adm.

LS:blp

cc: Senator Larry Craig
Senator Steven Symms
Senator Max Baucus
Senator Conrad Burns
Congressman Larry LaRocco
Congressman Richard Stallings
Congressman Ron Marlenee
Congressman Pat Williams
Mike Oldak
Roy Eiguren

CLEARWATER POWER COMPANY

LEWISTON, IDAHO 83501

91-13-102

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Reference: FAR Case 91-13

Dear Sir:

I am writing to urge you to reconsider your proposed rule on the acquisition of services from utilities (56 Federal Register 23982).

Clearwater Power Company is an electrical distribution cooperative that is owned by those we serve. Each member of the cooperative has one vote. All votes are equal and members have the right to attempt to influence the other members to cast their vote in their favor.

No member has the right to demand special treatment and privileges for themselves as you are proposing without the majority vote of the voting membership.

I have enclosed a copy of our By-Laws (amended 11-9-90) for your attention. Article II, Section 5, on Voting, and Article VIII, Section 2, on Patronage in Connection with Furnishing Electric Energy, should be of special interest to you.

All members, including the Government, have had a chance to vote on these By-Laws and they work very well for the membership.

JUL 22 1991

91-13-14
91-13-102

By-Laws
of
CLEARWATER POWER COMPANY

"Owned by Those We Serve"

THE AIM of Clearwater Power Company (hereinafter called the "Cooperative") is to make electric energy available to the members at the lowest cost consistent with sound economy and good management.

As Amended November 9, 1990

91-13-102

Your proposed self-serving rule is not in the best interest of the Government nor the membership; and, I again urge you to reconsider your position regarding this matter.

Sincerely,

CLEARWATER POWER COMPANY

John H. Pankey

John H. Pankey
General Manager

JHP b
Enc
cc Senator Steve Symms
Senator Larry Craig
Representative Richard Stallings
Representative Larry LaRocco

BY-LAWS 91-13-102

ARTICLE I.
Members

Section 1. Qualifications and Obligations.

Any person, firm, corporation or body politic may become a member in the Cooperative by:

(a) paying the membership fee hereinafter specified;

(b) agreeing to purchase from the Cooperative electric energy as hereinafter specified; and

(c) agreeing to comply with and be bound by the Articles of Incorporation of the Cooperative, these By-Laws and any amendments thereto, and such rules and regulations and written policies as may from time to time be adopted by the Board of Directors,

provided, however, that no person, firm, corporation or body politic shall become a member unless and until he or it has been accepted for membership by the Board of Directors or the members. At each annual meeting of the members all applications received more than ninety (90) days prior to such meeting and which have not been accepted by the Board of Directors shall be submitted by the Board of Directors to such meeting of the members, and subject to compliance by the applicant with the conditions set forth in subdivisions (a), (b) and (c) of this section, such application for membership may be accepted by a vote of the members at such meeting. The Secretary shall give any such applicant at least ten (10) days prior notice of the date of the members' meeting to which his application will be submitted and such applicant may be present and heard at the meeting. No person, firm, corporation or body politic may own more than one (1) membership in the Cooperative.

Two natural persons may jointly become a member and their application for a joint membership may be accepted in accordance with the foregoing provisions of this section provided the applicants comply jointly with the provisions of the above subdivisions (a), (b) and (c).

The following provisions shall apply to the holders of a joint membership:

(a) The presence at a meeting of either or both shall be regarded as the presence of one member and shall constitute a joint waiver of notice of the meeting.

(b) A joint membership shall be entitled to one vote which shall not be divided. The vote of a joint membership may be cast by either of the holders of the membership unless the Cooperative is notified in writing prior to voting that the holders of the joint membership are in disagreement as to voting, in which case the Cooperative shall then require the holders of the joint membership to vote jointly.

91-13-16

(c) A waiver of notice signed by either or both shall constitute a joint waiver.

(d) Notice to either shall constitute notice to both.

(e) Expulsion of either shall terminate the joint membership.

(f) Withdrawal of either shall terminate the joint membership.

(g) Either but not both may be elected or appointed as an officer or Board Member, provided that both meet the qualifications of such office.

(h) All deposits and refundable fees or contributions paid to and held by the Cooperative in connection with any service to a joint membership and all capital credits allocated to such joint members shall be deemed owned by the joint members in joint tenancy unless such ownership is changed by written instrument delivered to the Cooperative in accordance with such policies and rules as the Cooperative may adopt.

(i) Upon the death of either party to a joint membership such membership shall be held solely by the survivor.

Section 2. Membership Fee.

The membership fee shall be $5.00, the payment of which shall accompany the application for membership.

Section 3. Purchase of Electric Energy.

Each member shall, as soon as electric energy shall be available, purchase from the Cooperative electric energy to be used on the premises referred to in the application of such member for membership and shall pay therefor monthly or at such other times as may be otherwise specifically provided in any written contract between the member and the Cooperative at rates which shall from time to time be fixed by resolution of the Board of Directors; provided, however, that the electric energy which the Cooperative shall furnish to any member may be limited to such an amount as the Board of Directors shall from time to time determine and that each member shall pay to the Cooperative such minimum amount per month as shall be fixed by the Board of Directors from time to time, regardless of the amount of electric energy consumed. Each member shall also pay all obligations which may from time to time become due and payable by such member to the Cooperative as and when the same shall become due and payable.

Section 4. Non-Liability For Debts of the Cooperative.

The private property of the members of the Cooperative shall be exempt from execution for the debts of the Cooperative and no member shall be individually liable or responsible for any debts or liabilities of the Cooperative.

91-13-102

Section 5. Expulsion of Members.

The Board of Directors of the Cooperative may, by the affirmative vote of not less than two-thirds (2/3) of the members thereof, expel any member who shall have violated or refused to comply with any of the provisions of the Articles of Incorporation of the Cooperative or these By-Laws or any rules, regulations or written policies adopted from time to time by the Board of Directors. Any member so expelled may be reinstated as a member by a vote of the members at any annual or special meeting of the members. The action of the members with respect to any such reinstatement shall be final.

Section 6. Withdrawal of Membership.

Any member may withdraw from membership upon payment in full of all debts and liabilities of such member to the Cooperative and upon compliance with such terms and conditions as the Board of Directors may prescribe.

Section 7. Transfer and Termination of Membership.

(a) Membership in the Cooperative and a certificate representing the same shall not be transferable except as hereinafter otherwise provided, and upon death, cessation of existence, expulsion or withdrawal of a member, the membership of such member shall thereupon terminate and the certificate of membership of such member shall be surrendered forthwith to the Cooperative. Termination of membership in any manner shall not release the member from debts or liabilities of such member to the Cooperative nor affect the right, title and interest of the member in the assets of the Cooperative.

(b) The membership of any member of the Cooperative shall be automatically terminated in the event such member fails to receive electric service from the Cooperative — except that if electric service is disconnected at the specific request of a member, the membership of such member shall not automatically terminate if electric service is reconnected at the specific request of such member within six (6) months following such disconnection done at the specific request of such member.

(c) Upon written request to the Cooperative signed by the member and, if married, signed also by his or her spouse, a membership may be transferred by the member to his or her spouse, or jointly to such member and his or her spouse or jointly to such member and any other natural person and upon joint compliance by the transferees with provisions of subdivisions (b) and (c) of Section 1 of this Article. Such transfer shall be made and recorded on the books of the Cooperative and such joint membership noted on the original certificate representing the membership so transferred.

91-13-102

(d) When a membership is held jointly, upon the death of either joint member, such membership shall be deemed to be held solely by the survivor, with the same effect as though such membership had been originally issued solely to such survivor and the joint membership certificate may be surrendered by the survivor and upon the recording of such death on the books of the Cooperative, the certificate may be reissued to and in the name of such survivor; provided, however, that the estate of the deceased joint member shall not be released from any membership debts or liabilities to the Cooperative.

Section 8. Removal of Directors and Officers.

Any member may bring charges against an officer or Director by filing them in writing with the Secretary, together with a petition signed by ten percent (10%) of the members of the Cooperative requesting the removal of the officer or Director in question. Such petition shall specify with particularity the charges against the officer or Director whose removal is sought. No officer or Director shall be subject to removal hereunder except for conduct of such officer or Director which is inimical or detrimental to the interests of the Cooperative. Upon receipt of such petition, the Secretary shall immediately deliver or cause to be delivered, a copy thereof to the Director or officer whose removal is sought. If the Secretary receives such petition at least thirty (30) days, but not more than sixty (60) days, prior to the next annual meeting of the members, the matter of the removal of such officer or Director shall be placed upon the agenda for such annual meeting to be acted upon by the members at such annual meeting. If the Secretary receives such petition at any other time the Secretary shall promptly call a special meeting of the members to act upon such petition. Notice of such special meeting shall be given to all members at the time and in the manner provided in Article II, Section 3, of these By-Laws. The question of removal of such officer or Director shall be voted upon at such annual or special meeting of the members of the Cooperative, after hearing conducted at such meeting, and during such hearing any member and the officer or Director sought to be removed shall be entitled to be heard and present evidence and may be represented by legal counsel. Any vacancy in any office created as the result of the removal of any officer of the Cooperative shall be filled by the Board of Directors of the Cooperative promptly following the meeting at which said officer is removed. Any vacancy created in the Board of Directors as the result of the action of the members of the Cooperative in removing said Director shall be filled by the members of the Cooperative at the Annual or Special Meeting of the members of the Cooperative at which such Director is removed. No member of the Cooperative shall be eligible to fill the vacancy on the Board of Directors created by such action of the members of the Cooperative, unless such member be a resident of the district in which the Director so removed by action of the members of the Cooperative resided.

91-13-102

and any Director so elected by the members of the Cooperative as aforesaid shall serve as a member of the Board of Directors only until the expiration of the term of office for which the Director who has been removed was elected.

ARTICLE II.
Meetings of Members

Section 1. Annual Meeting.

The annual meeting of the members shall be held between the 15th day of October and the 30th day of November, inclusive, of each year, at such place within the service area of the Cooperative as shall be determined, from time to time, by the Board of Directors and as shall be designated in the notice of the meeting for the purpose of electing Directors, passing upon reports covering the previous fiscal year and transacting such other business as may come before the meeting. If the day fixed for the annual meeting shall be a Sunday or legal holiday, such meeting shall be held on the next succeeding business day. If the election of Directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the members as soon thereafter as conveniently may be. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Cooperative.

Section 2. Special Meetings.

Special meetings of the members may be called by at least three (3) Directors or upon a written request signed by at least ten per centum (10%) of all the members and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the members may be held at any place within the County of Nez Perce in the State of Idaho specified in the notice of the special meeting.

Section 3. Notice of Members' Meeting.

Written or printed notice of any meeting of the members stating the place, day and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which such special meeting is called, shall be delivered to each member entitled to vote at such meeting not less than ten (10) nor more than fifty (50) days before the date of the meeting by or at the direction of the President, or the Secretary, or the officers or persons calling the meeting.

Any such written notice shall be deemed to have been delivered if, within the time period above mentioned (1) such written notice is personally delivered to the member, or (2) such written notice is deposited in the United States mail addressed to the member at his address as it appears on the records of the Cooperative, with postage paid thereon, or (3) such written notice is conspicuously displayed in a publication such as a magazine, newsletter or like publication and such publication is deposited in the United States mail addressed to the member at his address as it appears on the records of the Cooperative, with postage paid thereon.

91-13-182

The failure of any member to receive such written notice of any meeting of the members shall not invalidate any action which may be taken by the members at any such meeting.

Section 4. Quorum.

At regular annual meetings of the members of the Cooperative at least twenty per centum (20%) of the total number of members of the Cooperative present in person or represented by proxy shall constitute a quorum for the transaction of business at such meeting as long as the number of members does not exceed one hundred (100) and in case the number of members exceeds one hundred (100), then, and in such case the members present either in person or represented by proxy at regular annual meetings of the members shall constitute a quorum for the transaction of business at such meeting.

At special meetings of the members at least twenty per centum (20%) of the total number of members of the Cooperative present in person or represented by proxy shall constitute a quorum for the transaction of business at such meetings so long as the number of members does not exceed three hundred (300) and in case the total number of members exceeds three hundred (300), then, and in such case, not less than seventy-five (75) members present in person or represented by proxy shall constitute a quorum for the transaction of business at such meeting.

Section 5. Voting.

Each member shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members. At all meetings of the members at which a quorum is present all questions shall be decided by a vote of a majority of the members voting thereon in person or by proxy, except as otherwise provided by law, the Articles of Incorporation of the Cooperative, or these By-Laws. If two natural persons hold a joint membership, they shall jointly be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members - as provided in Article I, Section 1, of these By-Laws.

The election of Directors shall be by ballot on which each member voting may designate the name or names of the candidate or candidates from each district he desires to vote for but in no case more than the number of Directors to be elected from each district, and in balloting for Directors, each member shall have the right to cast as many votes as there are Directors to be elected at such election, but each member may cast only one vote for each candidate, either in person or by proxy. Cumulative voting shall not be allowed.

The number of candidates equal to the number of Directors to be elected in each district receiving the highest number of votes in each district shall be elected for the terms specified in Section 2 of Article III of these By-Laws; all ties votes will be resolved by drawing lots.

91-13-102

Section 6. Proxies.

At all meetings of members, a member may vote by proxy executed in writing by the member. Such proxy shall be filed with the Secretary before or at the time of the meeting. No proxy shall be voted at any meeting of the members unless it shall designate the particular meeting at which it is to be voted, and no proxy shall be voted at any meeting other than the one so designated or any adjournment of such meeting. No person shall vote as proxy for more than (3) members at any meeting of the members except where the action desired to be taken requires by law, the Articles of Incorporation or the By-Laws, a vote greater than a majority of a quorum as defined by these By-Laws, in which case a member may vote, as proxy for any number of members, without limitation. No proxy shall be valid after sixty (60) days from the date of its execution. The presence of a member at a meeting of the members shall revoke a proxy theretofore executed by him and such member shall be entitled to vote at such meeting in the same manner and with the same effect as if he had not executed a proxy.

Section 7. Order of Business.

The order of business at the annual meeting of the members, and so far as possible at all other meetings of the members, shall be essentially as follows:

1. Call of the roll.
2. Reading of the notice of the meeting and proof of the due publication or mailing thereof, or the waiver or waivers of notice of the meeting, as the case may be.
3. Reading of unapproved minutes of previous meetings of the members and the taking of necessary action thereon.
4. Presentation and consideration of, and acting upon, reports of officers, Directors and committees.
5. Election of Directors.
6. Unfinished business.
7. New business.
8. Adjournment.

ARTICLE III.
Directors

Section 1. General Powers.

The business and affairs of the Cooperative shall be managed by a board of nine (9) Directors which shall exercise all of the powers of the Cooperative except such as are by law or by the Articles of Incorporation of the Cooperative or by these By-Laws conferred upon or reserved to the members.

Section 2. Qualifications and Tenure:

The area served by the Cooperative is hereby divided into four (4) districts, the geographical boundaries of each of which said districts being as follows:

91-13-102

DISTRICT NO. 1

The West line of said area is the West line of Range 2 W.B.M. extending from the North line of Township 41 N. to the North line of Township 40 N.; thence, along the Eastern border of the State of Washington for two (2) sections in a Southerly direction in the State of Idaho; thence, along the West line of Range 44 E.W.M. extending from the North line of Township 15 N. to the South line of Township 12 N. in the State of Washington.

The South line of said area is the South line of Township 12 N. to the Snake River and along the North shore of the Snake River in the State of Washington; thence along the North shore of the Clearwater River to the mouth of the Potlatch Creek; thence along the North shore of Potlatch Creek to the South line of Latah County; thence along the South line of Latah County to the West line of Clearwater County in the State of Idaho.

The East line of said area is the West line of Clearwater County from the South line of Latah County to the South line of Shoshone County in the State of Idaho.

The North line of said area is the North line of Township 41 N. from the West line of Clearwater County to the East line of Range 3 W.B.M.; thence along the North line of Township 40 N. to the Washington State line in the State of Idaho; thence along the North line of Township 15 N. to the West line of Range 44 E.W.M. in the State of Washington.

DISTRICT NO. 2

The West line of said area is the West line of Range 44 E.W.M. from the South line of Township 12 N. to the North line of Township 6 N. in the State of Washington; thence along the West line of Range 43 E.W.M. to the South line of Township 5 N. in the State of Oregon.

The South line of said area is the South line of Township 5 N. from the West line of Range 43 E.W.M. to the Snake River in the State of Oregon; thence along the South line of Township 32 N. to the West line of Lewis County; thence following the boundary between Nez Perce and Lewis Counties in an Easterly direction to the East line of Nez Perce County in the State of Idaho.

The East line of said area is the West shore of the Snake River from the South line of Township 5 N. in the State of Oregon to the South line of Township 32 N.; thence following the boundary between Nez Perce, Lewis and Clearwater Counties in a Northerly direction to the South line of Latah County in the State of Idaho.

The North line of said area is the South line of Latah County extending from the boundary line between Clearwater and Nez Perce Counties to Potlatch Creek; thence along the North shore of Potlatch Creek to the Clearwater River; thence along the North shore of the Clearwater River to

91-13-102

the Snake River in the State of Idaho; thence along the North shore of the Snake River to the South line of Township 12 N.; thence along the South line of Township 12 N. to the West line of Range 44 E.W.M. in the State of Washington.

DISTRICT NO. 3

The West line of said area is the West boundary of Clearwater and Lewis Counties extending from the North line of Township 41 N. to the South line of Township 32 N. in the State of Idaho.

The South line of said area is the South line of Township 32 N. extending from the West line of Lewis County to the East line of Range 4 E.B.M. in the State of Idaho.

The East line of said area is the East line of Range 4 E.B.M. extending from the South line of Township 32 N. to the North line of Township 41 N. in the State of Idaho.

The North line of said area is the North line of Township 41 N. extending from the East line of Range 4 E.B.M. to the West line of Clearwater County; thence along the South line of Latah County to the East line of Nez Perce County; thence along the boundary line between Nez Perce and Lewis Counties in a Westerly direction to the West line of Lewis County in the State of Idaho.

DISTRICT NO. 4

The West line of said area is the West line of Range 44 E.W.M. extending from the North line of Township 21 N. to the North line of Township 15 N. in the State of Washington.

The South line of said area is the North line of Township 15 N. from the West line of Range 44 E.W.M. to the State line in the State of Washington; thence along the South line of Township 41 N. from the Washington State line to the East line of Range 3 W.B.M.; thence along the North line of Township 41 N. to the East line of Range 4 E.B.M. in the State of Idaho.

The East line of said area is the East line of Range 4 E.B.M. extending from the North line of Township 41 N. to the North line of Township 46 N. in the State of Idaho.

The North line of said area is the North line of Township 46 N. extending from the East line of Range 4 E.B.M. to the Washington State line in the State of Idaho; thence along the North line of Township 21 N. to the West line of Range 44 E.W.M. in the State of Washington.

The Board of Directors of the Cooperative shall consist of two (2) Directors who reside in District No. 1, three (3) Directors who reside in District No. 2, two (2) Directors who reside in District No. 3, and two (2) Directors who reside in District No. 4. At the Annual Meeting of the members of the Cooperative held in 1981, and at the Annual Meeting of the members of the Cooperative every

91-18-102

third year thereafter, the members of the Cooperative shall elect to the Board of Directors one (1) member of the Cooperative who resides in District No. 1, one (1) member of the Cooperative who resides in District No. 2, and one (1) member of the Cooperative who resides in District No. 3.

At the Annual Meeting of the members of the Cooperative held in 1982, and at the Annual Meeting of the members of the Cooperative every third year thereafter, the members of the Cooperative shall elect to the Board of Directors one (1) member of the Cooperative who resides in District No. 1, one (1) member of the Cooperative who resides in District No. 3, and one (1) member of the Cooperative who resides in District No. 4.

At the Annual Meeting of the members of the Cooperative held in 1983, and at the Annual Meeting of the members of the Cooperative every third year thereafter, the members of the Cooperative shall elect to the Board of Directors one (1) member of the Cooperative who resides in District No. 4, and two (2) members of the Cooperative who reside in District No. 2.

All Directors elected prior to July 1, 1981, shall continue to hold office until the respective term for which each such Director was elected shall expire.

Each Director shall serve a term of three (3) years and until his successor shall have been duly elected and qualified.

If a Director ceases to be a resident of the District in which he resided at the time of his election, he shall hold office only until the next annual meeting of the members of the Cooperative following the date he ceases to be a resident of such District, and a vacancy shall be deemed to exist in such office and such Director shall be deemed removed from such office at time of such annual meeting. At such annual meeting the members of the Cooperative shall elect a member of the Cooperative who resides in such District in which the vacancy occurred, to fill such vacancy and the member so elected shall serve as a member of the Board of Directors only until the expiration of the term of office for which such removed Director was elected.

If a member of the Board of Directors fails to attend three (3) consecutive regular meetings of the Board without reasonable cause, the Board may declare the office of such Board member vacant and fill the vacancy in accordance with the provisions of Section 4 of this Article.

No member of the Cooperative shall be eligible to become or remain a Director, or to hold any position of trust in the Cooperative, who is not a bona fide resident in the area served by the Cooperative, or who is in any way employed by, or financially interested in a competing enterprise or business selling electric energy or supplies to the Cooperative.

91-13-102

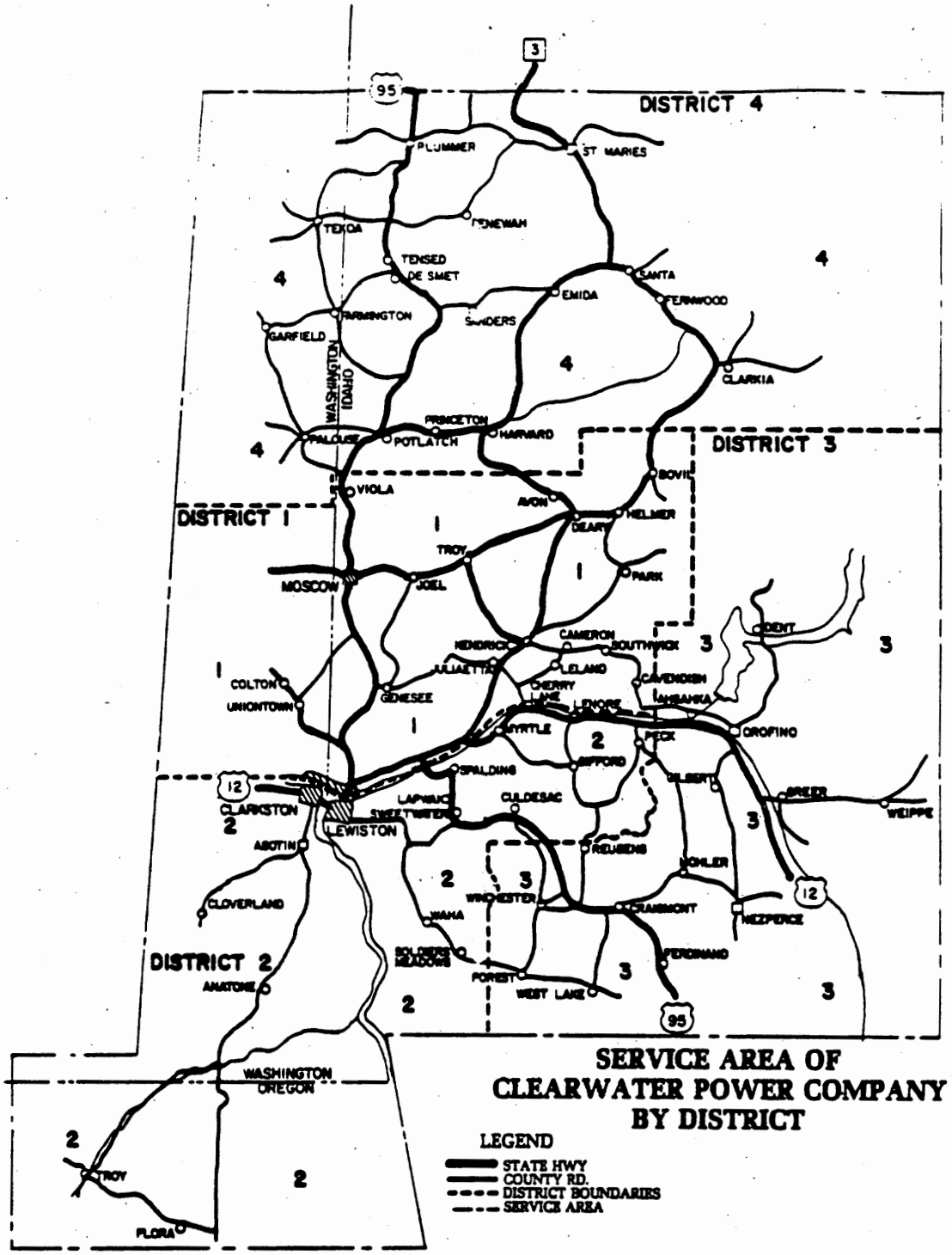
When a membership is held jointly by two persons, either one, but not both, may be elected as a Director, provided, however, that neither one shall be eligible to become or remain a Director or to hold a position of trust in the Cooperative unless both shall meet the qualifications hereinabove set forth.

Section 3. Nominations:
It shall be the duty of the Board of Directors to appoint, at a meeting held in July of each year, a committee on nominations consisting of one member of the Cooperative residing in each of the Districts of the Cooperative as those Districts are defined in Article III, Section 2 of these By-Laws, and one member at large. No officer or member of the Board of Directors shall be appointed a member of such committee.

The committee shall prepare and post at the principal office of the Cooperative at least thirty (30) days before the meeting, a list of nominees for Directors as nominated by said committee. The Secretary shall mail with the notice of such meeting a statement of the number of Directors to be elected showing the nominations made by the committee. Nothing contained herein shall, however, prevent additional nominations to be made from the floor at the meeting of the members. The members may, at any meeting at which a Director or Directors shall be removed as hereinbefore provided, elect a successor or successors thereto without compliance with the foregoing provisions with respect to nominations. Notwithstanding anything in this section contained, failure to comply with any of the provisions of this section shall not affect in any manner whatsoever the validity of any election of Directors.

Section 4. Vacancy:
Subject to the provisions of these By-Laws with respect to the removal of Directors, vacancies occurring on the Board of Directors shall be filled by a majority vote of the remaining Directors. No member of the Cooperative shall be so elected to the Board to fill any such vacancy unless such member be a resident of the District in which the Director whose death or resignation created such vacancy was a resident. Any Director so elected by the Board of Directors to fill such vacancy shall serve until the next Annual Meeting of the members of the Cooperative. At such Annual Meeting the members of the Cooperative shall elect a member of the Cooperative who resides in the same District as the Director whose death or resignation created such vacancy, and the member so elected at such Annual Meeting shall serve as a member of the Board of Directors only until the term of office for which the Direc-

91-13-102


DISTRICT 4
DISTRICT 3
DISTRICT 1
DISTRICT 2
PLUMMER
ST MARIES
TEKOA
TENSED
DE SMET
EMIDA
SANTA
FERNWOOD
FARMINGTON
SNIDERS
GARFIELD
WASHINGTON
IDAHO
CLARKIA
PALOUSE
POTLATCH
PRINCETON
HARVARD
VIOLA
AVON
DEARY
BOVILL
HELMER
TROY
MOSCOW
JOEL
PARK
CAMERON
SOUTHWICK
DENT
HENDRICK
LELAND
CAVENDISH
ULIASTIA
CHERRY LANE
ENOREE
ARBANKA
COLTON
UNIONTOWN
GENESEE
MYRTLE
PECK
GROFINO
SPALDING
BIFFORD
GILBERT
CLARKSTON
LAPWAI
CULDESAC
SWEETWATER
LEWISTON
ASOTIN
REUBENS
OHLER
CLOVERLAND
WINCHESTER
WAHA
CRAIGMONT
NEZPERCE
SOLDIERS MEADOWS
FERDINAND
FOREST
WEST LAKE
ANATONE
WASHINGTON
OREGON
TROY
PLORA
SERVICE AREA OF
CLEARWATER POWER COMPANY
BY DISTRICT
LEGEND
STATE HWY
COUNTY RD.
DISTRICT BOUNDARIES
SERVICE AREA

tor whose death or resignation created such vacancy was elected shall expire.

91-13-102

Section 5. Compensation.

Directors as such shall not receive any salary for their services, but by resolution of the Board of Directors, a fixed sum, which may include insurance benefits, and expenses of attendance, if any, may be allowed for attendance at each meeting of the Board of Directors and meetings of associated organizations attended by any Directors pursuant to authorization of the Board. Except in emergencies, no Director shall receive compensation for serving the Cooperative in any other capacity, nor shall any close relative of a Director receive compensation for serving the Cooperative, until such compensation be specifically authorized by a vote of the members.

Section 6. Rules and Regulations.

The Board of Directors shall have power to make and adopt such policies and rules and regulations, not inconsistent with law, the Articles of Incorporation of the Cooperative or these By-Laws, as it may deem advisable for the management, administration and regulation of the business and affairs of the Cooperative.

Section 7. Accounting System and Reports.

The Board of Directors shall cause to be established and maintained a complete accounting system which among other things subject to applicable laws and rules and regulations of any regulatory body, shall conform to such accounting system as may from time to time be designated by the Administrator of the Rural Electrification Administration of the United States of America. All accounts of the Cooperative shall be examined by a committee of the Board of Directors which shall render reports to the Board of Directors at least four times a year at regular meetings of the Board of Directors. The Board of Directors shall also after the close of each fiscal year cause to be made a full and complete audit of the accounts, books and financial condition of the Cooperative as of the end of such fiscal year. Such audit reports or summaries thereof shall be submitted to the members at the following annual meeting.

ARTICLE IV
Meetings of Directors

Section 1. Regular Meetings.

A regular meeting of the Board of Directors shall be held without notice other than this By-Law, immediately after, and at the same place as, the annual meeting of the members. A regular meeting of the Board of Directors shall also be held monthly at such time and place in Nez Perce County, State of Idaho, as the Board of Directors may provide by resolution. Such regular monthly meetings

91-13-102

may be held without notice other than such resolution fixing the time and place thereof.

Section 2. Special Meetings.

Special meetings of the Board of Directors may be called by the President or any three (3) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix the time and place (which place shall be within the service area of the Cooperative), for the holding of any special meeting of the Board of Directors called by them.

Section 3. Notice.

Notice of the time, place and purpose of any special meeting of the Board of Directors shall be given at least five (5) days previous thereto, by written notice, delivered personally or mailed, to each Director at his last known address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed with postage thereon prepaid. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except in case a Director shall attend a meeting for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

Section 4. Quorum.

A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided, that if less than a majority of the Directors is present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 5. Manner of Acting.

The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Any action which may be taken at a meeting of the Board of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors. Such consent shall have the same effect as a unanimous vote.

ARTICLE V.
Officers

Section 1. Number.

The officers of the Cooperative shall be a President, Vice President, Secretary, Treasurer and such other officers as may be determined by the Board of Directors from time to time. The offices of Secretary and Treasurer may be held by the same person.

Section 2. Election and Term of Office.

The officers shall be elected annually by and from the

91-13-102

Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until the first meeting of the Board of Directors following the next succeeding annual meeting of the members or until his successor shall have been duly elected and shall have qualified, subject to the provisions of these By-Laws with respect to the removal of officers.

Section 3. Removal.

Whenever, in the judgment of the Board of Directors, the best interests of the Cooperative will be served thereby, any officer elected by the Board of Directors may be removed from office by the vote of at least two-thirds (⅔) of the Directors and the appointment of any agent theretofore selected by the Board of Directors may be rescinded or otherwise terminated by the majority vote of a quorum of Directors.

Section 4. Vacancies.

Except as otherwise provided in these By-Laws, a vacancy in any office may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President.

The President:

(a) shall be the principal executive officer of the Cooperative and shall preside at all meetings of the members and of the Board of Directors;

(b) shall sign, with the Secretary, certificates of membership, the issue of which shall have been authorized by resolution of the Board of Directors, and may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board of Directors to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed; and

(c) in general shall perform all duties incident to the office of the President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. Vice President.

In the absence of the President, or in the event of his inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President and shall perform such other duties as from time to time may be assigned to him by the Board of Directors.

91-13-102

Section 7. Secretary.

The Secretary shall:

(a) keep the minutes of the members and the Board of Directors in one or more books provided for that purpose;

(b) see that all notices are duly given in accordance with these By-Laws or as required by law;

(c) be custodian of the corporate records and of the seal of the Cooperative and see that the seal of the Cooperative is affixed to all certificates of membership prior to the issue thereof and to all documents, the execution of which on behalf of the Cooperative under its seal is duly authorized in accordance with the provisions of these By-Laws;

(d) keep a register of the post office address of each member which shall be furnished to the Secretary by such member;

(e) sign with the President certificates of membership, the issue of which shall have been authorized by resolution of the Board of Directors;

(f) have general charge of the books of the Cooperative in which a record of the members is kept;

(g) keep on file at all times a complete copy of the By-Laws of the Cooperative containing all amendments thereto, properly certified by a majority of the Directors and the Secretary, which copy shall always be open to the inspection of any member, and at the expense of the Cooperative forward a copy of the By-Laws and all amendments thereto to each member; and

(h) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board of Directors.

Section 8. Treasurer.

The Treasurer shall:

(a) have charge and custody of and be responsible for all funds and securities of the Cooperative;

(b) receive or cause to be received and give receipts for moneys due and payable to the Cooperative from any source whatsoever, and deposit all such moneys in the name of the Cooperative in such bank or banks as shall be selected in accordance with the provisions of these By-Laws; and

(c) in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Directors.

Section 9. Manager.

The Board of Directors may appoint a manager who may be, but who shall not be required to be, a member of the Cooperative. The Manager shall perform such duties as the Board of Directors may from time to time require of him and shall have such authority as the Board of Directors may from time to time vest in him.

91-13-102

Section 10. Bonds of Officers.

The Board of Directors shall require the Treasurer or any other officer of the Cooperative charged with responsibility for the custody of any of its funds or property, to give bond at the cost of the Cooperative in such sums and with such surety as the Board of Directors shall determine. The Board of Directors in its discretion may also require any other officer, agent or employee of the Cooperative to give bond at the cost of the Cooperative in such amount and with such surety as it shall determine.

Section 11. Compensation.

The compensation, if any, of any officer, agent or employee who is also a Director or close relative of a Director shall be determined by the members as provided elsewhere in these By-Laws, and the powers, duties and compensation of any other officers, agents and employees shall be fixed by the Board of Directors; provided that the Board may authorize the manager to fix the powers, duties and compensation of agents and employees within limits from time to time established by the Board.

Section 12. Reports.

The officers of the Cooperative shall submit at each annual meeting of the members reports covering the business of the Cooperative for the previous fiscal year and showing the condition of the Cooperative at the close of such fiscal year.

ARTICLE VI.
Contracts, Checks and Deposits

Section 1. Contracts.

Except as otherwise provided in these By-Laws, the Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Etc.

All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Cooperative shall be signed by such officer or officers, agent or agents, employee or employees of the Cooperative and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 3. Deposits.

All funds of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such bank or banks or otherwise invested in such manner as the Board of Directors may select.

91-13-102

ARTICLE VII.
Membership Certificates

Section 1. Certificates of Membership.

Membership in the Cooperative shall be evidenced by a certificate of membership which shall be in such form and shall contain such provisions as shall be determined by the Board of Directors not contrary to, or inconsistent with, the Articles of Incorporation of the Cooperative or these By-Laws. Such certificate shall be signed by the President and by the Secretary of the Cooperative and the corporate seal shall be affixed thereto.

Section 2. Issue of Membership Certificates.

No membership certificates shall be issued for less than the membership fee fixed in these By-Laws, nor until such membership fee has been fully paid for in cash and such payment has been deposited with the Treasurer.

Section 3. Lost Certificate.

In case of a lost, destroyed or mutilated certificate a new certificate may be issued therefor upon such terms and such indemnity to the Cooperative as the Board of Directors may prescribe.

ARTICLE VIII.
Non-Profit Operation

Section 1. Interest or Dividends on Capital Prohibited.

The Cooperative shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its patrons. No interest or dividend shall be paid or payable by the Cooperative on any capital furnished by its patrons.

Section 2. Patronage in Connection with Furnishing Electric Energy.

In furnishing of electric energy the Cooperative's operations shall be so conducted that all patrons will through their patronage furnish capital for the Cooperative. In order to induce patronage and to assure the Cooperative will operate on a non-profit basis, the Cooperative is obligated to account on a patronage basis to all its patrons for all amounts received and receivable from the furnishing of electric energy. All such amounts in excess of operating costs and expenses at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the patrons as capital. The Cooperative is obligated to pay by credits to a capital account for each patron all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year commencing in 1953, the amount of capital, if any, so furnished by each patron is clearly reflected in an appropriate record to the capital account of each patron, and the Cooperative shall within a

91-13-102

reasonable time after the close of the fiscal year notify each patron of the amount of capital so credited to his account. All such amounts credited to the capital account of any patron shall have the same status as though they had been paid to the patron in cash pursuant of a legal obligation to do so and the patron had then furnished the Cooperative the corresponding amount of capital.

All other amounts received by the Cooperative from its operations in excess of costs and expenses shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, allocated to its patrons on a patronage basis and any amount so allocated shall be included as a part of the capital credited to the accounts of patrons, as herein provided.

In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness shall have been paid, outstanding capital credits shall be retired without priority on a pro-rata basis before any payments are made on account of property rights of members. Payments shall then be made on account of property rights of members and former members of the Cooperative in the same proportion as the patronage of the member or former member bears to the total patronage of all current and former members of the Cooperative. If, at any time prior to dissolution or liquidation, the Board of Directors shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to patrons' accounts may be retired in full or in part subject to the limitations set forth hereinbelow.

The Cooperative shall not, except as to retirement of a decedent's capital credits, retire any capital credits unless after the proposed retirement the equity of the Cooperative shall equal at least forty per centum (40%) of the Cooperative's total assets; provided, however, the Cooperative may make distributions in retirement of capital credits in any one year if such distributions (including any retirement of decedent's capital credits), do not exceed twenty-five per centum (25%) of aggregate capital credits allocated by the Cooperative to its patrons in the next preceding year. Any such retirements of capital credits shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Cooperative being first retired; provided, however, that beginning with the year 1986, cash made available for retirement in any year may be used, in whole or part, to retire capital furnished by all patrons during the most recent fiscal year subject to the requirement that at least fifty per cent (50%) of such cash shall be applied to the retirement of the oldest outstanding capital credits as hereinabove provided.

91-13-162

Capital credited to the accounts of each patron shall be assigned only on the books of the Cooperative pursuant to written instruction from the assignor and only to successors in interest or successors in occupancy in all or a part of such patrons' premises served by the Cooperative unless the Board of Directors, acting under policies of general application, shall determine otherwise.

Notwithstanding any other provision of these By-Laws, the Board of Directors, in its discretion, shall have the power at any time upon the death of any patron who is a natural person, if the legal representatives of his estate shall request in writing that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of these By-Laws, to retire capital credited to such patron, subject to any such terms and conditions as the Board of Directors, acting under policies of general application, and the legal representatives of such patron's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby.

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and By-Laws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of this Article of the By-Laws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's office.

ARTICLE IX.
Waiver of Notice

Any member or any Director may waive, in writing, any notice of meeting required to be given by these By-Laws.

ARTICLE X.
Disposition of Property

The Cooperative may not sell, mortgage, lease or otherwise dispose of or encumber any of its property other than:

(a) A property which in the judgment of the Board of Directors neither is nor will be necessary or useful in operating and maintaining the Cooperative system and facilities; provided, however, that all sales of such property shall not, in any one (1) year exceed in value ten per centum (10%) of the value of all of the property of the Cooperative;

91-13-102

(b) Services of all kinds, including electric energy, and

(c) Personal property acquired for resale; unless such sale, mortgage, lease or other disposition or encumbrance is first authorized at a regular or special meeting of the Board of Directors by an affirmative vote of at least three-fourths (¾) of the entire membership of the Board of Directors and is thereafter authorized at a regular or special meeting of the members of the Cooperative by the affirmative vote of at least two-thirds (2/3) of the members constituting a quorum; for the purposes of this Article only, a quorum shall consist of not less than seventy-five per cent (75%) of the registered members of the Cooperative, all of whom must be personally present at such meeting, and the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice of such meeting; provided, however, that notwithstanding anything herein contained, the Board of Directors, without authorization by the members, shall have full power and authority to borrow money from the United States of America, or any agency or instrumentality thereof, or any corporation, cooperative association, or other organization of which this Cooperative is a member or shareholder thereof, and in connection with such borrowings, to authorize the making and issuance of bonds, notes, or other evidences of indebtedness, and to secure the payment thereof, to authorize the execution and delivery of a mortgage or mortgages or a Deed or Deeds of Trust upon, or the pledging or encumbrances of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Cooperative, whether acquired or to be acquired, and wherever situated, all upon such terms and conditions as the Board of Directors shall determine.

ARTICLE XI.
Fiscal Year

The fiscal year of the Cooperative shall be as fixed, from time to time, by the Board of Directors.

ARTICLE XII.
Membership in Other Organizations

The Cooperative shall not become a member of any other organization without an affirmative vote of the members at a meeting called as provided in these By-Laws, and the notice of said meeting shall specify that action is to be taken upon such proposed membership as an item of business; provided, however, that the Directors shall have full power and authority on behalf of the Cooperative to purchase

91-1312

stock in, or to become a member of any corporation, association or cooperative organized on a non-profit basis for the purpose of advancing the interests of Rural Electrification.

ARTICLE XIII.
Seal

The corporate seal of the Cooperative shall be in the form of a circle and shall have inscribed thereon the name of the Cooperative and the words "Corporate Seal, Idaho."

ARTICLE XIV.
Indemnification of Officers, Directors, Attorneys, Employees and Agents

Section 1.

The Cooperative shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by, or in the right of, the Cooperative) by reason of the fact that such person is or was a Director, Officer, Employee, Attorney or Agent of the Cooperative, or who is or was serving at the request of the Cooperative as a Director, Officer, Employee, or Agent of another cooperative, association, corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Cooperative, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Cooperative, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct of such person was unlawful.

Section 2.

The Cooperative shall indemnify any person who was or is a party, or is threatened to be made a party to, any threatened, pending or completed action or suit by, or in the right of, the Cooperative to procure a judgment in its favor by reason of the fact that such person is, or was, a Director, Officer, Employee, Attorney or Agent of the

91-13-102

Cooperative, or is, or was, serving at the request of the Cooperative as a Director, Officer, Employee, or Agent of another Cooperative, association, corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to the best interests of the Cooperative, and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of the duty of such person to the Cooperative, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity of such expenses as the court shall deem proper.

Section 3.

To the extent that a Director, Officer, Employee, Attorney or Agent of the Cooperative has been successful, on the merits or otherwise, in the defense of any action, suit, or proceeding referred to in Sections (1) and (2), in defense of any claim, issue, or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 4.

Any indemnification under Sections (1) and (2) (unless ordered by a court) shall be made by the Cooperative only as authorized in the specific case, upon a determination that indemnification of the Director, Officer, Employee, Attorney or Agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections (1) or (2). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit, or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or (3) by the members.

Section 5.

Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Cooperative in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the Director, Officer, Employee, Attorney or Agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Cooperative as authorized in this Article.

91-13-102

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-Law, agreement, vote of members or disinterested Directors, or under any law, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, Officer, Employee, Attorney or Agent, and shall inure to the benefit of the heirs, executors, and administrators of such a person.

The Cooperative may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Employee, Attorney or Agent of the Cooperative, or who is or was serving at the request of the Cooperative as a Director, Officer, Employee, or Agent of another cooperative, association, corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of the status of such person as such, whether or not the Cooperative would have the power to indemnify such person against such liability under the provisions of this Article.

ARTICLE XV.
Amendments

The By-Laws of the Corporation may be amended as provided by the laws of the State of Idaho; provided that no By-Law shall be altered, repealed or amended at any annual or special meeting of the members of the Cooperative unless the notice of such annual or special meeting includes, or is accompanied by, a copy of any such proposed By-Law amendment or alteration to be presented at such meeting or includes notice that a proposal to repeal a specific By-Law or By-Laws will be acted upon at such meeting.

Any alteration, amendment or repeal of the By-Laws must be certified by a majority of the Directors and the Secretary of the Cooperative, and recorded in the book of By-Laws kept in the registered office of the Cooperative. The date of the meeting at which the alteration, amendment or repeal was enacted must be stated in the margin of the place where the original form of the By-Law, altered, amended or repealed appears and a reference must there also be made to the page of the book and By-Laws where the alteration, amendment or fact of repeal is stated. Any alteration, amendment or repeal shall not take effect until the provisions of this Article are fully complied with.

91-13-103

SHERIDAN ELECTRIC COOP. INC.

July 19, 1991

General Service Administration
FAR Secretariat (VRS)
18th and F Street, NW Room 4041
Washington, D.C. 20405

RE: Comments of Sheridan Electric Cooperative Inc., on proposed Federal Acquisition Regulation for the acquisition of utility service (FAR Case 91-13)

Dear Sir:

Sheridan Electric's primary concern is that part 52.241-13, titled capital credits, parts (b)(c)(d) are against the Cooperative's bylaws and also state and federal government laws.

First, providing the amount of the capital credit pay-out within 60 days of the fiscal year-end would pose a problem for some cooperatives. An electric cooperative typically assigns capital credits annually to each of its members as soon as practicable after the close of its fiscal year-end. Capital credits cannot be assigned, however, until the cooperative's annual financial statements have been audited; the amount of such capital credit assignment, therefore, may not be available within 60 days of the cooperative's fiscal year-end, depending upon whether annual audit has concluded.

Second, providing the timing of when the capital credit cash pay-out will be made is even more problematic. Capital credits are typically paid out in cash to members (i.e., retired) several years after the capital credit assignment. While many cooperatives, pursuant to policies of their boards of directors, have established capital credit retirement cycles which set the timing of capital credit cash payout, such timing can be changed at the discretion of the cooperative's board of directors in response to the changing capital needs of the cooperative. If during the period before capital credit retirement, the cooperative experiences the need for increased capital resulting from some catastrophic circumstance such as hurricane, changes in available financing or other changing conditions, it might be necessary to withhold payment of those capital credits. Additionally, as discussed below, the cooperative is prohibited from paying capital credits unless the cooperative has met the financial standards established by the United States Department of Agriculture, Rural Electrification Administration and anyone else who is a co-mortgagee with REA.

Additionally, many distribution cooperatives are member-owners of generation and transmission cooperatives (G&Ts), and as such, are entitled to receive capital credits from the G&T, It would be virtually impossible to determine the appropriate capital credits due the distribution cooperative from the G&T, and consequently the distribution cooperative's own member-owners, within 60 days after the close of the distribution cooperative's fiscal year.

JUL 22 1991

91-13-103

More importantly, Sheridan Electric believes that subsection (c) would require the cooperative to violate its own by-laws, articles of incorporation and consequently state laws governing cooperatives. Under subsection (c), cooperatives would be required, upon termination or expiration of a contract, to pay the government for all unpaid capital credits. As indicated in subsection (a) quoted above, the government is entitled to be paid for capital credits in the method and at the time provided for in the cooperative's bylaws. Provisions requiring payment at the expiration or termination of a contract would generally be inconsistent with the very terms and conditions which subsection (a) recognizes as controlling the provision of service from a cooperative to one of its members, the government. Such action on the part of the cooperative would also most likely violate applicable state laws which govern the operation of cooperatives within the particular state.

Capital credits are unique to not-for-profit electric and telephone cooperatives and of necessity must be treated in a manner which is consistent with their bylaws, as well as all applicable federal and state laws. In a cooperative, there are no "profits" to be disbursed to investors. Rather, to the extent that income exceeds costs, these "margins" accumulated as capital credits. They are, in accordance with the cooperative's bylaws, returned to the member-owners in direct proportion to their use of electricity. Return of capital credits to a cooperative's members is made in a manner which must be consistent with the requirements of the cooperative's bylaws. As a member of the cooperative, the government is entitled to be paid its capital credits, consistent with the cooperative's bylaws; it is not however, entitled to become a privileged class of customer. Provision of capital credits to the government in a manner which is inconsistent with the cooperative's bylaws grants the government a preference over other cooperative members.

Furthermore, a unique preferential treatment for the government's capital credits over those of the other cooperative members could result in an electric cooperative's loss of cooperative status under federal income tax laws. Maintenance of cooperative status is required in order to preserve an electric Cooperative's income tax exemption. In order to qualify for cooperative status, an electric cooperative must operate on a "cooperative basis" treating similarly situated members equally.

Additionally, rural electric systems, as generally small "not-for-profit" entities, have limited sources of capital. The majority of their capital requirements are met by the Rural Electrification Administration. In order to be eligible for these loans, rural electric system are required to develop and maintain certain equity levels. Disbursing capital credits may be restricted or prohibited by REA depending upon the equity level of the borrower. Thus, repaying the capital credits as required in Part 52.241-13 could be in violation of the terms and conditions contained within the government's own mortgage requirements, could cause the cooperative to default on its mortgage with REA or other lenders, or at a minimum prevent the cooperative from competing to serve the government's load where such competition is consistent with state laws.*

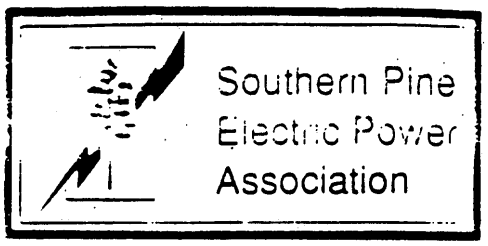
Sheridan Electric would appreciate it if you would rescind the section 52.241-13 of 48CFR(FAR Case 91-13). We must treat all members the same or we would be discriminating our grass root members.

Sincerely,

Lowell L. Snyder

Lowell L. Snyder
Manager

91-13-104



July 19, 1991

General Services Administration
FAR Secretariat (VSR)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

SUBJECT: FAR Case 91-13

Gentlemen:

This letter is in opposition to proposed rule on the acquisition of revenue from utilities (56 Federal Register 23982) and in particular paragraph 52.241-13 Capital Credits. Southern Pine Electric Power Association allocates Capital Credits as of the end of each calendar year after the completion of the annual independent audit, and therefore, cannot pay to a federal contractor Capital Credits within a sixty day period or upon the termination or expiration of the contract with a federal contractor. The bylaws of the association provides for the payment of Capital Credits to all its members upon board resolution only, depending upon the financial condition of the association.

The payment of Capital Credits to federal contractors would be in conflict with the association's bylaws and at the detriment of its members if the above referenced regulations were put into place.

We would appreciate your consideration of these comments and allow electric power associations to pay Capital Credits as provided by resolutions from time to time and pay all members Capital Credits simultaneously.

If you have any questions, please let me know.

Sincerely,

Donald L. Jordan
General Manager

DLJ:ek

JUL 22 1991

POST OFFICE BOX 60 • TAYLORSVILLE, MS 39168 • CALL (601) 785-6511 or MISSISSIPPI WATS: 1-800-231-5240
FAX (601) 785-4980

91-13-105

MOR-GRAN-SOU ELECTRIC COOPERATIVE, Inc.

202 6th Avenue West • P.O. Box 297
Flasher, North Dakota 58535 • Phone 597-3301 • FAX 597-3915
John L. Sims, General Manager

MOR-GRAN-SOU

DIRECTORS

non Glaesemann
President

Bill Koch
Vice President

Dale Heinle
cretary-Treasurer

Wendal Dawson

David Schmidt

Arlene Wells

Eugene Volk

Delores Olsen

Archie Giese

ernard Frederick

Gary Jochim

ATTORNEY

ell Thoraldson

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW
Room 4041
Washington, DC 20405

FEDERAL ACQUISITION REGULATIONS FOR THE ACQUISITION OF UTILITY SERVICES (FAR CASE 91-13)

Dear Sirs:

It has come to our attention that the General Services Administration (GSA) is proposing adding language to all contracts between Federal facilities and cooperative utilities. Mor-Gran-Sou Electric Cooperative, Inc., would like to go on record as opposing the additions as proposed.

The additions we find particularly troubling are located in 52.241-13 Capital Credits. Paragraph (b), last sentence where it states "..... and the date the payment is to be made." In cooperatives, the date the payment is to be made is contingent upon the current fiscal strength of the cooperative. Payment dates can vary widely and are established by the utility's board of directors. Firm dates of payment might impair the utility's financial flexibility and cause undue financial burden to existing rate payers.

Paragraph (c) in its entirety may prove unworkable. Major by-law revisions would have to be adopted by the memberships of most cooperatives. If the cooperative's membership decides not to adopt such amendments, it would be illegal to make payments as proposed. Such payments are made only to the estates of deceased patrons and, in some cases, to dissolved partnerships and corporations.

In other paragraphs, additional administrative over-burden will be added, resulting in added costs, if the proposals are adopted. Paragraph (d) contains language that would cause minor, but expensive, software changes in our accounting procedures.

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91-13-102

Please consider the implications of these changes. Adoption of the proposals would increase our costs and could prove to be unworkable if the membership of the cooperative would refuse to amend the bylaws.

Sincerely,

John L. Sims

John L. Sims
General Manager

cgt/L7192

5100 WEST INA ROAD P.O. BOX 35970 TUCSON, ARIZONA 85740-5970 (602) 744-2944

91-13-106

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW
Room 4041
Washington, DC 20405

Subject: FAR Case 91-13

Dear Sir:

The rewrite verbage used in 52.241-13 Capital Credits is totally inconsistent and inappropriate for our Cooperative and I would guess all Cooperatives.

The U. S. Government should be treated no differently than any other Member.

It must be remembered that the Membership through the election of the Board of Directors establishes the mandate that the Cooperative be managed in a manner to maintain financial stability. In changing conditions, that means flexibility must exist and one such area is rotation of Capital Credits. The following base concept must be maintained:

> "Capital Credits will be assigned in an equitable manner to all Members and returned when the financial conditions permits as judged by the Member-elected Board of Directors."

Exact dates and amounts are inappropriate. The U. S. Government should not be given preferential treatment over the rest of our Members.

Please make rewrite consistent with the long-established and effective Cooperative concepts.

Sincerely,

TRICO ELECTRIC COOPERATIVE, INC.

Marv Athey
General Manager

kv

pc Trico Board

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TRICO
ELECTRIC COOPERATIVE, INC.

91-13-107
Blachly-C

July 19, 1991

ELECTRIC CO-OP

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Reference: FAR Case 91-13

The proposed rules on acquisition of services from utilities (56 Federal Register 23982) would impose nearly impossible conditions on rural electric cooperatives.

Paragraph 52.251-13 (b) states that the Government must be notified of accrued capital credits within 60 days after the close of the fiscal year. This requirement is practically impossible to comply with because the annual audit of financial statements is not completed and accepted by the Board of Directors of Blachly-Lane Cooperative until the third month after the close of the year. Capital credits cannot be allocated until after that time. Also, that paragraph states that the Government must be notified of the date that payment will be made on capital credits accrued for the previous year. Did the authors of this requirement really believe this was possible? Usually, capital credit retirement policies of cooperatives are guidelines, not specific schedules for retirement. Actual payment may require board resolution and possibly approval from the Rural Electrification Administration (REA) on a year-by-year basis. Also, policies may be changed by resolution of the board of directors.

Paragraph 52.241-13 (c) states that capital credits shall be paid to the Government upon contract termination. This requirement would be contrary to the bylaws provisions of most electric cooperatives! It would also be contrary to the recommendations of REA. (Bulletin 102-1).

Most electric cooperatives are financed REA, a governmental agency which has regulatory authority over its borrowers. It is extremely poor policy to have the requirements of one governmental agency (GSA) conflict with the requirements and recommendations of another (REA).

Sincerely,

James P. Ramseyer

James P. Ramseyer, Manager

Karen J. Bennett

Karen J. Bennett, Accountant

Enclosures: Excerpts from
Bylaws, Mortgage Ageement,
Membership Application

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90680 HIGHWAY 99 • EUGENE, OREGON 97402 • TEL 688-8711 • FAX 688-8958

91-13-10

(End of clause)

52.241-11 Electric Service Territory Compliance Representation.

As prescribed in 41.007(h), insert a representation substantially the same as the following:

Public Law 100-202, Electric Service Territory Compliance Representation (Date)

(a) The Offeror represents as part of its offer that the Offeror's sale of electricity in accordance with the terms and conditions of this solicitation is ( ) is not ( ) consistent with Public Law 100-202, section 8093.

(b) The Offeror's supporting rationale is as follows:

_____

_____

_____

_____

(End of clause)

52.241-12 Nonrefundable, Nonrecurring Service Charge.

As prescribed in 41.007(i), insert a clause substantially the same as the following:

Nonrefundable, Nonrecurring Service Charge (Date)

The Government may pay a nonrefundable, nonrecurring charge when the rules and regulations of a supplier require that a customer pay (1) a charge for the initiation of service, (2) a contribution in aid of construction, or (3) a nonrefundable membership fee. This charge may or may not be in addition to or in lieu of a connection charge. Therefore, there is hereby added to the Contractor's schedule a nonrefundable, nonrecurring charge for _____ in the amount of $_____ dollars payable

_____

(specify dates or schedules)—

(End of clause)

52.241-13 Capital Credits.

As prescribed in 41.007(j), insert a clause substantially the same as the following:

Capital Credits (Date)

(a) The Government is a member of the (cooperative name) _____ and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing, a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made.

(c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____ unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

(End of clause)

[FR Doc. 91-12245 Filed 5-23-91; 8:45 am]

BILLING CODE 6820-34-M

91-13-107

APPLICANT COMPLETE THIS SECTION

MEMBERSHIP APPLICATION

For Office Use Only

Name of Applicant _____
Address _____
City, Zip _____
Employed by _____
Social Security No. _____
Telephone No. _____
Name of Spouse (first name) _____
Has applicant had previous service with Blachly-Lane? Yes ☐ No ☐

Account No. _____
Line Location _____
Date Connected _____
Capital Credit No. _____
Membership No. _____
Membership Fee _____
Set Up Fee _____
Deposit/Letter of Cr. _____
Received By _____
Date _____

The undersigned hereby applies for membership in the Blachly-Lane County Cooperative Electric Association (hereinafter called the "Corporation") and in consideration of the acceptance of this application agrees with the Corporation to abide by the terms listed on the reverse side of this application.

_____
_____
(Applicant)

The above application for membership accepted by Blachly-Lane County Cooperative Electric Association the _____ day of _____ 19____.

_____
(Secretary)

Blachly-Lane COUNTY CO-OP ELECTRIC ASSOCIATION
90680 HWY. 99
EUGENE, OREGON 97402

A non-profit cooperative association incorporated under Chapter VIII of Title XXV of the Oregon Code, 1930

Certificate No. _____

THIS CERTIFIES THAT _____ is a member of

Blachly-Lane County Cooperative Electric Association

IN WITNESS WHEREOF the Corporation has caused this Certificate to be signed by its President and Secretary and its corporate seal to be affixed this _____ day of _____, 19____.

_____
President.

_____
Secretary.

91-13-107

1. The applicant shall have all the rights and privileges granted to members under the Articles of Association and By-Laws of the Corporation or any amendments thereto and will comply with and be bound by such Articles of Association and By-Laws and all rules and regulations as may from time to time be adopted by the Board of Directors of the Corporation.

2. The applicant will pay forthwith to the Corporation a membership fee of Five Dollars (5.00) and to deposit with the Cooperative such consumer's deposit as is required by the Board of Directors; it being expressly understood that such deposit shall be non-interest bearing.

3. That fee specified in (2) shall be refundable upon termination of membership except in the event that the applicant fails to fulfill his contract with the Cooperative as provided in the By-Laws and that any deposit specified in (2) shall be refundable to Applicant upon termination of service except any portion applicable to the payment of bills due the Cooperative.

4. As soon as electric energy shall be available after the issuance to the applicant of a membership certificate, the applicant shall purchase monthly from the Corporation not less than the minimum amount of electric energy which shall from time to time be determined by the Board of Directors of the Corporation and will pay therefor, and for all additional electric energy used by the applicant, the price which shall from time to time be fixed therefor by the Board of Directors.

5. The applicant will grant to the Corporation at its request the necessary rights, privileges and easements to construct, operate, replace, repair and perpetually maintain on the property owned or occupied by the undersigned, and in or upon all roads, streets or highways abutting said property, its line or lines for the transmission or distribution of electric energy, and will execute and deliver to the Corporation any conveyance, grant or instrument which the Corporation shall deem necessary or convenient for said purposes or any of them. All service lines supplying the undersigned with electric energy and all switches, meters and other appliances and equipment constructed or installed by the Corporation on said property, except so much thereof, if any, as shall be paid for by the undersigned, shall at all times be the sole property of the Corporation, and the Corporation shall have the right of access to said property to repair and service, and upon the discontinuance of service for any reason to remove the same.

6. The applicant acknowledges and agrees that an amount not less than $2.70 nor more than $4.00 per year of his payments to the Cooperative is for a subscription to Ruralite Magazine.

The certificate and the membership evidenced hereby are transferable only upon and subject to the provisions of the Articles of Association and By-Laws of the Corporation. The Corporation reserves and shall have the exclusive right and option to purchase such membership; provided, however, that if the Corporation shall not have exercised its option as provided in the Articles of Association and By-Laws such membership shall not be transferred or sold to any person, firm, partnership or corporation unless such person, firm partnership, or corporation is eligible to membership and becomes a member in the Corporation pursuant to the provisions of the Articles of Association and By-Laws of the Corporation. Upon termination, as provided in the By-Laws, of the membership of the holder hereof, this certificate shall thereupon be surrendered to the Corporation. Each member of the Corporation shall be entitled to one vote and no more at all meetings of the members of the Corporation.

This certificate and the membership evidenced hereby are subject to all the terms, conditions and limitations of the Articles of Association and By-Laws of the Corporation and all amendments thereto and to the application of the holder hereof for membership in the Corporation.

91-13-107

SECTION 2. PATRONAGE CAPITAL IN CONNECTION WITH FURNISHING ELECTRIC ENERGY. In the furnishing of electric energy the Cooperative's operations shall be so conducted that all patrons will through their patronage furnish capital for the cooperative. In order to induce patronage and to assure that the Cooperative will operate on a non-profit basis the Cooperative is obligated to account on a patronage basis to all its patrons for all amounts received and receivable from the furnishing of electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric energy. All such amounts in excess of operating costs and expenses at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the patrons as capital. The Cooperative is obligated to pay by credits to a capital account for each patrons all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron, and the Cooperative shall within a reasonable time after the close of the fiscal year notify each patron of the amount of capital so credited to his account. All such amounts credited to the capital account of any patron shall have the same status as though they had been paid to the patron in cash in pursuance of a legal obligation to do so and the patron had then furnished the Cooperative corresponding amounts for capital.

All other amounts received by the Cooperative from its operations in excess of costs and expenses shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, allocated to its patrons on a patronage basis and any amount so allocated shall be included as a part of the capital credited to the accounts of patrons, as herein provided.

In the event of dissolution of liquidation of the Cooperative after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credits shall be retired without priority on a prorata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the Board of Directors shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to the patrons' accounts may be retired in full or in part. After April 12, 1986, the Board of Directors shall determine the method, basis, priority and order of retirement, if any, for all amounts heretofore and hereafter furnished as capital.

Capital credited to the account of each patron shall be assignable only on the books of the Cooperative pursuant to written instructions from the assignor and only to successors in interest or successors in occupancy in all or part of such patrons premises served by the Cooperative unless the Board of Directors, acting under policies of general application, shall determine otherwise.

Notwithstanding any other provisions of these Bylaws, the Board of Directors, at its discretion, shall have the power at any time upon the death of any patron, including any joint owner of a membership, if the legal representatives of his estate shall request in writing that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of these Bylaws, to retire capital credited to any such patron or joint membership immediately upon such terms and conditions as the Board of Directors, acting under policies of general application, and the legal representatives of such patron's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby.

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Association and Bylaws, shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the Bylaws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's office.

ARTICLE IX

Waiver of Notice

Any member or director may waive, in writing, any notice of meetings required to be given by these Bylaws.

ARTICLE X

Disposition of Property

The Cooperative may not sell, mortgage, lease or otherwise dispose of or encumber any of its property other than:

(a) Property which in the judgment of the Board of Directors neither is nor will be necessary or useful in operating and maintaining the Cooperative's system and facilities; provided, however, that all sales of such property shall not, in any one (1) year exceed in value ten per centum (10%) of the value of all of the property of the Cooperative;

(b) Services of all kinds, including electric energy; and

(c) Personal property acquired for resale, unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a meeting of the members by the affirmative vote of at least two-thirds (2/3) of all members, and the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice of the meeting, provided, however, that notwithstanding anything herein contained, the Board of Directors, without authorization by the members, shall have full power and authority to borrow

such further and supplemental indentures of mortgage, mortgages, security agreements, financing statements, instruments and conveyances, and take or cause to be taken all such further action, as may reasonably be requested by either Mortgagee in order to include in this Mortgage, as Mortgaged Property, and to subject to all the terms and conditions of this Mortgage, all right, title and interest of the Mortgagor in and to, all and singular, the automobiles, trucks, trailers, tractors, aircraft, ships and other vehicles then owned by the Mortgagor, or which may thereafter be owned or acquired by the Mortgagor. From and after the time of such written demand of the Government or CFC, such vehicles shall be deemed to be part of the Mortgaged Property for all purposes hereof.

SECTION 14. Any noteholder may, at any time or times in succession without notice to or the consent of the Mortgagor or any other noteholder and upon such terms as such noteholder may prescribe, grant to any person, firm or corporation who shall have become obligated to pay all or any part of the principal of or interest on any note held by or indebtedness owed to such noteholder or who may be affected by the lien hereby created, an extension of the time for the payment of such principal or interest, and after any such extension the Mortgagor will remain liable for the payment of such note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

SECTION 15. The Mortgagor, subject to applicable laws and rules and orders of regulatory bodies, will design its rates for electric energy and other services furnished by it with a view to paying and discharging all taxes, maintenance expenses, cost of electric energy and other operating expenses of its electric transmission and distribution system and electric generating facilities, if any, and also to making all payments in respect of principal of and interest on the notes when and as the same shall become due, to providing and maintaining reasonable working capital for the Mortgagor and to maintaining a TIER of not less than 1.5; for purposes of this section 15, TIER of the Mortgagor shall be determined in accordance with the principles set forth in section 5 of this article II, except that Patronage Capital and Margins shall be determined as if the rates proposed by the Mortgagor had been in effect for each of the 3 calendar years referred to in said section 5. The Mortgagor shall give 90 days prior written notice to each of the Mortgagees of any proposed change in its general rate structure.

9413-107

SECTION 16. The Mortgagor will not, in any one year, without the approval in writing of both of the Mortgagees, declare or pay any dividends, or pay or determine to pay any patronage refunds, or retire any patronage capital or make any other cash distributions (such dividends, refunds, retirements and other distributions being hereinafter collectively called "distributions"), to its members, stockholders or consumers if after giving effect to any such distribution the total Equity of the Mortgagor will not equal or exceed 40% of its total assets and other debits; provided, however, that in any event the Mortgagor may make distributions to estates of deceased patrons to the extent required or permitted by its articles of incorporation and bylaws, and, if such distributions to such estates do not exceed 25% of the patronage capital and margins received by the Mortgagor in the next preceding year, make such additional distributions in any year as will not cause the total distributions in such year to exceed 25% of the patronage capital and margins received in such next preceding year, and provided, further, however, that in no event will the Mortgagor make any distributions if there is unpaid when due any installment of principal of or interest on the notes, if the Mortgagor is otherwise in default hereunder or if, after giving effect to any such distribution, the Mortgagor's total current and accrued assets would be less than its total current and accrued liabilities.

For the purpose of this section, a "cash distribution" shall be deemed to include any general cancellation or abatement of charges for electric energy or services furnished by the Mortgagor, but not the repayment of a membership fee of not in excess of $25 upon termination of a membership. As used or applied in this Mortgage (1) "Equity" shall mean the aggregate of Equities and Margins (as such terms are defined in the Uniform System of Accounts) and Subordinated Indebtedness; and (2) "Subordinated Indebtedness" shall mean unsecured indebtedness of the Mortgagor payment of which shall be subordinated to the prior payment of the notes by subordination agreement in form and substance satisfactory to the Government and CFC.

North Carolina
Association of Electric Cooperatives, Inc.

3400 Sumner Boulevard
Post Office Box 27306
Raleigh, North Carolina 27611
Telephone: (919) 872-0800

91-13-108

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

SUBJECT: FAR CASE 91-13

Dear Sir:

As the statewide organization representing the 28 electric membership corporations in the State of North Carolina, we have serious concerns regarding the above-referenced Federal Acquisition Regulation ("FAR"). The section which particularly concerns us is 52.241-13, entitled "Capital Credits."

Paragraph (b) of that section would require a cooperative furnishing electricity to a government agency pursuant to the FAR to provide a list of accrued capital credits by contract number, year, and delivery point within 60 days after the close of a cooperative's fiscal year. It also requires the cooperative to state the date payment would be made. These portions of the proposed regulations are contrary to State and Federal law and deference should be given to the requirements of law.

The requirement of providing a list of accrued capital credits within 60 days after the close of a cooperative's fiscal year runs counter to the following legal and administrative concerns. First, under Federal law cooperatives are not required to mail capital credit notices to their members and may satisfy capital credit notification requirements simply and cheaply by publishing a notice to the customers telling them how they themselves can calculate capital credits for a given year. Second, doing this within 60 days after the end of a given fiscal year may be an impossibility. Many cooperatives are themselves members of supply cooperatives and do not know the capital credits allocated to them by their supply cooperative within 60 days after the end of a given fiscal year and thus cannot include supply cooperative capital credit allocations within overall capital credits until they receive capital credit notices from their supply cooperatives.

Stating the date payment of capital credits is to be made is a problem until such time as the cooperative's board of directors authorizes the retirement of capital credits. It is only then that the cooperative can state the date that payment is to be made.

JUL 22 1991

91-13-108

Paragraph (c) of section 52.241-13 raises some of the same concerns which have already been expressed. For a cooperative to pay capital credits to a government entity at the expiration of the contract would require violation of State and Federal legal principles.

We respectfully request that the offending sections of the proposed regulations be changed so that government agencies abide by the same legal principles as the citizens do. In these particular matters, the government and its agencies should not be above the law.

Sincerely yours,

Wayne D. Keller

Wayne D. Keller
Executive Vice President

cc: Managers, 28 NCAEC member systems

Blue Ridge Electric
Membership Corporation

Doug Johnson, Executive Vice President
Caller Service 112
Lenoir, North Carolina 28645
Telephone (704) 758-2383

91-13-109

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW
Room 4041
Washington, D. C. 20405

Reference: FAR Case 91-13

Gentlemen:

We are in receipt of your proposed rule on acquisition of services from utilities (56 Federal Register 23982).

We are opposed to the adoption of this rule. In our opinion, if this rule is adopted, it would provide preferential treatment for the government in that it is requesting, in Section B relating to capital credits, that the cooperative furnish the contracting officer with the government the capital credits that have accrued to the government and the date the payment is to be made. We do not specify the expected date of payment to our other members; therefore, if this rule is adopted, we would be giving preferential treatment to the government.

If we are required to state when we plan to pay capital credits, it will reduce our flexibility and will tie our hands in respect to our capital credits policy. We need to remain flexible as there are times that we need to use a portion of our capital to build plant or to do replacement of existing plant.

For the reasons stated above, we are in opposition to the adoption of this proposed GSA rule.

Sincerely,

Douglas W. Johnson

Douglas W. Johnson
Executive Vice President

DWJ:cwb

c: Bob Bergland

REC

JUL 22 1991

M.J.M. Electric
Cooperative, Inc.

P.O. Box 80
Carlinville, IL 62626
Telephone: (217) 854-3137

Dennis A. Keiser
Manager

91-13-110

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and "F" Streets, N.W.
Room 4041
Washington, D.C. 20405

Subject: Comments concerning FAR Case 91-13

To Whom It May Concern:

I read in the Federal Register, dated May 24, 1991 the Proposed Rules for Acquisition of Utility Services.

52.241-13 titled "Capital Credits" includes several areas which concern me:

Paragraph "B" in that section states that we should notify the Government within 60 days of all accrued capital credits, at the close of the fiscal year. This is too short a time for such notification.

Paragraph "B" also states that a date is to be given stating when the payment will be made. This will not always be known at that point in time.

Paragraph "C" refers to payment of Capital Credits to the Government. The manner in which it is stated is simply discriminatory towards all other members of the Cooperative and should be deleted.

Sincerely,

Dennis A. Keiser

Dennis A. Keiser, General Manager
M.J.M. ELECTRIC COOPERATIVE, INC.

DAK/de

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JUL 22 1991

"Owned by those we serve"

Kootenai Electric Cooperative, Inc.

A Consumer Owned Electric Utility

KEC

91-13-111

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F. Streets, N.W., Room 4041
Washington, D.C. 20405

Ref: FAR Case 91-13

Gentlemen:

We are alarmed by your proposed rule on the acquisition of services from utilities (56 Federal Register 23982).

The proposed rule would blatantly require us to discriminate against the consumers-owners of this cooperative in favor of the U.S. government. We, like our sister cooperatives all across the nation, are governed by state corporate law and our by-laws.

Now comes the General Services Administration with the arrogance to propose over riding the state's authority to govern as well as the cooperative's by-laws. Further, to stipulate special treatment right down to dictating accounting procedures and payment of capital credits by certified check. Maybe we should require GSA to pay its utility bills on time with a certified check?

The proposed rules are ill advised and totally unnecessary. We are a nonprofit business. That means whatever margin we earn is owned (capital credits) by the people who paid it, including GSA. As required by our state law and our by-laws all of our members will be refunded their capital credits on exactly the same basis. We do not discriminate between the poor elderly widow trying to survive on social security and the powerful GSA. You should not either.

Sincerely,

Charles Y. Walls
General Manager

cc: Richard Stallings
Larry Larocco
Steve Symms
Larry Craig

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JUL 22 1991

W. 2451 Dakota Ave. • P.O. Box 278 • Hayden, ID 83835-0278
(208) 765-1200 • Fax (208) 772-5858

91-13-112

Big Flat Electric Cooperative, Inc

Malta, Montana 59538

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Gentlemen:

This letter is in object to the following action pertaining to proposed rule on the acquisition of services from utilities (56 Federal Register 23982.)

52.241-13 Capital Credits

The Board of Directors feel that suggested action would be very detrimental to this cooperative and discriminating to the other member/consumers.

We are a cooperative and all members/consumers whom ever they are (race,color, natural origin, etc.) to be treated equally.

Sincerely,

Bill R. Henderson

Bill R. Henderson, Manager

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JUL 22 1991

91-13-113

Charles Mix Electric Association, Inc.

July 19, 1991

General Services Administration
FAR Secretariat
18th and F Streets, NW
Room 4041
Washington, DC 20405

Dear FAR Secretariat:

This letter is in response to the Federal Register Notice published by the General Services Administration dated May 24, 1991 concerning Federal Acquisition Regulation; Acquisition of Utility Services (FAR case 91-13).

The management of this cooperative closely studied and scrutinized the proposed regulations regarding Federal acquisition of utility services (48 CFR, parts 6, 8, 15, 41, and 52). Understand that this cooperative is organized under the Rural Electrification Act. Our operation is governed by Federal regulation and overseen by REA in Washington, DC. Our by-laws are fundamentally a product of model by-laws suggested and recommended by REA. Those by-laws prohibit that which 52.241-13(c) requires. Understand that there is a direct relationship between capital credits and the financial stability of the cooperative. Thus, the model by-laws provide that "if, . . . the Board of Directors shall determine that the financial condition of the cooperative will not be impaired thereby, the capital then credited to patrons' accounts may be retired in full or in part. Any such retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited." (FIFO). Obviously, the proposed rules conflict with REA's model by-laws. Moreover, the proposed rules discriminate in favor of the governmental agencies and against non-governmental members and patrons of this cooperative. There appears no reasonable basis for such discrimination given that

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JUL 22 1991

440 Lake Street • P.O. Box 10 • Lake Andes, South Dakota 57356 • (605) 487-7321

91-13-113

governmental agencies are generally perpetual in duration. Governmental agencies which are of limited duration have the same rights as natural and corporate "persons" under the by-laws regarding retirement of capital credits. We note that under existing REA law, a cooperative with under forty percent (40%) equity must obtain approval from REA to retire more than twenty-five percent (25%) of the previous year's margins. That approval cannot be obtained within the time frame specified in 52.241-13. Thus, your regulations create an "impossibility of performance" situation. Further, it should be of overriding concern that these proposed regulations jeopardize the existence of cooperatives with a substantial governmental agency load. Understand that such a co-operative must meet certain financial standards as set forth in REA and CFC mortgages. Failure to do so amounts to a default and would require REA to operate and manage the defaulting cooperative. If the capital credits clause of the proposed contract results in a default and the REA must then man and operate small cooperatives, where are the savings to the Federal government?

The disastrous effects of the proposed rules can only be avoided by excepting from their scope and application rural electric cooperatives.

In summary, the proposed regulations a) conflict with existing REA law; b) have no reasonable basis in fact; c) jeopardize the financial status of numerous rural electric cooperatives; d) could result in an overall increase in Federal expenditures; and e) would likely increase the rates to the Federal government and all members.

Sincerely,

CHARLES MIX ELECTRIC ASSOCIATION, INC.

Mark W Mengenhauser

Mark W. Mengenhauser
Manager

SOUTH LOUISIANA ELECTRIC COOPERATIVE ASSOCIATION

91-13-114

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW
Washington, D.C. 20405

RE: Comments of South Louisiana Electric Cooperative on FAR Case 91-13

Dear Sir,

South Louisiana Electric Cooperative Association (SLECA), is a member-owned electric utility headquartered in Houma, Louisiana. At SLECA we are very concerned about some of the provisions in the proposed rules in FAR Case 91-13.

Under part 52.241-13 Capital Credits part (b), SLECA would be unable to meet the 60 day requirement. SLECA's annual audit, which has an effect on capital credits, is not completed until 90 days after the close of the fiscal year. The exact amount of capital credits to be distributed cannot be accurately calculated and stated until after the audit.

The date of payment requirement of part 52.241-13 (b) would also be impossible to comply with. SLECA cannot project a date for future payment of capital credits for the following reasons:

1) SLECA is paying capital credits on a 20 year rotation. Capital credits are paid 20 years after they are earned if,
2) SLECA has met certain requirements of our mortgage with the Rural Electrification Administration and,
3) SLECA has the cash reserves available to pay the capital credits

The three conditions make projecting a date of payment impossible.

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WILLIE WIREDHAND

91-13-114

In order to comply with 52.241-13(c), SLECA would have to violate its own By-Laws and Articles of Incorporation. Under these terms SLECA cannot pay capital credits to any member out of that member's proper payment order.

The overall record keeping requirements of Section 52.241-13 would present an additional strain on the limited human resources of this small business.

Sincerely,

Roy A. Landry
Manager, Finance & Accounting

91-13-115

BANTA, HOYT, GREENE & EVERALL, P.C.
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
6300 SOUTH SYRACUSE WAY, SUITE 555
ENGLEWOOD, COLORADO 80111-6725
TELEPHONE (303) 220-8000

RICHARD L. BANTA
RICHARD D. GREENE
STEPHEN G. EVERALL
DARRYL L. FARRINGTON
CHARLES A. KUECHENMEISTER
JANE B. GARROW
BERNARD N. MESSER
SUSAN L. ELKINS
JAMES E. GIGAX
JOHN L. PALMQUIST

FACSIMILE
(303) 220-0153

OF COUNSEL
RICHARD L. BANTA, JR.
R. VAL HOYT

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets N.W. Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13
Comments from Intermountain Rural Electric Association (IREA) Sedalia, Colorado 80135

To Whom It May Concern:

Intermountain Rural Electric Association (hereinafter referred to as "IREA") an electric co-op presents herein its comments regarding the proposed rule on the acquisition of services from utilities (56 Federal Register 23982).

At the present time IREA assigns and pays capital credits to Government agencies consistent with the associations's by-laws which provide that capital credits will be clearly reflected in the appropriate patrons capital account within a reasonable time after the close of the fiscal year. As to the actual payment being made it would be very difficult to pinpoint with any accuracy a specific time such as "..within 60 days" and to do so it would constitute an unreasonable burden on IREA and contravene its by-laws.

IREA would respectfully request GSA to consider the following:

1) For the year 1989 HUD had applied for 432 separate electric services and for one contract in particular HUD was credited with $0.13 (13 cents) as capital credits. It becomes readily apparent that to make an accounting of capital credits for each individual contract would be terribly burdensome and constitute an overkill.

2) For the fiscal year 1990 HUD applied for 775 separate contracts for service.

3) As to the reference for a list of accrued credits for each delivery point it should be noted that IREA's system provides electric service for the V.A. at 36 delivery points; the Forest Service at 24 delivery points and the

91-13-115

U.S. Air Academy at 8 delivery points as well as other delivery points for other agencies.

4) Pursuant to the mandates of the REA and CFC mortgage requirements, the association can pay no more than 25% of the previous year's margin in capital credits. Therefore, before capital credits can be assigned yet alone paid it must first determine what margin, if any, will be accrued and then only 25% of the previous year's margin may actually be assigned. To determine the precise amount and the date of payment cannot possibly be done in the way the proposed rule suggests.

5) IREA is a member-owned non-profit electric cooperative organized under the laws of the State of Colorado and whose chief lender of funds is the REA, an agency of the U.S. Department of Agriculture and subject to the rules, regulations and laws of the above.

All of the foregoing constitute some of the basic objections IREA has to sections (b) and (c) of 52.241--Capital Credits. IREA presently serves over 52,000 meters. Proposing new rules is fine, but much consideration must be given to the logistics personnel and funding to implement such rules.

Very truly yours,

Richard D. Greene

Richard D. Greene
General Counsel IREA

/rdg

(via Federal Express)

91-13-116

Redwood Electric Cooperative
P.O. Box 15
Clements, MN 56224
Telephone
692-2214

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets NW
Room 4041
Washington, DC 20405

RE: FAR Case 91-13

Dear Sirs:

I am writing in regards to the proposed rule change of the Federal Acquisition Regulations for the Acquisition of Utility Services (FAR Case 91-13).

It is my understanding that the purpose of this rule change is to give some consistency to Government contracts in the acquisition of utility services. For the most part, this rule change will provide that. Unintentionally, though, the proposed rule will have serious impacts on cooperatives and their member/owners because they ignore the unique way in which cooperatives are structured as member-owned not-for-profit entities. Adoption of the rules, as proposed, could result in violations of cooperative by-laws, articles of incorporation, Rural Electrification Administration mortgage requirements, and state laws governing cooperative operations.

However, there are parts of this rule that will cause undue financial hardship on many cooperatives. Specifically, I am referring to 52.241-13 Capital Credits. By including parts (b) and (c) in this section, you are forcing cooperatives to pay all remaining unpaid capital credits.

We agree with subsection (a) which indicates that the government, as any other member of a cooperative:

> "...is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the [cooperative] to pay capital credits and which specifies the method and time of payment."

Most cooperatives retire their capital credits on some form of rotation basis. In our instance, we retire capital credits on a 15-year cycle. Hence, those consumers that were members of the cooperative in 1976 will be receiving their capital credits some time this year. For example, let's say the Government has entered into a 20-year power supply contract with a cooperative effective January 1971.

In January 1991 the contract expires. There is no reason for the government to renew it. According to part (c) of the proposed rule, "... the Contractor shall make payment to the Government for the unpaid capital credits." It is now possible for the Cooperative to experience undue financial hardship by having to refund capital credits for 15 years of patronage before they are scheduled to be retired. This, in effect, puts the Government in a position to collect capital credits before the remaining members are allowed to. If the Government must abide by

JUL 22 1991

the by-laws of the cooperative, this rule would be in conflict with the by-laws of this and hundreds of other cooperatives. If a matter such as this had to be settled in court, do the by-laws of a cooperative supersede the rules of a governmental agency or vice versa? Part (c) must be amended by adding the words "on the Contractor's regular schedule for the retirement of capital credits" to the end of the sentence.

Capital credits are unique to "not-for-profit" cooperatives and of necessity must be treated in a manner which is consistent with their by-laws, as well as applicable federal and state laws. In a cooperative, there are no "profits" to be disbursed to investors. Rather, to the extent that income exceeds costs, these "margins" accumulate as capital credits. They are, in accordance with the cooperative's by-laws, returned to the member/owners in direct proportion to their use of electricity. As a member of the cooperative, the government is entitled to be paid its capital credits, consistent with the cooperative's by-laws; it is not entitled to become a privileged class of customer. Provision of capital credits to the government in a manner which is inconsistent with the cooperatives' by-laws could be, in effect, providing the government with a preference over other cooperative members. This treatment could be inconsistent with the requirement of the United States Internal Revenue Service for cooperative status, that the cooperative operate on a "cooperative basis."

Part (b) of the proposed rule change must be redefined. Currently, this part would make it obligatory for the Contractor to pay capital credits on a date stated 60 days after the close of the fiscal year. There are numerous cooperatives that pay their capital credits up to a year after the Board of Directors has announced that capital credits would be retired. For example, the above cooperative uses a fiscal year of January 1 - December 31. On February 15, 1978, the Board of Directors announce that the date consumers can expect to receive a capital credit check is December 15, 1978. On December 2, 1978, a storm damages or destroys a majority of the system. If, for circumstances beyond the cooperative's control, it is necessary to withhold payment of the capital credits, is the cooperative obligated to pay the capital credits to the Government?

To determine the amount of capital credits to be paid to the Government and the date the payment would be made, would be difficult, if not impossible. While some indication of the amount of capital credits may be ascertainable at the close of the fiscal year, depending upon the by-laws of the cooperative and its financial condition, these credits will be held by the cooperative for a period determined by the cooperative and applied uniformly to all members. If during that period, which typically runs 15 years, our cooperative experiences circumstances as described above, it might be necessary to withhold payments of those capital credits. Additionally, the cooperative is prohibited from paying capital credits unless the cooperative has met the financial standards established by the United States Department of Agriculture, Rural Electrification Administration, and anyone else who is a co-mortgagee with REA.

Many distribution cooperatives are member-owners of generation and transmission cooperatives (G&Ts), and as such, are entitled to receive capital credits from the G&T. It would be virtually impossible to determine the appropriate capital credits due the distribution cooperative from the G&T, and consequently the distribution cooperative's own member/owners, within 60 days after the close of the distribution cooperative's fiscal year.

More importantly, though, I believe that subsection (c) would require the cooperative to violate its own by-laws, articles of incorporation, and state laws governing cooperatives! Under subsection (c), cooperatives would be required, upon termination or expiration of a contract, to pay the government for al unpaid capital credits. As indicated in subsection (a), quoted above, the government is entitled to be paid for capital credits in the method and at the time provided for in the cooperative's by-laws. Provisions requiring payment at the expiration or termination of a contract are in direct violation of our by-laws and is inconsistent with the very terms and conditions from which subsection (a) recognizes as controlling the provision of service from a cooperative to one of its members, the government.

Additionally, rural electric systems, as generally small "not-for-profit" entities, have limited sources of capital. The majority of capital requirements are met by the Rural Electrification Administration. In order to be eligible

for these loans, rural electric systems are required to develop and maintain certain equity levels as required by REA. Disbursing capital credits may be restricted or prohibited by REA depending upon the equity level of the borrower. Thus, repaying capital credits as required in Part 52.241-13 would be in violation of the terms and conditions contained within the government's own mortgage requirements! It could also cause the cooperative to default on its mortgage with REA or other lenders, or at a minimum, prevent the cooperative from competing to serve the government's load where such competition is consistent with state laws.

Part 52.241-8 Connection Charge, also creates a procedure which is inconsistent with the way in which cooperatives operate as not-for-profit member-owned systems. Under the proposed rules, the cost of providing connection facilities for the government would be shifted from the government to other cooperative members. While not only unfair to other cooperative members, this is also a violation of our by-laws, and most probably other cooperative's by-laws and the state statutes which govern the way cooperatives operate within the state.

Part 52.241-8 provides in relevant part that the government shall pay a connection charge to cover the contractor's cost of furnishing and installing new connection facilities. Then, on each monthly bill for service furnished, the government receives a credit until the accumulation of credits equals the amount of such connection charge. While this section is appropriate for contractors which are for-profit entities, and represents an expense which is appropriately credited against profits, this is inappropriate where the contractor is a not-for-profit cooperative and the provision of a credit would require other cooperative members to bear the cost of facilities constructed to meet the requirements of the government, as well as their own.

In a cooperative utility, rates are based upon the actual cost of doing business. There are no shareholders or other investors who obtain a profit on their investment, nor, more importantly, profits against which the cost of connections can be expensed as a cost of doing business. Providing the government with a credit for connection facilities which were built to serve the government's own load would mean that those costs would have to be borne by the cooperative's other members. This would not only be unfair to those other members who are already paying the cost of facilities built to meet their loads, but would be in violation of our by-laws as well as state statutes which govern the way in which cooperatives operate within the state. Such action could also be considered as an unlawful disbursement of capital credits, as discussed previously.

Because what appears to be happening is a member of a cooperative, the Government, is telling the utility how to run its business, I must oppose the proposed rule change on the acquisition of services from utilities (56 Federal Register 23982).

Sincerely,

Norman Kahl

Norman Kahl
General Manager

(djc)

91-13-117

MINNESOTA VALLEY COOPERATIVE LIGHT & POWER ASSOCIATION
501 SOUTH FIRST STREET P.O. BOX 717 MONTEVIDEO, MINNESOTA 56265

PHONE 612-269-2163 Wats 800-247-5051 Fax 612-269-2165

JUL 13, 1991

General Services Administration, FAR
Secretariat (VRS)
18th & F Street NW
Room 4041
Washington, DC 20405

RE: FAR Case 91-13

We are concerned about the proposed GSA rule change at Section 41.007 (j), 52.241-13 Capital Credits. We are specifically concerned about the proposed language in paragraphs (b) and (c).

Our comments with regard to paragraph (b) are as follows:

1. It would not be possible for rural electric cooperatives to give the government a date when their capital credits would be refunded. Rural electrics have different methods of refunding. Most follow the first in first out principle, retiring a year or more at a time. Others retire a percentage of all past credits on an annual basis. In either case, the amount would not be known because percentages vary from year to year and only part of a given years credits may be refunded in a particular year. None retire all of a former members capital credits when they discontinue membership.

   The amount of refunds depends on the individual systems financial condition and the requirements of the Rural Electrification Administration (REA) and other lenders. It would be impossible for us to comply with this requirement.

2. It would not be possible for rural electrics to notify the government of their capital credits within 60 days. The exact amounts are not known until the books are closed and the annual audit scheduled and completed. This does not give us enough time. The government should expect to be notified on the same schedule as all other members, which in our case would be about 120-150 days after the fiscal year.

JUL 22 1991

BOARD OF DIRECTORS

IRVING ANDERSON, President, District 5
MORRIS BEHRMAN, Vice President, District 6
PHILIP GRESETH, Secretary, District 1
DARRIS KOMPELIEN, Treasurer, District 7
GORDON JAENISCH, Director, District 2
WILTON GUSTAFSON, Director, District 3
JOEL SACHARIASON, Director, District 4

91-13-117

Another complication is that most rural electrics belong to generation and transmission cooperatives. As such, they are entitled to capital credits from them. Those capital credits in turn are allocated to the rural electric members, the government being among them. These amounts are not available in 60 days either.

Our comments with regard to paragraph (c) are as follows:

1. The principle that governs the retirement of capital credits apply equally to all members including the government. It would be a violation of the Articles of Incorporation and Bylaws of most of the nations 1,000 rural electrics to retire capital credits to the government ahead of the schedule for other members. Our system is on a 17 year rotation basis. What that means is that those members who were allocated capital credits 17 years ago are now being paid. This rotation continues and each year those members will continue to receive whatever credits they have coming, but not all at once as is being proposed. If a member discontinues service, they are not paid their capital credits until their years of taking service come up in the rotation. The same would apply to the government too.

We want to emphasize that what is being proposed is in conflict with the rules we are required to follow by another government agency, REA, other lenders, state laws, the Articles of Incorporation and the bylaws of rural electric cooperatives. They simply cannot be complied with.

Therefore, we want to voice our strong opposition to the proposed rule on the acquisition of services from utilities as described in paragraph (b) and (c). We urge that they be withdrawn.

We appreciate this opportunity to comment.

Sincerely,

MINNESOTA VALLEY COOPERATIVE
LIGHT AND POWER ASSOCIATION

Leroy D. Schecher

Leroy D. Schecher
General Manager

LDS/js

cc: Bob Bergland
Mike Oldak

Serving Campbell, Walworth and Potter Counties with Low Cost Electricity...

ELECTRIC COOPERATIVE, INC.

BOX 135 ■ SELBY, SOUTH DAKOTA 57472 Telephone 649-7676

91-13-118

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets
Room 4041
Washington DC 20405

RE: FAR Case 91-13

Dear Sirs:

In relation to the proposed changes in section 52.241, Capital Credits, we are opposed to the proposed changes as required in paragraphs (b) and (c). The addition of these clauses to the contracts between Cam Wal Electric and government agencies will have a profound effect upon the accounting systems of our cooperative.

We recognize the Government as a member of the system and is entitled to the refund of capital credits on the same basis as all members are!

Sincerely,

Charles W. Birkholt

Charles W. Birkholt
General Manager

CWB/dh

JUL 22 1991

91-13-119

Corporation • P.O. Box 1389 • 3111 Fairview Dr., Owensboro, Ky. 42302-1389

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW
Room 4041
Washington, D.C. 20405

RE: Federal Acquisition Regulations for the Acquisition of Utility Services (FAR Case 91-13)

Gentlemen:

The proposed regulation on the acquisition of utility services, as recently published by your agency in the Federal Register, incorporates some very unacceptable requirements in Section 52.241-13. Green River Electric Corporation, a Kentucky electric cooperative, states for the record in this case that the GSA requirements pertaining to cooperative provided utility service and more specifically capital credit allocation/payment, categorically disregard and ignore the following:

1) State statutes governing the organization and operation of cooperative utilities in Kentucky,
2) The Articles of Incorporation, Bylaws, and Service Rules and Regulations of the corporation,
3) Regulations, policy and procedures of the Kentucky Public Service Commission, the legislated regulatory agency for all utilities in the state,
4) Rural Electrification Administration mortgage covenants, FAR's, and operating bulletins and recommendations,
5) National Bank for Cooperatives, (Co-Bank), mortgage covenants and requirements, and
6) The prerogative of the cooperatives' board and management to operate the utility in the best interest of all its member customers.

JUL 22 1991

Phone 502/926-4141 • 1-800-284-1473 • Fax 502/685-2279

91-13-119

We trust the above comments will be given due consideration by your agency before making the monumental changes proposed in FAR Case 91-13.

Sincerely,

Dean Stanley

Dean Stanley
President and General Manager

bd

91-13-120

JACKSON COUNTY RURAL ELECTRIC

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D. C. 20405

Re: FAR Case 91-13

Gentlemen:

We have reviewed the proposed rule on acquisition of services from utilities (56 Federal Register 23982). We believe that it will be an unnecessary and costly duplication of efforts, and will be discriminatory. We see no reason why the 17,000 members of our cooperative should be asked to bear added financial burdens for special treatment of a few services used by the federal government. The rule, as stated, will require us to treat federal accounts under considerably more favorable terms than those set forth in our tariffs, Bylaws, and Rules of the Indiana Utility Regulatory Commission (IURC):

- For administrative accuracy and consistency contract terms need to be uniform and understandable. Customized contracts are discriminatory and an invitation to misunderstanding and misinterpretation.

- Cumulative billing is not permitted by our Commission (52.241-5(a))

- Our meters are read by our consumers, in order to hold rates down (52.241-5(b))

- Pro-rating for outages would be an administrative nightmare and an invitation for disputes (52.241-5(d)) A one hour outage proration would be .1389 percent!

- Service extension terms are prescribed by our Commission. (52.241-8)

- Paragraphs (b), (c) and (d) of 52.241-13 (Capital Credits) contradict paragraph (a) by attempting to modify Bylaw terms and dictate terms not available to other members.

- 52.251-13(c) specifically calls for out-of-turn capital credit payments in direct violation of our Bylaws, and of REA recommended Bylaws.

JUL 22 1991

RURAL ELECTRIC MEMBERSHIP CORP. • BOX K • BROWNSTOWN, IN. 47220 • (812) 358-4458

91-13-126

Our Board of Directors, elected by and from our consumers, has steadfastly insisted for over fifty years that no consumer or class of consumers be given an advantage over any others. Further, we are a regulated utility. The federal government should be more than adequately protected by our democratic organization and State regulation, without adding another meaningless but bothersome layer of bureaucratic rules. If we're not doing the job well enough to suit, please talk to us about it like any other consumer does, but please don't make it more difficult and costly to serve all of our consumers, without a clear public benefit.

Sincerely,

Don Clodfelter

Don Clodfelter
General Manager

DC:bem

91-13-121

McNAIR, McLEMORE, MIDDLEBROOKS & CO.

CERTIFIED PUBLIC ACCOUNTANTS

RALPH S. McLEMORE, SR., C.P.A. (1963-1977)

SIDNEY B. McNAIR, C.P.A.
SIDNEY E. MIDDLEBROOKS, C.P.A., P.C.
RAY C. PEARSON, C.P.A.
J. RANDOLPH NICHOLS, C.P.A.
WILLIAM H. EPPS, JR., C.P.A.
RAYMOND A. PIPPIN, JR., C.P.A.
JERRY A. WOLFE, C.P.A.
W. E. BARFIELD, JR., C.P.A.
HOWARD S. HOLLEMAN, C.P.A.
F. GAY McMICHAEL, C.P.A.

389 MULBERRY STREET
POST OFFICE BOX ONE
MACON, GEORGIA 31202
(912) 746-6277

1117 MORNINGSIDE DRIVE
POST OFFICE BOX 1287
PERRY, GA 31069
(912) 987-0947

227 NORTH MEMORIAL
POST OFFICE BOX 668
WALTERBORO, SC 29488
(803) 549-9518

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N. W.
Room 4041
Washington, D. C. 20405

RE: FAR Case 91-13
General Services Administration,
Federal Acquisition Regulations
for the Acquisition of Utility
Services

To Whom It May Concern:

We have recently become aware of the General Services Administration's (GSA) proposed rule on the acquisition of services from utilities (56 Federal Register 23982). We wish to comment on the proposed addition of paragraph 2.241-13 regarding capital credits to Section 41.007 (j) (FAR Case 91-13).

Based on the following discussion, it is our opinion that 501(c)(12) utility cooperatives should be specifically excluded from the requirement to retire the government's capital credits upon the expiration or termination of the contract for utilities.

Facts: GSA has proposed a rule which will require that all contracts between Federal government agencies/facilities and utility cooperatives include language which will force the cooperative to pay capital credits to the government upon the contract's termination or expiration.

Issue: What are the potential income tax consequences of the proposed GSA rule to 501(c)(12) tax-exempt cooperatives?

Conclusion: The GSA proposed rule would grant the government priority in capital credit retirements over other cooperative members. This priority to one member (to the detriment of other members) calls into question whether "cooperative operation" principles are met. The violation of cooperative operation principles could seriously threaten the utility cooperative's tax-exempt status under Sec. 501(c)(12) (i.e., the Internal Revenue Service may disallow the cooperative's tax-exempt status).

JUL 22 1991

91-13-121

Discussion: A reading of the GSA's proposal suggests that its author either has no understanding of tax-exempt utility cooperative tax rules or has confused tax-exempt (501(c)(12)) and taxable (subchapter T) cooperatives.

In order to qualify (and remain qualified) as a 501(c)(12) organization, a utility cooperative must operate on a cooperative basis. The definition of cooperative operation is found in case law and administrative rulings. In essence, cooperative operation requires that the utility account on a patronage basis to all of its patrons for amounts received from furnishing utilities in excess of the amounts required for operating costs and expenses (including future business needs). This accounting is generally achieved by the annual allocation of "credits" to a capital account for each patron of the operating excess. These credits represent amounts provided to the utility cooperative by the patrons for capital needs (thereby, the term "capital credits"). See Puget Sound Plywood, 44TC 305; Rev. Rul. 78-238, 1978-1 CB, 161; Peninsula Light 77-1USTC 9401; and Rev. Rul.72-36, 1972-1 CB, 151.

Cooperative principles allow the retention of capital credits for such purposes as retiring debt, expanding services or maintaining necessary reserves. Rev. Rul. 72-36, question 2.

Capital credits must be allocated to patrons in an equitable manner, generally on the basis of their patronage. See Pomeroy Cooperative Grain Co., 31TC 674; Lamesa Cooperative Gin, 78TC 894; Kingfisher Cooperative Elevator Association, 84TC 600. It is noteworthy in Lamesa that equitable allocations of capital credits are intended "to prevent inequitable treatment to some patrons at the expense of others...." It is a reasonable assumption that this logic extends to capital credit retirements.

Capital credit retirements are typically determined by the cooperative's Board of Directors within the guidelines of the bylaws and with consideration of the cooperative's financial status. Historically, most utility cooperatives have returned capital credits on a first-in, first-out (FIFO) basis, as recommended by REA (see REA Bul. 102-1:402-3 Appendix A). This system returns older capital to patrons as newer capital is supplied by new patrons.

Generally cooperative's bylaws provide for "out-of-sequence" retirements in cases where the member has ceased to exist (specifically, estates, bankrupt corporations and dissolved entities). However, no member or class of members continuing in existence is given preferential rights to capital credit retirements.

The GSA position seeks to modify this historical treatment by legislative change and to place the government ahead of all other members in the retirement order. This position is patently unfair and inequitable and violates the equity principle which is the spirit of "cooperative operation."

91-13-124

At best, the GSA proposal reflects bad faith on the part of the government in abiding by its own cooperative rules; at worst, it could result in the revocation of the tax-exempt status of the utility cooperative.

Richard A. Whitten, Jr.

Richard A. Whitten, Jr.

Addendum: The government's drafter of the proposed rule change could have been thinking of nonexempt, "subchapter T" cooperatives in making this change. Subchapter T cooperatives are subject to potentially accelerated payment rules under the tax law. However, their payments are generally referred to as "patronage dividends." The term "capital credits" is generally used only by 501(c)(12) tax-exempt organizations.

CRAWFORD Electric
COOPERATIVE — GAYS MILLS, WISCONSIN 54631

91-13-122

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW, Room 4041
Washington, DC 20405

RE: FAR Case 91-13

I have examined the proposed changes to section 41.007(j) regarding Contracts between federal facilities and cooperative utilities for electric service and find that the requirements would be exceptionally troublesome to us.

Section (a) dealing with assignment of capital credits is no problem. It is required in our bylaws.

Section (b) is a problem because assignment of capital credits within 60 days is not possible using our present billing and accounting systems. A time frame of 6 months would be much more appropriate.

Section (c) requiring payment of capital credits upon termination of the contract is prohibited by our bylaws and quite possibly by state statute.

Section (d) requiring payment of capital credits by certified check would be possible but would be difficult, costly, and could create a delay in the payment of these capital credits.

The Federal facilities we have at the present time are small and I am not sure whether the regulation would require a contract covering these. For these small accounts, these regulations would be impossible to follow. Even on a larger installation the requirements would require bylaw changes (if state statute will allow) and require us to create a class of service that would have higher cost to compensate for the special handling of the capital credits.

I hope these comments will be considered before the regulations are adopted.

Cooperatively yours,
CRAWFORD ELECTRIC COOPERATIVE

Alan Kopan, Manager

AK:kk

JUL 22 1991

91-13-123

North Carolina
Electric Membership Corporation

3400 Sumner Boulevard
Post Office Box 27306
Raleigh, North Carolina 27611
Telephone: (919) 872-0800

July 20, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Re: **FAR Case 91-13**

Dear Sir:

As detailed in the May 24, 1991, issue of the Federal Register the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a rewrite of the FAR coverage dealing with utility services.

The following are our comments in regard to that proposed rule making; specifically to Part 52.241-13 Capital Credits:

52.241-13 (a) as proposed states, " The Government is a member of the (cooperative name) _____, and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment." (Emphasis added)

Parts 52.241-13 (b), (c) and (d) as proposed attempts to outline the method: of notifying the Government of capital credits accrued; the application of capital credits upon the termination of the contract; and, the payment of capital credits, respectively.

It is our considered opinion that the proposed Parts 52.241-13 (b), (c) and (d) be deleted in their entirety. Part 52.241-13 (a) proposes that the Government is to be entitled to capital credits consistent with the by-laws of the cooperative. Accordingly, it should be the by-laws of the cooperative, and not this proposed rule, which determines a cooperative's methodology in matters regarding capital credits.

The proposed rule making will have a severe impact on cooperatives if they were required to comply with the rule as currently proposed. The proposed rule will greatly increase both the time and cost of capital credits record keeping.

JUL 22 1991

91-13-123

Additionally, cooperatives are required by Section 501(c)12 of the Internal Revenue Code to operate on a cooperative basis. Establishing a capital credits policy for the Government which is different from the capital credits policy used for the rest of a cooperative's members is contrary to operating on a cooperative basis as required by 501(c)12. The Internal Revenue Service (a governmental agency) could determine that a cooperative is not operating on a cooperative basis, due to the requirements of another governmental agency, resulting in a cooperative loosing its tax exempt status.

Finally, Section B. Regulatory Flexibility Act of the proposed rule states, "The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most public utility companies are not small businesses." (Emphasis added) The fact of the matter is that many cooperatives are not large businesses.

We are hopeful that you will take these comments into account during the rule making process. We are not asking that cooperatives be given any special treatment. The simple fact is that a cooperative's by-laws already addresses the issues raised in the proposed rule as it applies to capital credits.

Sincerely,

Orrie Baffi (mb)

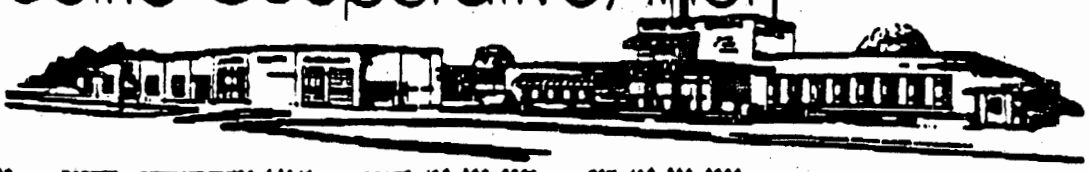
Orrie Baffi
Vice President of Finance

OVB/mb

cc: Bob Bergland (NRECA)

Central Electric Cooperative, Inc.

91-13-124



BOX 329 - PARKER, PENNSYLVANIA 16049 - PHONE (412-399-2931 - FAX (412-399-2300

FAX TRANSMISSION

✓ One: CONFIDENTIAL _____
NOT CONFIDENTIAL X

TO: General Services Adm.

ATTN: FAR Secretariat (VRS)

DATE: July 22, 1991

FROM: Kenneth J. Clark, Central Electric

NUMBER OF PAGES (INCLUDING COVER PAGE) 4

SPECIAL INSTRUCTIONS:

JUL 22 1991

AMERICA'S RURAL ELECTRICS OWNED BY THOSE THEY SERVE

JUL 22 1991

Central Electric Cooperative, Inc.

91-13-124

BOX 329 • PARKER PENNSYLVANIA 16049 • PHONE 412-399-2931

July 22, 1991

General Services Administration
FAR Secretariat (VSR)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Dear Sir:

I am writing to you regarding FAR Case 91-13. The General Services Administration (GSA) recently published a proposed rule on the acquisition of services from utilities (56 Federal Register 23982). As part of this rule, the GSA is proposing at section 41.007 (j) that certain language be added to all contracts between Federal facilities and cooperative utilities such as Central Electric Cooperative. We are opposed to paragraphs (b) and (c) because the addition of the clauses to the contracts between Central Electric Cooperative and various government agencies, will have a profound affect on the co-op.'s accounting system.

Specifically, Central Electric is concerned because many of the provisions of the proposed rule would have serious impact on the co-op. and its members because, in its present language, this rule ignores the unique way in which co-op.'s, such as CEC, is structured as a member owned, non-profit entity. Adoption of these proposed rules could result in violations of cooperative by-laws, articles of incorporation, United States Department of Agriculture, Rural Electrification Administration (REA) mortgage requirements, as well as Pennsylvania state laws governing our cooperative operations.

Part 52.241-13 Capital Credits.

Of primary concern to Central Electric as stated earlier are parts (b) and (c) of proposed part 52.241-13 Capital Credits. Central Electric agrees with subsection (a) which indicates that the government, as any other member of a cooperative:

"is entitled to capitol credits consistent with the by-laws of the cooperative, which states the obligation of the (cooperative) to pay capital credits and which specifies the method and time of payment."

However, Central Electric believes that compliance with the requirements of subsection (b), ie., to state within 60 days after the

JUL 22 1991

JUL 22 1991

91-13-124

close of the fiscal year, the amount of capital credits to be paid to the government and the date the payment is to be made, would be very difficult, if not impossible. While some indication of the amount of capital credits may be ascertainable at the close of the fiscal year, depending upon the by-laws of the cooperative and its financial condition, these credits will be held by the cooperative for a period determined by the cooperative and applied uniformly to all members.

If during that period (which typically runs for 15 to 20 year rotation cycles) the cooperative experiences a major calamity such as a tornado or hurricane, it might by necessary to withhold payment of the capital credits. Additionally the cooperative is prohibited from paying capital credits unless it has met the financial standards as established by the Rural Electrification Administration or anyone else who is a co-mortgagee with REA. Additionally, Central Electric is a member owner of a generation and transmission cooperative known as Allegheny Electric Cooperative. It would be virtually impossible to determine the appropriate capital credits due Central Electric from Allegheny within the 60 days after the close of Central Electric's fiscal year.

As a member of Central Electric, the government is entitled to be paid its capital credits; however it must be consistent with the co-op.'s by-laws. It is not entitled to become a privileged class of customer. Provisions of capital credits to the government in a manner which is inconsistent with the co-op.'s by-laws could be in affect providing the government with a preference over other co-op. members. This treatment could be inconsistent with the requirements of the United States Internal Revenue Service for cooperative status, that the cooperative operate on a "cooperative basis".

This brings me to our next concern and that is <u>Part 52.241-8 Connection Charges</u>.

<u>Part 52.241-8 Connection Charge</u>, also creates a procedure which is inconsistent with the way Central Electric operates as a non-profit member-owned system. Under the proposed rules, the cost of purchasing connection facilities for the government would be shifted from the government to other co-op. members. While this is not only unfair to other co-op. members, it is most likely a violation of many co-op. by-laws as well as state statutes which governs the way we operate.

Part 52.241-8 provides in relevant part that the government shall pay a connection charge to cover the contractor's cost of furnishing and installing new connection facilities. Then, on each monthly bill for service furnished, the government receives a credit until the accumulation of credits equal the amount of such connection charge. While this section is appropriate for contractors which are for-profit entities, and represents an expense which is appropriately credited against profits, this is inappropriate where the contractor is a not-for-profit cooperative and the provision of a credit would require other coop members to bear the cost of facilities constructed to meet the requirements of the government, as well as their own.

In a cooperative utility, such as Central Electric, rates are based upon the actual cost of doing business. There are no shareholders or other investors who obtain a profit on their investment, nor, more importantly, profits against which the cost of

91-13-124

connections can be expensed as a cost of doing business. Providing the government with a credit for connection facilities which were built to serve the government's own load would mean that those costs would have to be borne by the cooperative's other members. This would not only be unfair to the other members who are already paying the cost of facilities built to meet their loads, but would be in violation of the co-op.'s by-laws as well as state statutes. Such actions could also be considered as an unlawful disbursement of capital credits, as discussed previously.

While I realize my letter is rather lengthy, it is very important to our cooperative that paragraphs (b) and (c) either be reworded or eliminated completely.

Sincerely yours,

Kenneth J. Clark

Kenneth J. Clark
Asst. to the General Manager
and Manager of Member Services

PCPA
People's Co-op Power Assc
3935 Highway 14 East. P.O. Box 339. Rochester, MN 55903-0339 Phone 507-288-4...

91-13-125

July 16, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets N.W., Room 4041
Washington, D. C. 20405

MINNESOTA 59 OLMSTED
FAR Case 91-13

Comments concerning the proposed Federal Regulation (56 Federal Register 23982) section 41.007(j) and section 52.214.13 Capital Credits are as follows:

Paragraph (a) with respect to the statement that says "*which specifies the method of time of payment*". People's Cooperative Power Association is currently on a 20 year revolvement of Capital Credits. However, there is no set date as to when the capital credits will be paid. This date is established each year by the Board of Directors. Furthermore, capital credits are returned at the discretion of the Board of Directors and when the financial condition of the Cooperative will not be impaired.

Paragraph (b) the Cooperative has an annual audit of its records at the close of each fiscal year which is a requirement of the Mortgage with REA & CFC. Due to time constraints, it is nearly impossible to have the audit performed, to review the audit with the Board of Directors, and to allocate the capital credits within 60 days of the closing of the Cooperative's books.

Additionally, the Board of Directors cannot set a payment date 20 years in advance without knowledge of the financial condition that the Cooperative could possibly be in.

Paragraph (c) by adhering to this paragraph, the Cooperative would be in violation of its By-Laws and also erode the capital of other members as well as its own by paying capital credits early.

The basic structure of the Cooperative is to treat all members equally and its By-Laws do not permit special retirements of capital credits except to estates of deceased patrons at the discretion of the Board of Directors. In the above scenario, the Cooperative would be required to refund to its other members in the same manner as it would to the government. In doing so, the financial strength and integrity of the system could be impaired. This impairment could lead to higher rates for all consumers because of increased interest costs due to additional borrowing of loan funds. Additionally, by refunding capital credits early the Cooperative's equity could drop dangerously low possibly low enough to affect its Mortgage requirement with REA & CFC.

JUL 23 1991

91-13-125

Paragraph (d) basically could work although it would mean special handling to produce a certified check.

In conclusion, the proposed regulation could have a profound affect on the Cooperative's financial strength and stability for now and into the future. This proposed regulation would also require changes in the by-laws and accounting practices of this Cooperative.

We would urge that this proposed regulation have the section on Capital Credits removed prior to its passage.

Thank you.

PEOPLE'S COOPERATIVE POWER ASSOCIATION

Donald H. Brandt

Donald H. Brandt
General Manager.

/se

GUNNISON COUNTY
ELECTRIC ASSOCIATION, INC.

P.O. BOX 180 GUNNISON, COLORADO 81230 (303) 641-3520

91-13-126

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W. Room 4041
Washington, DC 29405

RE: FAR Case 91-13

Dear Sirs:

In the matter of FAR Case 91-13 we would offer the following comments:

52.241-13 Capital Credits

(a) The method of capital credit refunds appears in the By-Laws of each cooperative. The time of payment depends upon many factors some of which are outside the control of the cooperative. Many times the schedule of refunds will need Department of Agriculture, REA approval depending on the equity level of the cooperative.

(b) Requiring a sixty day mailing of the allocation notice could pose a severe hardship on many cooperatives. This is by far the busiest time of the year for the bookkeeping department with all the year end reports required from different governmental agencies. Asking for the contract number to be included with the other information would be very costly. This information is not included in any of the packaged software I am aware of and would require new programming as well as new forms. Again, we have the same problem with the (date of payment] requirement.

(c) Complying with this section would be discriminatory. It would also affect future capital credit retirements, and could force the cooperative in violating its mortgage requirements with REA. Ex: (If a cooperative has less equity than 40% it can only refund 25% of its previous years margins.) Enforcement of this paragraph could cause a refund larger than this 25% level would allow.

JUL 23 1991

91-13-126

If the cooperative had 0 margins, any refunds would be a violation of it's mortgage requirements with the REA.

(d) The refund checks show the Cooperative account number for the service. Again, requiring the cooperative to show the contract number will require an upgrade in software for one customer.

In closing we feel this proposal is discriminatory and will be expensive to all the member owners of our non-profit cooperative. The Cooperative's philosophy is to treat all member owners the same. It is extremely unfair to require the retirement of these capital credits to governmental agencies when the tax payers and our member owners aren't afforded the same luxury. We ask you to carefully review the comments we have offered before adoption of this proposal.

Sincerely,

Jesse T. Stone
Office Manager

Raft River Rural
Electric Cooperative, Inc.

250 North Main

91-13-127

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th Nad F. Street, N.W. Room 4041
Washington, D.C. 20405

REF: FAR Case 91-13

Dear Sir,

Your recently published proposed rule on the acquisition of services from utilities (56 Federal Register 23982) certainly causes me a great amount of concern.

As I understand the GSA is proposing in section 41.007 (j) that the following four paragraphs' be added to all contracts between federal facilities and cooperative utilities. To be perfectly honest, I find each of the four paragraphs not only offensive but, additionally find several elements contained in your proposal extremely discriminatory.

I shall address each of the paragraphs individually referenced 52.241-13:

(A) The government is a member of the (Cooperative Name)_____, and as any other member, is entitled to Capital Credits consistent with the By-Laws of the cooperative, which states the obligation of the contractor to pay Capital Credits and which specifies the method and time of payment.

RESPONSE:

I support the idea of treating all members exactly the same and paying them on the same rotation. Plus, I believe the method should be consistent with that provided for in the By-Laws. The only method of changing this method should be limited to the vote of the members. Further, the idea of specifying a specific time as to the payment of such, should be solely at the discretion of the duly elected Board of Directors and not mandated as you have proposed.

(B) Within 60 days after the close of the contractor's fiscal year, the contractor shall furnish to the contracting officer, or the designated representative of the contracting officer, in writing a list of accrued credits by contract number, year, and delivery point. Also, the contractor shall state the amount of Capital Credits to be paid to the Government and the date payment is to be made.

JUL 23 1991

91-13-127

RESPONSE:

This particular paragraph is extremely offensive since your proposed rule making appears to be an end run effort to circumvent the authority of the members of the Cooperative, plus usurping the discretionary authority of the duly elected members of the Board, which by the way the Government agency, as a member, had the privilege of electing.

For you to arbitrarily set 60 days is also an invasion of the members authority, since once again the By-Laws as established may be something more or less than your time frame. Again, we feel that it is our responsibility to inform you as soon as possible as to the amount of Capital which will be credited to your capital account each year. However, your desire to have this reported by delivery point and contract number is again asking for special handling and preferential consideration. Why should we discriminate against all of our other members, for your convenience? Personally, your proposal requesting that each contract number be segregated for the purpose of showing the amount of capital credited to that specific service would be no problem, provided each member had only one service. But, the Government as well as the majority of our members have more than one contract or one service. We continue to feel obligated and proud to notify each one of our members as to their accrual each year. But, to ask for this to be done on a service by service or contract by contract is extremely selfish on your part. To ask that coincidental to this notification you be given the date of the actual retirement is totally impossible. When you consider the unknowns that can and will effect the cooperatives financial condition, plus the restrictions that in our and many others cases could be prohibited by our mortgage agreement with our bankers.

(C) Upon termination or expiration of this contract, unless the government directs that the unpaid Capital Credits be applied to another contract, the contractor shall make payment to the Government for the unpaid Capital Credits.

RESPONSE:

Again, you are asking for preferential treatment which would be a blatant discrimination against the other members of the cooperatives. Unless your assignment was to be made as provided in conformance to the By-Laws, as established by the members of each cooperative.

(D) Payment of Capital Credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the contracting officer at_____, unless otherwise diected in writing by the contracting officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment of all capital credits accrued.

RESPONSE;

It certainly seems funny that you would specifically request that a certified check is required. Through out the years the payments we receive are not by certified check. In fact, for years and years the Government agencies have been notorious for being late with their payments and refusing to pay any penalties. Unlike all other members who have been forced to pay or be subject to disconnection of service, in our case until all past due and penalties have been paid.

Please consider the abandonment of this proposal in preference of the By-Laws of those Cooperatives which the members (including you, the Government) have established and further have the ability to change by another vote of the members.

91-13-127

It has always been my belief that this country was founded on the principle of "of the people, for the people, by the people" not rules which are "of the Government, for the Government, by the Government!

I am enclosing a copy of the pertinent section from our By-Laws, which show our technique and rules which we are proud to operate by.

Thank-You for considering these points in your deliberation.

Sincerely,

Bud Tracy
General Manager

BT/ba

CC: Richard Stallings
Larry Larocco
Steve Symms
Larry Craig

91-13-128

SEQUACHEE VALLEY ELECTRIC COOPERATIVE
P. O. BOX 31
615/837-8605
SOUTH PITTSBURG, TENNESSEE 37380

July 17, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N. W., Room 4041
Washington, D. C. 20405

Re: FAR Case 91-13

Pursuant to the instructions covering the proposed rules relating to the above-noted case, I would like to submit the following comments relating to certain specified sections of the proposed rule.

First of all, I have a question as to whether Section 52-241-13 Capital Credits speaks to areas of state law which cannot be superseded by Federal regulations. Capital Credits are a property right of the members of the Cooperative and, as such, are controlled by state statutes relating to non-profit organizations. Regulations relating to the timing of notification of allocation of patronage capital credits and the payment of the same must first be consistent with state law. Secondly, the payment of capital credits is controlled by both the bylaws of the cooperative and any contractual obligations imposed upon the cooperative.

To be more specific in relation to our own system, I would address the following issues:

1. Paragraph (b) imposes a 60-day limit on notification on the Contractor to tell the Contracting Officer the amount of capital credits due the Government and "the date when payment is to be made." A fixed time period such as this one is not feasible, since it may take more than sixty days to close out the books for the previous fiscal year and to make the necessary calculations of the capital credit amounts due each patron. Since, for most electric cooperatives, capital credits are retired many years into the future, the requirement of such a short time period can impose a burden on a cooperative which is unwarranted.

2. That paragraph's requirement to detail a payment date is, in most cases, a nullity, since the payment of capital credits is dependent upon many factors (such as: cash flow, capital needs, possible disastrous storms, regulations of the Rural Electrification Administration, etc.) which cannot be foreseen. Since all members of a cooperative should be treated alike, it would not be possible to set a date for

91-13-128

paying the government capital credits unless all members of that class of patron can be paid also. It may not be financially possible.

3. Paragraph (c) sets a requirement which is closely related to the problem in 2 above. Capital credits are not paid to patrons when they discontinue service. They must wait until their "class" is paid, which is usually many years into the future.

4. Sequachee Valley Electric Cooperative (SVEC) does assign capital credits to its patrons. However, our Power Contract with the Tennessee Valley Authority (TVA) does not allow us to pay capital credits. SVEC cannot enter into a contract with GSA to pay capital credits to the government when to do so would force us to breach our contract with TVA.

Because of the above factors, I would recommend that careful consideration be given to these particular sections of the proposed regulations and changes made in the terms and language which will make these provisions includable in a service contract.

Thank you for this opportunity to respond to the planned regulations.

Sincerely,

SEQUACHEE VALLEY ELECTRIC COOPERATIVE

By: Bob D. Pickering
Bob D. Pickering, General Manager

BDP/r

WEST CENTRAL ELECTRIC
COOPERATIVE, INC.
204 Main
P. O. Box 17
Murdo, South Dakota 57559-0017

91-13-127

Power For Progressive People WCEC

July 18, 1991

General Services Administration
FAR Secretariat
BRS 18th & F Streets NW - Room 4041
Washington DC 20405

Re: FAR Case 91-13

Dear Sirs:

I am responding to your proposal which is published in the Federal Register, Friday May 24, 1991, regarding 48 CFR parts 6, 8, 15, 41, 52. West Central Electric is a Rural Electrification Administration borrower and operates on a non-profit basis. We are particularly concerned with this provision as stated below.

52.241-5 - Service Provisions

A. Measurement of Service - We are very concerned with the statement that when more than a single meter is installed at the service location, the readings thereof shall be billed conjunctively. It appears to us that the government is asking to be treated differently than the rest of the members of the cooperative, in that each time the government requests a new meter installation this should be considered as a separate installation NOT as a continuous location, and thus should be subject to the rules and regulations the same as all other members.

B. The contractor shall read all meters at periodic intervals of approximately 30 days or in accordance with the policy of the cognizant regulatory body. All billings based on meter readings of less than _____ days or more than _____ days shall be prorated accordingly. This particular provision assumes the cooperative reads the meters. In our case we serve several small government installations as well as some department of defense installations.

The concerns we have, in our particular case, is that we are a self-read self-billing system. In other words, the member themselves read their own meters and compute their bills. We read the meters only once each year to verify accuracy along with other situations.

C. Meter Tests - The contractor at its expense shall periodically inspect and test contractor installed meters at intervals not exceeding one year. We feel with the accuracy of the meters that are out, that this is not a necessary requirement and that a lot longer time should be allowed before testing is required. As an example: We have approximately 7000 meters and if

JUL 23 1991

PHONE (605) 669-2472 FAX: (605) 669-2358

91-13-129

the government is allowed to request this testing at our expense then all other members would be entitled to the same thing. At an average cost of $10 to $20 per meter, this would cost us between $70,000 and $140,000, which is more than our operating margins were in 1990, thus putting a financial stress on the cooperative.

D. Continuity of Service and Consumption - We are concerned with the statement that indicates that if the aggregate outage time shall be more than one hour in any billing period an equitable adjustment shall be made in the monthly billing specified in this contract, including the monthly minimum charge.

We believe one hour is not an adequate amount of time. In our region of the country we have periodically had storm jobs that have caused us several days outage time. Although there may be an argument on the minimum charge, in our particular case, our charges are based on usage only. Therefore, there should not be any reduction in the amount paid based on usage.

Section 2 indicates that if we were to build a long line for the government and they were unable to operate it after 15 days, because of Acts of God, etc. that we would be obligated to pay for it from the rest of our members even though the government was the reason we put the investment in.

E. Item 52.246 - Changing current rates or terms of conditions of service of regulated suppliers.

West Central is regulated by rates by the Rural Electrification Administration only. Section A. indicates that we must notify the government each and every time that we would be adjusting our rates. We are presently required by REA to give notice through our newsletter or some other means to all our members of a proposed rate increase. We feel the government should not be treated any differently and feel this provision is unnecessary.

F. Item 52.241-7 - Item A. indicates that we must negotiate each and every agreement with the government.

The government is a member of the cooperative and as such is bound by the same rules and regulations not inconsistent with the laws. We feel that our rates are sent to the Rural Electrification Administration and are approved and that, again, the government should not be treated any differently than anyone else within a similar class of service that they are. If we had to negotiate each and every rate change with all the different government agencies we have to deal with it would add an extreme cost to the cooperative. In this light, we are also assuming that if the load is a large load in a significant part of our system that this would be a negotiated contract which would require notifications and different rules with the government than what is presently required under our general rate conditions.

G. Item 52.241-8 - Connection Charges Item C. - Credits

Again this is an item that is contrary to what is done with the rest of our customers and we feel the government should be treated as another customer and no differently. If an Aid to Construction required, which there very well could be, that this is a result of the government and it is to offset the investment and the government is not entitled nor should they be entitled to receive this money back in the form of a credit against their bill.

91-13-129

H. Item 52.241-13 - Capital Credits

Item A. - We have no problem with the government receiving Capital Credits on the same basis as other consumers.

Item B. - Our fiscal year closes on January 1. Our books are then audited in March or April. We cannot even make an allocation within 60 days of the close of our fiscal year. We notify all patrons of their Capital Credit Allocation within the following fiscal year. We feel this is adequate. It also indicates that we will state the date that Capital Credits will be paid to the government. We are unable to do this for many reasons, one being that the Rural Electrification Administration, who is our banker, restricts the amounts of Capital Credits that we can retire. We can only retire Capital Credits on a "first in - first out" basis, as well as limiting the amount of retirement to 25% of your prior years margins. Capital Credits are retired when the cooperative's Board of Directors determines that the cooperative is financially able to do so. Thus, anytime the government terminated a contract, or account, and requested the Capital Credits be paid they would be getting their credits paid before anyone else. This is inconsistent with the cooperative's principal and theories as well as inconsistent with our by-laws. It also presumes that the cooperative has this money laying around to pay back, which in our particular case we do not. These Capital Credits are used as working capital and investing in plant to help hold rates down. If we were required to pay Capital Credits to the government we potentially could be in violation of our mortgage agreement with REA.

Also, the payment of the Capital Credits states that it shall be made by certified check payable to the Treasurer of the United States and forwarded to the contracting officer. We do not have a problem with who the checks should be payable to but we do have a problem with a certified check. We write approximately 4,000 checks by computer. To write one certified check would require extra time and labor which should be deducted from the check if that is what the government wishes.

In closing I would like to point out that we feel these rules are very detrimental to the small rural electric utilities of the country and there should be some limitations put on. Such as: Only installations that require electrical service in excess of $500,000 per year be subject to these rules on a per installation site.

The cost of these proposals will have a significant impact on a number of small rural electric cooperatives and thus we feel there should be an initial regulatory flexibility analysis prepared. If all the provisions of this act are enacted it will most certainly cause a rate increase of significant amounts to all consumers of West Central Electric, as well as many other cooperatives in this area.

If any additional information is desired please feel free to contact me.

Sincerely,
WEST CENTRAL ELECTRIC CO-OP., INC.

Steven J. Reed
Manager

SJR:sh

91-13-130

RITA BLANCA ELECTRIC
COOPERATIVE, INC.

HIGHWAY 136 NORTH P.O. BOX 990
DALHART TEXAS 79022-0990

July 18,1991

General Services Administration
FAR Secretarial (VRS)
18th & F Street
N.W. Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

To Whom It May Concern:

We would offer the following comments on section 52.241-13 Capital Credits:

Paragraph (a)	Sounds OK.
Paragraph (b)	Conflicts with Paragraph (a) especially the date the payment is to be made. This fact is normally not known.
Paragraph (c)	Would be contrary to 99.9% of all Co-op By-laws. Cannot be done due to the fact you are paying one member before other members.

Suggestion: Delete Paragraphs (b) & (c).

Sincerely,

Bob Elliott

Bob Elliott
Executive Vice President
General Manager

BE/jlb

One of America's Consumer-Owned
Rural Electric Systems

JUL 23 1991

91-13-131

110 East Spring Street
P.O. Box 579
Saratoga, WY 82331-0579

CARBON POWER & LIGHT INC. SARATOGA

(307) 326-5206
1-800-442-9314
(Toll Free in Wyo.)

July 15, 1991

General Services Administration
FAR Secretariat (VRS), Room 4041
18th and F Streets, N.W.
Washington, D.C. 20405

Re: FAR Case 91-13

Dear Sirs:

I am submitting comments to your proposed rule on the GSA Federal Acquisition Regulations for the Acquisition of Utility Services.

We provide electric service to federal government entities (Forest Service, Fish & Wildlife, and FAA predominantly). Capital credits (a paper transaction) are allocated based on the entity's electricity consumption for the year, January through December. A simple explanation is the year-end expenses are subtracted from revenue and the remaining margins are member capital credits.

Being a non-profit organization and operating under Rural Electrification Administration (REA) rules, regulations and mortgage requirements, and Carbon Power and Light Bylaws, we can only retire capital credits to members if we do not jeopardize our financial position. As a non-profit, we do not produce large margins, we are regulated by the Wyoming Public Service Commission, and our rates are set to provide the consumer with reasonable kilowatt-hour and demand charges. We retire (or pay back) capital on a 20-year rotation, and also to deceased patron estates. We have just retired 1970 and 1971 capital credits.

Carbon Power and Light opposes Paragraph 52.241-13 Capital Credits (c) and (d). We cannot pay the capital credits to the government except on a 20-year rotation as per our bylaws and non-profit status. I have enclosed a copy of our member handbook. Please refer to pages 29 and 30, Article VII.

Sincerely,

Ardyce M. Hoem

ARDYCE M. HOEM
General Manager

AMH/lrs
cc: Bob Bergland, NRECA

JUL 23 1991

Member Owned. . .Service Proud

91-13-131

A Message From Your Board of Directors

We welcome you as a member of Carbon Power & Light, Inc. This handbook is designed to answer some of the questions you might have about YOUR cooperative and receiving electric service. We suggest that you keep this booklet in a handy place for quick reference.

Carbon Power & Light, Inc. is owned and controlled by the member-owners that it serves. It is governed by a board of directors elected from the membership, by the membership.

The goals of the Board are reviewed from time to time, but we continue to adhere to the philosophy that we must maintain a system that is capable of supplying your electrical needs NOW and into the FUTURE.

Reliability of service is foremost in our minds. If you have any inquiry concerning our supplying electric service to you, we urge you to call or write the office in Saratoga. Trained people are there to help you.

The Cooperative is your business! We will keep you informed of Cooperative business through the monthly "Carbon Light Lines."

Your Board of Directors

Amendment to Bylaws, 2/23/1990: Page 25, Art. III, Meeting of Members, Sec. 7., line 8. Delete "as of the end of such fiscal year". Page 29, Art. VII, Non-Profit Operation, Sec. 2, lines 14, 17 and 24. Delete the word "fiscal".

91-13-131

Table of Contents

	Page
Account/Location Numbers - Their Importance	9
Articles of Incorporation	18-20
Board of Directors	4
By-Laws	21-32
Cooperative Facts	2
Electric Bills - how, when, where to pay	7
Electric Use - guide for household items	16-17
[illegible]trical Terms Defined	15
[illegible]/Circuit Breakers	13
Idle Service	10
Margins - you share in them (Capital Credits)	3
Meter - is it correct?	9
Nondiscrimination - statement of	33
Organization Chart	5
Organizations - what those initials mean	12
Outages - what to do	14
Power Supply	6
Reading Your Meter - how to	8
Responsibilities of Members	11

91-13-131

Cooperative Facts

What is a Cooperative? By definition, it is a group of people joining together to do something (in this case, provide electric energy) for the group they cannot do individually. It is a business enterprise which is jointly owned and equally controlled by those who use it.

How did an electric cooperative start? During the 1930s, the vast majority of rural America did not have electricity. The existing providers of electric energy felt it unfeasible and much less profitable to run electric lines into the countryside to provide the badly needed electric service.

In 1935, President Franklin Roosevelt created the Rural Electrification Act which provided money in the form of loans to electrify rural America.

By having rural Americans join together and form cooperatives, they could form a corporation that could then BORROW money from the REA and build an electric system.

To that end, Carbon Power & Light, Inc. began business in 1941.

TODAY, your Cooperative serves over 4,500 rural, south-central Wyomingites in two counties: Albany and Carbon.

It should be noted that Carbon Power & Light, Inc. exists for only one purpose - to provide the best possible electric service at the lowest possible cost to the member-owners in the area it serves.

91-13-131

You and Other Members Share In the Cooperative's Margins

Your Cooperative's "margin" is any money left over after all its operating costs have been paid. Since you are one of the owners of the Cooperative, part of that margin belongs to YOU!

Your share of the margin is a "deferred patronage dividend." The more electricity you've used, the greater your share of the Cooperative's margins. The "deferred patronage dividend" is retained by the Cooperative until directed to be paid by the Board of Directors on approval of the Rural Electrification Administration (REA).

Each year you will receive a card in the mail that will notify you of your allocation for the previous year. The card is for notification purposes only.

It is the policy of this Cooperative to return patronage capital to the estates of deceased members yearly. Application and notification must be made to the Cooperative by the heirs of the estate. Please read Article VII, Section 2, of the By-laws for further explanation of capital credits. It is very important that address changes are reported to Carbon Power & Light, Inc. so that former members may receive their patronage checks when paid.

91-13-131

You Help Elect the Board of Directors

Rural electric cooperative operations are carried out under the policies established by the board of directors.

Each member of the board of directors is an active member of the cooperative and obtains his electricity from the cooperative just as you do..

Each member of the board of directors is just as interested in the quality of service he receives as you are.

You and other members determine who the directors will be. The directors are elected during the cooperative's annual meeting which is held the fourth Saturday in June of each year. Each member has one vote in the election of directors, which may be mailed in or cast at the annual meeting. Since each member has only one vote, your voice in the policies and operations of Carbon Power & Light, Inc. is just as strong as that of any other member.

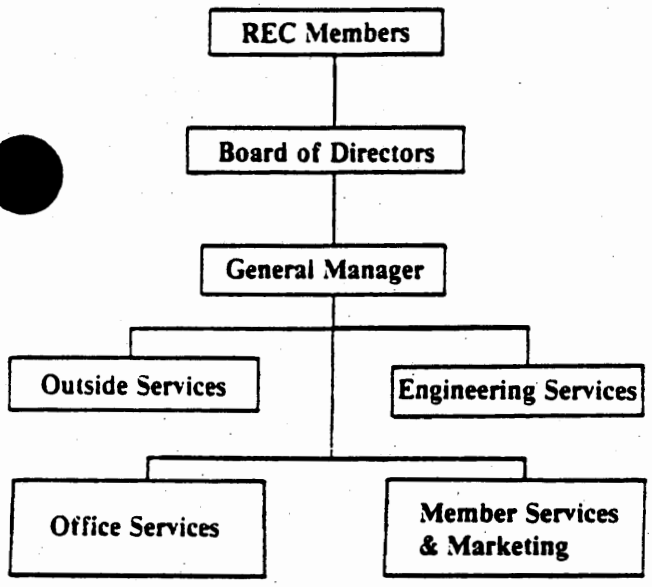
Carbon Power & Light, Inc. serves over 4,500 farms, residences, schools and industries in rural south-central Wyoming with well over 1,650 miles of electric line.

Nine directors serve on the board of directors, who are nominated from among the membership.

91-13-131

Cooperative Organization

Your Board of Directors employs a general manager who is responsible for day-to-day operations of the system. Because it would be impossible for one person to perform all duties necessary to provide rural electric service, the general manager employs the needed specialists. Here is an organizational chart:



The different departments of your Cooperative offer these services to the members including:

* Provide energy audits of your home.
* Answer questions on wiring, lighting and electrical load.
* Keep you informed on what's going on through the monthly CARBON LIGHT LINES sent to you.

91-13-131

How Electricity Reaches You

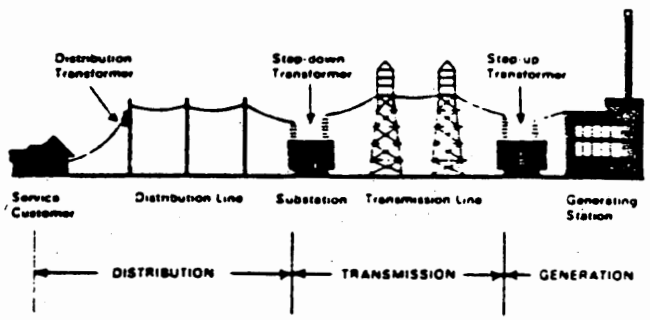
Carbon Power & Light, Inc. is an electrical distribution system; we own no power generating plant and produce no electricity itself.

But this cooperative does share in the ownership and control of Tri-State Generation and Transmission Association, Inc. with headquarters in Denver, Colorado. Tri-State, as it is called, is a Generation and Transmission cooperative (G&T) - it supplies wholesale electric power to Carbon and other distribution type cooperatives in Colorado, Wyoming and Nebraska.

Tri-State obtains its power from the Western Area Power Administration (WAPA) and Basin Electric Power Cooperative located in Bismarck, North Dakota. Basin is commonly referred to as a "super G&T" since by its size, it supplies other G&Ts.

Since Tri-State and Basin have an excellent mix of coal-fired and hydro electric generating plants, we at Carbon Power and Light enjoy some of the lowest wholesale electric rates in the Rockies - thereby keeping our rates as low as possible.

In the diagram below, Carbon Power & Light, Inc. would be the "distribution" portion and Tri-State and Basin would be the "generation and transmission" portion.



91-13-131

The "when," "where," and "how" of paying your monthly electric bill

Electric power bills are mailed to member-owners on about the 1st of each month. They are due by the 5th of each month. By Wyoming Public Service ommission rulings, you are allowed 10 days in which pay your electric bill. Carbon allows an extra 5 days efore penalties are assessed.

If electric bill is not paid by the 15th of the ion becomes delinquent.

You may pay your bill by mail or in person. If you ay by mail, please send a check or money order, DO OT SEND CASH. If you prefer to pay by mail, lease return the right-hand portion of the billing card e sure to enter the meter reading(s) in the spaces arked for meter readings). Keep the other section of e bill card for your records.

If your bill does become delinquent, you will be bject to a late payment charge. Also, you will be ailed a delinquent notice that shows the date service ill be subject to disconnection for non-payment.

Should it be necessary for a representative of the ooperative to make collection, a charge to recover e Cooperative's costs in making collection will apply.

Should disconnection of electric service be necessary r non-payment of electric service, you may have it estored by paying the delinquent bill and the appro-riate charges assessed to recover the Cooperative's cost ncurred upon re-connection of service.

The Cooperative's office hours are from 8:00 a.m. o 4:30 p.m. Monday through Friday except on holidays. For your convenience, there is an after-hours depository ear the office front door.

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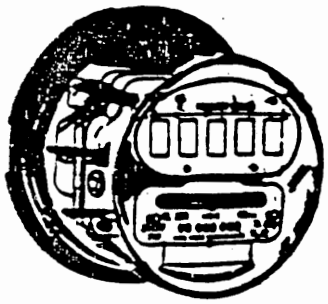


Is The Meter Correct?

The electric meter is a finely calibrated, highly accurate device for measuring electric power usage. The Cooperative has a continuing program to test the accuracy of all its meters to assure members that they are billed for the exact amount of electricity used.

When an electric bill is higher than expected, accuracy of the meter is sometimes questioned. It is unlikely that the meter is registering incorrectly, and the member may want to check the wiring and appliances for grounds, shorts, or other malfunctions.

A member may request a special meter test by contacting the Cooperative office. It is the policy of the Cooperative to special test a meter only once within a 12-month period at a member's request.

You're Not Just a Number, but.....

As a member and part-owner of Carbon Power & Light, Inc., you're more than a number to us.....much more. But, your account number and location number are meaningful identification.

If you have a question about your bill and call on the phone, please give us your account number -- it's very helpful to the person who answers the phone to give you a speedy reply.

If you report an outage to us, please give the person on the phone your location number, this will get the repair crew to your location quicker.

Both your account number and location number can be found on your electric bill AND we have made provision on the front cover of this book for you to write them in for handy reference.

91-13-131

Idle Services

In order to reduce operating costs, services that have been idle in excess of 12 months are reviewed for retirement. Any transformers, lines and poles which have been in the field for several years and not used will be reclaimed by the Cooperative for service somewhere else. In addition, idle services create "line loss" because electricity is available at those locations even though it isn't being used.

When a service has been disconnected and has not produced revenue for a period of twelve months, members will be notified by mail that the Cooperative is considering reclaiming the property. Members have three options:

1. To leave the service facility energized.
2. To retire the transformer and meter loop, and pay an annual billing in advance calculated at 75% of the monthly charges.
3. To remove the entire service facility at no cost to the member. The member always has the option of having a retired service re-installed (under current line extension policies).

91-13-131

What are My Responsibilities as a Member?

In an attempt to control costs, the Cooperative asks each member to assume certain responsibilities. These responsibilities include:

* If you read your meter, report the reading to Carbon each month.
* Pay the electric bill by the due date (the 15th).
* Report power interruptions and damage to poles, lines, or other materials.
* Be on the look-out for trees in the power lines or wires sagging too low.
* Give plenty of advance notice of any needed changes or any considerable increases in electrical load.

It is also the member's responsibility to actively support any Cooperative projects or programs; one such program is the Cooperative's Annual Meeting.

Carrying out these responsibilities is an excellent example of what makes the Cooperative a unique business - member-owners working together toward a common goal.

When You Move

When you move from your present location, please provide the following information to Carbon's office:

* Your forwarding address
* Name and mailing address of the person to whom future bills for electric service to this location are to be sent, if you know.

91-13-131

What Those Initials Mean

The following is a list of definitions of some of the organizations you may read about in the newsletter.

REC — ***Rural Electric Cooperative*** - A private, non-profit business enterprise which provides electric service in mainly rural areas. Incorporated under state law, an REC is locally owned and controlled by those it serves.

REA — ***Rural Electrification Administration*** - an agency of the U.S. Department of Agriculture. Created in 1935, REA lends money to local organizations - mostly cooperatives - to finance construction of electric power generation, transmission and distribution facilities to serve rural areas. This money is a LOAN, and must be paid back to REA with interest.

WREA - ***Wyoming Rural Electric Association*** - sometimes referred to as the Statewide - is a non-profit organization providing certain services to 12 Wyoming rural electric cooperatives. Located in Casper, Wyoming, they publish the Wyoming Rural Electric News, provide employee training, safety, and public information services. WREA represents the RECs in legislative concerns and provides liaison with state agencies that regulate the RECs.

NRECA — ***National Rural Electric Cooperative Association*** - is a national association of the RECs - over 1000 in the United States. Located in Washington, D.C., they provide member systems with services which would be unavailable or too expensive if each member REC, individually, would attempt themselves. NRECA represents RECs in national legislative concerns, provides insurance and retirement programs, conducts management development programs.

CFC — ***National Rural Utilities Cooperative Finance Corporation*** - is a non-government, REC-owned financial services cooperative located in Washington, D.C. It borrows money in the private money market and re-lends it to the RECs. CFC was created to supplement REA loans as a source of financing for REC growth and development.

WPSC — ***Wyoming Public Service Commission*** - has regulatory jurisdiction over rates, territory and services of Carbon Power & Light, Inc. and other electric utilities operating in Wyoming.

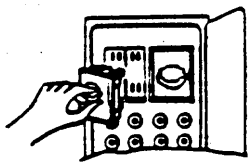
91-13-131

How to reset a circuit breaker

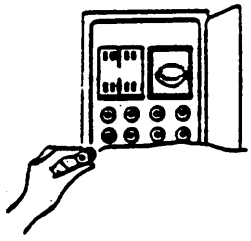
1. Move handle to OFF position.
2. Push handle past OFF position.
3. Return handle to ON position.

or change a fuse...

1. First, disconnect lamps and appliances in use when circuit [illegible] out.

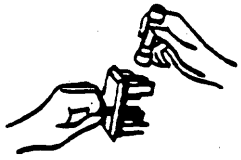


2. Make sure your hands are dry; stand on a dry board or rubber pad, if possible. Open main switch, or pull-out section of panel labeled "main" in the service entrance, to cut off current while working on the branch circuit box.



3. Identify the blown fuse. When a fuse blows, the transparent section becomes cloudy, or blackened.

4. Replace the blown fuse with a new one of proper size. The smaller sizes screw in and out just like light bulbs. If the blown fuse is a cartridge type, located in the pull-out section, it can be removed and replaced by hand pressure.



5. Close the main switch, or replace pull-out section, to restore service.

Throw away the blown fuse.

91-13-131

A power failure seldom occurs..... but if your electric power does go off, here's what to do.....

1. First of all, if some of your lights work, then the trouble could possibly be in your own fuses, or breakers. Remember, to check the main fuse in your fuse box. If they are okay, check the fuses or switch below your meter.

2. If all your lights are off and you've checked your fuses, call your neighbor to see if his power is aiso off.

3. If you still haven't found the trouble, call Carbon Power and Light at 326-5206 or 1-800-442-9314 (anytime day or night). Be sure to give your location number and name (it can be found on your bill.) We ask for your phone number so that we can call you back.

Call in just as soon as the trouble is discovered or you notice any suspicious circumstances such as a tree in the lines, a flash, arc, or smoke from a transformer. This information is a real help, especially during a large outage.

91-13-131

Electrical Terms Defined

Listed here are some electrical terms commonly used by REC staff persons. It may help you to know the meaning of those terms.

AMPERE (amp) -- A unit of measure pertaining to the intensity or rate of flow of electric current.

BTU (British Thermal Unit) -- A measure of heat. One BTU is the amount of heat needed to raise the temperature of one pound of water one degree -- or about the amount of heat produced by burning a wooden kitchen match.

CIRCUIT -- The complete path of an electric current from the power source, through the conductors, through the device using the power, back through the conductors, and back to the source of power.

FUSE -- A protective device that prevents the overheating of a circuit; interrupts the current under abnormal conditions.

KILOWATT (KW) -- A unit of measure pertaining to the strength or amount of power produced by or used by various electrical devices. One kilowatt equals 1,000 watts.

KILOWATT-HOUR (KWH) -- A unit of measure to describe the use of one kilowatt of electricity for a one-hour period.

METER -- A device used to measure the number of kilowatt-hours of electricity that pass through it.

OUTAGE -- An interruption of electric current; a power failure.

SERVICE ENTRANCE -- The wire, cables, conduit, etc., that make up the connection between a home and the power line that serves it.

SHORT CIRCUIT-- The path of an electric current other than the way it is supposed to flow.

SUBSTATION -- An electrical installation that contains power transformers to reduce or increase the voltage of an electric current.

TRANSFORMER -- An electrical device that reduces or increases the voltage of an electric current.

VOLT -- A unit of measure that describes the pressure force that causes the movement of electricity.

WATT -- A unit of measure of the rate of electrical usage. Wattage is determined by multiplying volts times amperage (120 volts at 30 amps provides 3,600 watts.)

91-13-131

A Guide to Equipment Usage In the Home

The estimated yearly kilowatt-hour consumption of the electric appliances listed in this reference are based on the national average use.

Individual usage may vary from these estimates due to such factors as size of appliance, how conservative a person might be, the number of people in the home and with some appliances the geographical area of use.

Electric use of individual appliances can be calculated as follows:

Rating in Watts x Hours of Use divided by 1,000 = Kilowatt-hours

	Average Wattage	Average Hours Per Yr.	Est. kWh Used Per Yr.
FOOD PREPARATION			
Blender	386	39	15
Broiler	1,436	70	100
Carving Knife	92	87	8
Coffee Maker	894	302	106
Deep Fryer	1,448	57	83
Dishwasher	1,201	119	363
Egg Cooker	516	27	14
Frypan	1,196	155	186
Hot Plate	1,257	72	90
Mixer	127	102	13
Oven, Microwave	1,450	131	190
Range with Oven	12,200	96	1,175
Range with self-cleaning Oven	12,200	99	1,205
Roaster	1,333	154	205
Sandwich Grill	1,161	28	33
Toaster	1,146	34	39
Trash Compactor	1,380	24	36
Waffle Iron	1,116	20	22
Waste Disposer	445	67	30
FOOD PRESERVATION			
Freezer (15 cu. ft.)	341	3,504	1,195
Freezer (frostless 15 cu. ft.)	440	4,002	1,761
Refrigerator (12 cu. ft.)	241	3,021	728
Refrigerator (frostless 12 cu. ft.)	321	3,791	1,217
Refrigerator/Freezer (14 cu. ft.)	326	3,488	1,137

91-13-131

	Average Wattage	Average Hours Per Yr.	Est. kWh Used Per Yr.
Refrigerator/Freezer (frostless 14 cu. ft.)	615	2,974	1,829
LAUNDRY			
Clothes Dryer	4,856	205	993
Iron (hand)	1,008	143	144
Washing Machine (Automatic)	512	201	103
Washing Machine (Non-automatic)	286	266	76
Water Heater	2,475	1,705	4,219
Water Heater (quick recovery)	4,474	1,075	4,811
COMFORT CONDITIONING			
Air Cleaner	50	4,320	216
Air Cond. (Room)	860	800	*688
[illegible]ket	177	831	147
[illegible]midifier	257	1,467	377
[illegible]attic)	370	786	291
Fan (circulating)	88	489	43
Fan (rollaway)	171	807	138
Fan (window)	200	850	170
Heater (portable)	1,322	133	176
Heating Pad	65	154	10
Humidifier	177	921	163
HEALTH & BEAUTY			
Hair Dryer	750	51	38
Heat lamp (infrared)	250	52	13
Shaver	14	129	1.8
Sun lamp	279	57	16
Toothbrush	7	71	0.5
Vibrator	40	50	2
HOME ENTERTAINMENT			
Radio	71	1,211	86
Radio/Rec. Player	109	1,000	109
B/W TV (tube)	160	2,188	350
B/W TV (sol. state)	55	2,182	120
Color TV (tube)	300	2,200	660
Color TV (sol. state)	200	2,200	440
HOUSEWARES			
Clock	2	8,760	17
Floor Polisher	305	49	15
Sewing Machine	75	147	11
[illegible]uum Cleaner	630	73	46

[illegible]d on 800 hours of operation per year. This figure [illegible]ry widely depending on area and specific size of unit.

SOURCE: The Electric Energy Association

91-13-131

CERTIFICATE OF AMENDMENT
of the
CERTIFICATE OF INCORPORATION
of
CARBON POWER & LIGHT, INC.
(As Amended to June 25, 1988)

Pursuant to the provisions of the Wyoming Statutes governing non-profit corporations, the undersigned Corporation hereby adopts the following Certificate of Amendment to its Certificate of Incorporation:

ARTICLE I

The name of the Corporation is Carbon Power & Light, Inc.

ARTICLE II

The object or objects and purpose or purposes for which the Corporation is formed are:

(a) To generate, manufacture, purchase, acquire, and accumulate electric energy for its members only and to transmit, distribute, furnish, sell and dispose of such electric energy to its members only, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange and mortgage plants, buildings, works, machinery, supplies, apparatus, equipment and electric transmission and distribution lines or systems necessary, convenient or useful for carrying out and accomplishing any or all of the foregoing purposes;

(b) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, use, convey, sell, lease as lessor, exchange, mortgage, pledge or otherwise dispose of any and all real and personal property or any interest therein necessary, useful or appropriate to enable the Corporation to accomplish any or all of its purposes;

(c) To acquire, own, hold, use, exercise, and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate and in any manner dispose of franchises, rights, privileges, license, rights-of-way and easements necessary, useful or appropriate to accomplish any or all of the purposes of the Corporation;

(d) To borrow money, to make and issue bonds, notes and other evidences of indebtedness, secured or unsecured, for monies borrowed or in payment for property acquired, or for any of the other objects or purposes of the Corporation; to secure the payment of such bonds, notes or other evidences of indebtedness by mortgage or mortgages, or deed or deeds of trust upon, or by the pledge of or other lien upon any or all of the property, rights, privileges or permits of the Corporation; wheresoever situated, acquired or to be acquired.

(e) To do and perform, either for itself or its members any and all acts and things, and to have and exercise any and all powers, as may be necessary or convenient to accomplish any or all of the foregoing purposes or as may be permitted by the Act under which the Corporation is formed. The Corporation shall render no service to or for the public.

ARTICLE III

Section 1. The Corporation is formed without any purpose of direct gain to itself and shall have no capital stock.

Section 2. Any person, firm, corporation or body politic may become a member in the Corporation by:

(a) Making a written application for membership therein;

(b) Agreeing to purchase from the Cooperative electric energy as hereinafter specified;

(c) Agreeing to comply with and be bound by the Articles of Incorporation and bylaws of the Cooperative and any rules and regulations adopted by the board; and

(d) Paying the membership fee specified in the bylaws of the Cooperative.

A husband and wife, or any two natural adult persons residing together and drawing electric energy from the same meter for their residence, may jointly become a member and their application for a joint membership may be accepted in accordance with the foregoing provisions of this section provided the joint members comply jointly with the provisions of the above subdivisions (a) through (d).

91-13-131

Section 3. The private property of the members of the Corporation shall be exempt from execution for the debts of the Corporation and no member shall be individually liable or responsible for any debts or liabilities of the Corporation.

Section 4. (a) Membership in the Corporation and evidence representing the same shall not be transferable, except as hereinafter otherwise provided, and upon the death, cessation of existence, expulsion or withdrawal of a member the evidence membership of such member shall be thereupon terminated, and the evidence of membership of such member shall be surrendered forthwith to the Corporation. Termination of membership in any manner shall not release the member from the debts or liabilities of such member to the Corporation.

(b) When a membership is held jointly by a husband and wife, or by any two natural adult persons, upon the death of either such membership shall be deemed to be held solely by the survivor with the same effect as though such membership had been originally issued solely to him or her, as the case by the survivor and upon the recording of such death on the books of the Corporation the evidence of membership may be reissued to and in the name of such survivor provided, however, that the estate of the deceased shall not be released from any membership debts or liabilities to the Corporation.

Section 5. Each member shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members. At all meetings of the members at which a quorum is present all questions shall be decided by a vote of a majority of the members voting thereto in person or by proxy, except as otherwise provided by the Certificate of Incorporation of the Corporation, by the bylaws. Joint members jointly be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members.

ARTICLE IV

Section 1. Except as limited elsewhere in this Certificate or in the bylaws of the corporation, the business and affairs of the Corporation shall be vested in and managed and controlled by a board of directors and the officers of the Corporation shall be a president, a vice-president, a treasurer and a secretary. The offices of secretary and treasurer may be held by the same person

Section 2. The officers of the Corporation shall be elected, by ballot, by and from the members of the board of directors at such times and for such terms of office as shall be provided in the bylaws of the Corporation.

Section 3. The number of directors of the Corporations shall be nine (9) and the names and post office addresses of the directors who shall manage the affairs and business of the Corporation for the first year commencing at date of incorporation in 1941, or until their successors shall have been elected and shall have qualified according to law and by the bylaws of the Corporation are:

Name	Post Office Addresses
Kenneth P. Day	Saratoga, Wyoming
William Evans	Elk Mountain, Wyoming
Henry Finch	Encampment, Wyoming
Orville Meyer	Elk Mountain, Wyoming
Harvey Mowry	Saratoga, Wyoming
Will A. Tikkanen	Saratoga, Wyoming
Elton Trowbridge	Saratoga, Wyoming
A.L. Weiton	Walcott, Wyoming
Adrian Wolford	Encampment, Wyoming

Hereafter, at each annual meeting of the members, the directors shall be elected by and from the members of the Corporation to hold office until the next annual meeting of the members or until their successors shall have been elected and shall have qualified.

Section 4. The bylaws may make provisions for the removal of directors and the [illegible] of vacancies. The bylaws may also provide for division of the territory served by the Corporation into voting districts, and for the nomination and election of directors [illegible] by such voting districts.

Section 5. The directors, as such, shall not receive any compensation for their services, but the bylaws may provide for affixed sums and reimbursements for reasonable expenses incurred in connection with the performance of their duties.

91-13-131

ARTICLE V

Section 1. The first set of bylaws of the Corporation shall be adopted by the board of directors but thereafter the bylaws of the Corporation may be altered, amended or repealed by the board of directors at any regular or special meeting, provided that the notice of such a meeting shall have contained a copy of the proposed alteration, amendment or repeal.

Section 2. The bylaws of the Corporation may define and fix other duties and responsibilities of the members and prescribe other terms and conditions upon which members shall be admitted to and retain membership in the Corporation, make provisions for annual and special meetings of members and directors and notices thereof, provide for methods of voting, quorum requirements, and any other matters relating to the internal organization and management of the Corporation, provided that such provisions shall not be inconsistent with these Certificates of Incorporation or the laws of the State of Wyoming.

ARTICLE VI

The term of existence of the Corporation shall be perpetual.

ARTICLE VII

The operations of the Corporation shall be carried on in the counties of Albany and Carbon, Wyoming, and in such other counties in the State of Wyoming and in the United States, as the board of directors may from time to time decide. The principal office and place of business of the Corporation shall be in the municipality of Saratoga, in Carbon County, in the State of Wyoming, and the Corporation may maintain offices at such other place or places in the State of Wyoming and in the United States as the board of directors may from time to time decide.

DATED this Twenty-fifth day of June, 1988.

CARBON POWER & LIGHT, INC.

William W. Dailey, President

Joe E. Jones, Secretary

BYLAWS 91-13-131
of
CARBON POWER & LIGHT, INC.
(As Amended to June 25, 1988)

ARTICLE I

MEMBERSHIP

Section 1. Requirements for Membership. Any natural adult person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision thereof, or body politic or subdivision thereof will become a member of CARBON POWER & LIGHT, INC., (hereinafter called the "Cooperative") upon receipt of electric service from the Cooperative, provided that he or it has first:

(a) Made a written application for membership therein;

(b) Agreed to purchase from the Cooperative all electric energy as hereinafter specified;

(c) Agreed to comply with and be bound by the certificate of incorporation and bylaws and amendments to the certificate of incorporation and bylaws of the Cooperative and [illegible] rules and regulations adopted by the board; and

[illegible]pecifically stated the district or area number of the cooperative in which the [illegible]hip shall be located; and

[illegible]id the membership fee hereinafter specified.

No member may hold more than one membership in the Cooperative and no membership in the Cooperative shall be transferable, except as provided in these bylaws.

Section 2. Membership Fee; Service Security and Facilities Extension Deposits; Contributions in Aid of Construction. The membership fee shall be as fixed from time to time by the Board of Directors. The membership fee (together with any service security deposit, service connection deposit or fee, facilities extension deposit, contribution in aid of construction or any combination thereof, if required by the Cooperative) shall entitle the member to one service connection. A service connection deposit or fee, in such amount as shall be prescribed by the Cooperative (together with a service security deposit, a facilities extension deposit or a contribution in aid of construction or any combination thereof, if required by the Cooperative), shall be paid by the member for each additional service connection requested by him.

Section 3. Certificate of Membership; Renewal of Prior Application. The applicant shall agree to purchase all electric power and energy from the Cooperative and to be bound by and to comply with all of the other provisions of the Cooperative's Articles of Incorporation and Bylaws, and all rules, regulations and rate schedules established pursuant thereto, as all the same then exist or may thereafter be duly adopted or amended (the obligations embraced by such agreement being hereinafter called "membership obligations") – shall be made in writing on such form as is provided therefor by the Cooperative. The membership application shall be accompanied by the membership fee (together with any security deposit, service connection deposit or fee, facilities extension deposit, or contribution in aid of construction that may be required by the Cooperative), which fee (and such service security deposit, service connection deposit or fee, facilities extension deposit, or contribution in aid of construction, if any) shall be refunded in the event the application is by Board resolution denied. Any former member of the Cooperative may, by the sole act of paying a new membership fee and any outstanding account plus accrued interest thereon at the Wyoming legal rate on judgments in effect when such account first became overdue, compounded annually (together with any service security deposit, service connection deposit or fee, facilities extension deposit, or contribution in aid of construction that may be required by the Cooperative), renew and reactivate any prior application for membership to the same [illegible] as though the application had been newly made on the date of such payment.

[illegible]n 4. **Joint Membership.** Any two natural adult persons, living together, [illegible] electric energy from the same meter, may apply for a joint membership and, subject to their compliance with the requirements set forth in Section 1 of this Article, may be accepted for such membership. The term "member" as used in these bylaws shall be deemed to include a husband and wife holding a joint membership, or any two natural adult persons holding a joint membership, and any provisions relating to the rights and liabilities of membership shall apply equally with respect to the holders of a

91-13-131

joint membership. Without limiting the generality of the foregoing, the effect of the hereinafter specified actions by or in respect of the holders of a joint membership shall be as follows:

(a) The presence at a meeting of either or both shall be regarded as the presence of one member and shall constitute a joint waiver of notice of the meeting;

(b) The vote of either separately or both jointly shall constitute one joint vote;

(c) A waiver of notice signed by either or both shall constitute a joint waiver;

(d) Notice to either shall constitute notice to both;

(e) Expulsion of either shall terminate the joint membership.

(f) Withdrawal of either shall terminate the joint membership.

(g) Either but not both may be elected or appointed as an officer or board member, provided that both meet the qualifications of such office.

Section 5. Conversion of Membership.

(a) A membership may be converted to a joint membership upon the written request of the holder thereof and the agreement by such holder and his or her spouse, or other natural adult person living with him or her, to comply with the articles of incorporation, bylaws and rules and regulations adopted by the board. The outstanding evidence of membership shall be surrendered and shall be reissued by the Cooperative in such manner as shall indicate the changed membership status.

(b) Upon the death of either spouse, or other natural adult person, who is a party to the joint membership, such membership shall be held solely by the survivor. The outstanding membership certificate shall be surrendered, and shall be reissued in such manner as shall indicate the changed membership status, provided, however, that the estate of the deceased shall not be released from any debts due the Cooperative.

Section 6. Termination of Membership.

(a) Any member may withdraw from membership upon compliance with such uniform terms and conditions as the board may prescribe. The board may , by the affirmative vote of not less than two-thirds of all the members of the board, expel any member who fails to comply with any of the provisions of the articles of incorporation, bylaws or rules and regulations adopted by the board, but only if such member shall have been given written notice by the Cooperative that such failure makes him liable to expulsion and such failure shall have continued for at least ten days after such notice was given. Any expelled member may be reinstated by vote of the board or by vote of the members at any annual or special meeting. The membership of a member who has ceased to purchase energy from the Cooperative shall be cancelled without further notice unless the board extends the membership by resolution stating the specific terms of the membership extension.

(b) Upon the withdrawal, death, cessation of existence or expulsion of a member, the membership of such member shall thereupon terminate, and the evidence of membership of such member shall be surrendered forthwith to the Cooperative. Termination of membership in any manner shall not release a member or his estate from any debts due the Cooperative.

Section 7. Purchase of Electric Energy. Each member shall, as soon as electric energy shall be available, purchase from the Cooperative all electric energy purchased on the premises specified in the member's certificate of membership and contract for electric service, and shall pay therefor at rates which shall from time to time be fixed by the board. It is expressly understood that amounts paid for electric energy in excess of the cost of service are furnished by members as capital and each member shall be credited with the capital so furnished as provided by these bylaws. Each member shall pay to the Cooperative such minimum amount regardless of the amount of electric energy consumed, as shall be fixed by the board from time to time. Each member shall also pay all other amounts owed by him to the Cooperative as and when the same shall become due and payable. When the member has more than one service connection from the Cooperative, any payment by him for service from the Cooperative shall be deemed to be allocated and credited on a pro rata basis to his outstanding accounts for all such service connections, notwithstanding that the Cooperative's actual accounting procedures did not reflect such allocation and proration. It is further understood that the Cooperative shall make all reasonable efforts to furnish its members with adequate and dependable electric service, although it cannot and therefore does not guarantee a continuous and uninterrupted supply thereof.

91-13-131

Section 8. Power Production by Member. Each member, for so long as such premises are owned or directly occupied or used by him, shall purchase from the Cooperative all central station electric power and energy purchased for use on all premises to which electric service has been or shall be furnished by the Cooperative within its territory pursuant to his membership, unless and except to the extent that the Board of Directors may in writing waive such requirement, and shall pay therefor at the times, and in accordance with the rules, regulations, and rate schedules (including any monthly minimum amount that may be charged without regard to the amount of electric power and energy actually used) established by the Board of Directors and, if in effect, in accordance with the provisions of any supplemental contract that may have been entered into as provided for in Article I, Section 3. Production or use of electric energy on such premises, regardless of the source thereof, by means of facilities which shall be interconnected with Cooperative facilities, shall be subject to appropriate regulations as shall be fixed from time to time by the Cooperative.

Section 9. Wiring of Premises; Responsibility Therefor; Responsibility for Meter Tampering or Bypassing and for the Damage to Cooperative Properties; Extent of Cooperative Responsibility; Indemnification. Each member shall cause all premises receiving electric service pursuant to his membership to become and to remain wired in accordance with the specifications of the National Electric Safety Code, any applicable state code or local government ordinances, and of the Cooperative. If the foregoing specifications are variant, the more exacting standards shall prevail. Each member shall be responsible for — and shall indemnify the Cooperative and its employees, agents and independent contractors against death, injury, loss or damage resulting from any defect in or improper use or maintenance of — such premises and all wiring and apparatuses connected thereto or used thereon. Each member shall make available to the Cooperative a suitable site, as determined by the Cooperative, whereon to place the Cooperative's physical facilities for the furnishing and metering of electric service and shall permit the Cooperative's authorized employees, agents and independent contractors to have access thereto safely and without interference from hostile dogs or any other hostile source for meter reading, bill collecting and for inspection, maintenance, replacement, relocation, repair or disconnection of such facilities at all reasonable times. As part of the consideration for such service, each member shall be the Cooperative's bailee of such facilities and shall accordingly desist from interfering with, impairing the operation of or causing damage to such facilities, and shall use his best efforts to prevent others from so doing. Each member shall also provide such protective devices to his premises, apparatuses or meter base as the Cooperative shall from time to time require in order to protect the Cooperative's physical facilities and their operation and to prevent any interference with or damage to such facilities. In the event such facilities are interfered with, impaired in their operation or damaged by the member, or by any other person when the member's reasonable care and surveillance should have prevented such, the member shall indemnify the Cooperative and its employees, agents and independent contractors against death, injury, loss or damage resulting therefrom, including but not limited to the Cooperative's cost of repairing, replacing or relocating any such facilities and its loss, if any, of revenues resulting from the failure or defective functioning of its metering equipment. In no event shall the responsibility of the Cooperative for furnishing electric service extend beyond the point of delivery.

Section 10. Member to Grant Easements to Cooperative. Each member shall, upon being requested to do so by the Cooperative, execute and deliver to the Cooperative grants of easement or right-of-way over, on and under such lands owned or leased by or mortgaged to the member, and in accordance with such reasonable terms and conditions, as the Cooperative shall require for the furnishing of electric service to him or other members or for the construction, operation, maintenance or relocation of the Cooperative's electric facilities.

ARTICLE II
RIGHTS AND LIABILITIES OF MEMBERS

Section 1. Property Interest of Members. Upon dissolution, after all debts and liabilities of the Cooperative shall have been paid; and all capital furnished through patronage shall have been retired; as provided by the bylaws, the remaining property and assets of the Cooperative shall be distributed among the members and former members in the proportion which the aggregate patronage of each bears to the total patronage of all members.

91-13-131

Section 2. Non-liability for Debts of the Cooperative. The private property of the members shall be exempt from execution or other liability for the debts of the Cooperative and no member shall be liable or responsible for any debts or liabilities of the Cooperative.

ARTICLE III
MEETING OF MEMBERS

Section 1. Annual Meeting. The annual meeting of the members shall be held on the fourth (4th) Saturday of June of each year beginning with the year 1981 at a place within the Cooperative's territory designated by the Board of Directors, and which shall be designated in the notice of the meeting, for the purpose of electing board members, passing upon reports for the previous fiscal year and transacting such other business as may come before the meeting. It shall be the responsibility of the board to make adequate plans and preparations for the annual meeting. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Cooperative.

Section 2. Special Meetings. Special meetings of the members may be called by resolution of the board, or upon written request signed by any five (5) board members, by the President, or by twenty-five percent (25%) or more of all the members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the members may be held at any place within one of the counties served by the Cooperative as designated by the board and shall be specified in the notice of the special meeting.

Section 3. Notice of Member's Meetings. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting or an annual meeting at which business requiring special notice is to be transacted, the purpose or purposes for which the meeting is called, shall be delivered not less than fifteen (15) days nor more than forty-five (45) days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, or upon default in duty by the Secretary, by the persons calling the meeting, to each member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Cooperative, with postage thereon prepaid. The failure of any member to receive notice of an annual or special meeting of the members shall not invalidate any action which may be taken by the members at any such meeting.

Section 4. Quorum. One hundred (100) members represented in person shall constitute a quorum for the transaction of all business, except that of the election of directors and except any such disposition of property as set forth in Article VIII hereof; provided, however, that in the election of directors, a quorum would consist of five percent (5%) of the total membership of the Cooperative with at least one hundred (100) members represented in person at any such meeting. If less than a quorum is present in person at any meeting, a majority of those present may adjourn the meeting from time to time without further notice.

Section 5. Voting. Each member shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members; provided, however, that in the election of directors a member may cast a number of votes equal to the number of directors to be elected. The number of candidates equal to the number of directors to be elected for the term specified in Section 2. of Article IV of these bylaws. At all meetings of the members at which a quorum is present, all questions shall be decided by a vote of a majority of the members voting therein in person or by proxy except as otherwise provided by law, the certificate of incorporation of the Cooperative, or these bylaws. If any two natural adult persons hold a joint membership, they shall jointly be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members.

Section 6. Proxies. At all meetings of members, a member may vote by proxy executed in writing by the member. Such proxy shall be filed with the Secretary before or at the time of the meeting. No proxy shall be voted at any meeting of the members unless it shall designate the particular meeting at which it is to be voted, and no proxy shall be voted at any meeting other than the one so designated or any adjournment of such meeting. No person shall vote as proxy for more than five (5) members (including an automatic proxy vote for a spouse) at any meeting of the members and no proxy shall be

91-13-131

valid after sixty (60) days from the date of its execution. Provided, however, that the spouse of any member shall be deemed automatically the proxy for an absent member unless the member specifically prohibits the spouse to act as his proxy in writing delivered to the Secretary of the Cooperative prior to the date of the membership meeting. The presence of a member at a meeting of the members shall revoke a proxy theretofore executed by him and such member shall be entitled to vote at such meeting in the same manner and with the same effect as if he had not executed a proxy.

Section 7. Accounting System and Reports. The board shall cause to be established and maintained a complete accounting system which, among other things and subject to applicable laws and regulations of any regulatory body, shall conform to such accounting system as may from time to time be designated by the Administrator of the Rural Electrification Administration of the United States of America. The board shall also after the close of each fiscal year cause to be made by a certified public accountant a full and complete audit of the accounts, books and financial condition of the Cooperative as of the end of such fiscal year. A report of such audit shall be submitted to the members at the next following annual meeting.

Section 8. Order of Business. The order of business at the annual meeting of the members and, so far as possible, at all other meetings of the members, shall be essentially as follows, except as otherwise determined by the members at such meeting:

(1) Report on the number of members present in person in order to determine the [illegible]ce of a quorum.

[illegible]ing of the notice of the meeting and proof of the due publication or mailing [illegible] the waiver or waivers of notice of the meeting, as the case may be.

[illegible]ading of unapproved minutes of previous meetings of the members and the taking of necessary action thereon.

(4) Presentation and consideration of reports of officers, trustees and committees.

(5) Election of board members.

(6) Unfinished business.

(7) New business.

(8) Adjournment.

ARTICLE IV
DIRECTORS

Section 1. General Powers. The business and affairs of the Cooperative shall be managed by a board of nine (9) directors which shall exercise all of the powers of the Cooperative except such as are by law or by the certificate of incorporation of the Cooperative or by these bylaws conferred upon or reserved to the members.

Section 2. Qualifications and Tenure. The persons named as directors in the certificate of incorporation of the Cooperative shall compose the board of directors until the first annual meeting or until their successors shall have been elected and shall have qualified. At each annual meeting of the members beginning with the year 1942, directors shall be elected by ballot, by and from the members as hereinafter provided, to serve until the next annual meeting of the members or until their successors shall have been elected and shall have qualified, subject to the provisions of these bylaws with respect to the removal of directors. No member shall be eligible to become or remain a director or hold any position of trust in the Cooperative, who is not a bona fide resident in the area served by the Cooperative, or who is in any way employed by or financially interested in a competing enterprise or a business selling electric energy or supplies to the Cooperative, or a business primarily engaged in selling electrical or plumbing appliances. When a membership is held jointly by any two natural adult persons, either one, but not both, may be elected a director; provided, however, that neither one shall be eligible to become or remain a director or to hold a position of trust in the Cooperative unless both shall meet the qualifications hereinabove set forth. Nothing in this section contained shall, or shall be construed to, affect in any manner whatsoever the validity of any action taken at any meeting of the board of directors.

Section 3. Nominations. It shall be the duty of the board of directors to appoint, [illegible] than sixty (60) days nor more than ninety (90) days before the date of a [illegible] of the members at which directors are to be elected, a committee on [illegible]s consisting of three (3) members from each district as established by these [illegible] No officer or member of the board of directors shall be appointed a member of such a committee. The committee shall prepare and post at the principal office of the Cooperative at least twenty (20) days before the meeting a list of nominations for directors, but any fifteen (15) or more members from any district may make other

91-13-131

nominations from said district in writing over their signatures not less than fifteen (15) days prior to the meeting and the secretary shall post the same at the same place where the list of nominations made by the committee is posted. The secretary shall mail with the notice of the meeting a statement of the number of directors to be elected and showing separately the nominations made by the committee on nominations and the nominations made by petition, if any. Nothing contained herein shall, however, prevent additional nominations to be made from the floor at the meeting of the members by members of the respective districts. The members may, at any meeting at which a director or directors shall be removed, as herein before provided, elect a successor or successors thereto without compliance with the foregoing provisions with respect to nominations. Notwithstanding anything in this section contained, failure to comply with any of the provisions of the section shall not affect in any manner whatsoever the validity of any election of directors.

Section 4. Representation. The territory to be served by the Cooperative shall be divided into three (3) districts or areas bounded as follows.

District or Area No. 1 - Platte Valley

District No. 1 shall be that portion of the certificated area of the Carbon Power & Light, Inc., that lies west of a line beginning at the NE corner of Township 22 N., Range 82 W.; thence south to the NE corner of Township 16 N., Range 82 W.; thence east to the Carbon and Albany county line; thence south to the Wyoming state line.

District or Area No. 2 - Elk Mountain and Rock River.

District No. 2 shall be that portion of the certificated area of the Carbon Power & Light, Inc., that lies north and west of a line beginning at the NE corner of Township 16 N., Range 82 W., thence east to the SE corner of Township 17 N., Range 79 W., thence north to the NE corner of Township 18 N., Range 79 W., thence east to the SE corner of Township 19 N., Range 76 W., thence to the north boundary of the certificated area.

District or Area No. 3 - Laramie Valley.

District No. 3 shall be that portion of the certificated area of the Carbon Power & Light, Inc., that lies south and east of a line beginning at the NE corner of Township 22 N., Range 76 W.; thence south to the SE corner of Township 19 N., Range 76 W.; thence west to the NW corner of Township 18 N., Range 78 W.; thence south to the Carbon and Albany county line; thence west and south along said county line to the Wyoming state line.

There shall be three (3) directors elected from the qualified members residing in each of the above named districts; that the said three (3) directors in each district shall be elected by qualified members residing in that respective district, and no member shall be permitted to vote for any directors from districts which said member does not reside. That at the annual meeting of the members held on June 23, 1958, one (1) director from each district shall be elected for a term of one (1) year, one (1) director from each district shall be elected for a term of two (2) years, and one (1) director from each district for a term of three (3) years; and the said terms of said directors at said annual meeting on June 23, 1958, shall be determined as follows: The nominee from each district receiving the highest number of votes shall be declared elected for a three (3) year term; the second highest for a two (2) year term; and the third highest for a one (1) year term. That thereafter all directors shall be elected for a term of three (3) years in accordance with the provisions of this bylaw.

Section 5. Vacancies. Subject to the provisions of these bylaws with respect to the removal of directors, vacancies occurring in the board of directors shall be filled by a majority vote of the remaining directors and directors thus elected shall serve until the next annual meeting of the members or until their successors shall have been elected and shall have qualified.

Section 6. Compensation; Expenses. Directors shall, as determined by resolution of the Board of Directors, receive a fixed fee, which may include insurance benefits, for attending meetings of the Board of Directors and when such has had the prior approval of the Board of Directors, for the performance of other Cooperative business. Directors shall also receive advancement or reimbursement of any travel and out-of-pocket expenses actually, necessarily and reasonably incurred in performing their duties. No director shall receive compensation for serving the Cooperative in any other capacity, nor shall any close relative of a director receive compensation for serving the Cooperative, unless the payment and amount of such compensation shall be specifically authorized by a vote of the members or such payment and amount shall be specifically authorized by the Board of Directors upon their certification of such as an emergency measure. Provided, that a director who is also an officer of the board, and who as such officer performs regular or periodic duties of a substantial nature for the Cooperative in its fiscal affairs, may be compensated in such amount as shall be fixed and authorized in advance of such service by the Board of Directors.

91-13-131

Section 7. Removal of Directors by Members. Any member may bring one or more charge(s) for good cause against any one or more director(s) and may request the removal of such director(s) by reason thereof by filing with the Secretary such charge(s) in writing, together with a petition signed by not less than twenty-five percent (25%) of the then-total members of the Cooperative which petition calls for a special member meeting the stated purpose of which shall be to hear and act upon such charge(s) and, if one or more directors are recalled, to elect their successor(s), and which specifies the place, time and date thereof not sooner than fifty (50) days after filing of such petition. Each page of the petition shall, in the forepart thereof, state the name(s), and address(es) of the member(s) filing such charge(s), a verbatim statement of such charge(s) and the name(s)of the director(s) against whom such charge(s) is (are) being made. The petition shall be signed by each member in the same name as he is billed by the Cooperative and shall state the signatory's address as the same as it appears on such billings. Notice of such charge(s) verbatim, of the director(s) against whom the charge(s) have been made and the purpose of the meeting shall be contained in the notice of the meeting, or separately noticed to the members not less than fifteen (15) days prior to the member meeting at which time the matter will be acted upon: Provided, that the notice shall set forth (in alphabetical order) only twenty (20) of the names of the members filing one or more charges if twenty (20) or more members file the same charge(s) against the same director(s). Such director(s) shall be informed in writing of the charge after they have been validly filed and at least forty-five (45) days prior to the meeting of the members at which the charges are to be considered, and shall have an opportunity at the meeting to be heard in person, by evidence in respect of the charge(s); and the [illegible]er(s) bringing the charge(s) shall have the same opportunity, but must be heard [illegible] question of the removal of such director(s) shall, separately for each if more [illegible]e has been charged, be considered and voted upon at such meeting, and any vacancy created by such removal shall be filled by vote of the members at such meeting without compliance with the foregoing provisions with respect to nominations, except that nominations shall be made from the floor: Provided, that the question of the removal of a director shall not be voted upon at all unless some evidence in support of the charge(s) against him shall have been presented during the meeting through oral statements, documents or otherwise. A newly-elected director shall be from or with respect to the same Directorate District as was the director whose office he succeeds and shall serve the unexpired portion of the removed director's term.

ARTICLE V
MEETINGS OF BOARD

Section 1. Regular Meetings. A regular meeting of the board shall be held without notice, immediately after, and at the same place as, the annual meeting of the members. A regular meeting of the board shall also be held monthly at such time and place within one of the counties served by the Cooperative as designated by the board. Such regular monthly meeting may be held without notice other than such resolution fixing the time and place thereof.

Section 2. Special Meeting. Special meetings of the board may be called by the President or by any five (5) board members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. The President or board members calling the meeting shall fix the time and place for the holding of the meeting. Special meetings, upon proper notice, may also be held via telephone conference call, without regard to the actual location of the directors at the time of such a telephone conference meeting, if all the directors consent thereto.

Section 3. Notice of Board Meetings. Written notice of the time, place and purpose of any special meeting of the board shall be delivered to each board member either personally or by mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the President or the board member calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the board member at his address as it appears on the records of the Cooperative, with postage thereon prepaid, at least five (5) days before the date [illegible] for the meeting.

[illegible]on 4. Quorum. A majority of the board shall constitute a quorum, provided, [illegible]ess than such majority of the board is present at said meeting, a majority of the [illegible]d present may adjourn the meeting from time to time; and provided further, that the Secretary shall notify any absent board members of the time and place of such adjourned meeting. The act of a majority of the board members present at a meeting at which a quorum is present shall be the act of the board, except as otherwise provided in these bylaws.

91-13-131

ARTICLE VI
OFFICERS

Section 1. Number. The officers of the Cooperative shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be determined by the board from time to time. The offices of Secretary and Treasurer may be held by the same person.

Section 2. Election and Term of Office. The four officers named in Article VI, Section 1 shall be elected by secret written ballot, annually and without prior nomination, by and from the Board of Directors at the first meeting of the board held after the annual meeting of the members. If the election of such officers shall not be held at such meeting, it shall be held as soon thereafter as is convenient. Each such officer shall hold office until the first meeting of the board following the next succeeding annual meeting of the members or until his successor shall have been duly elected and shall have qualified, subject to the provisions of the bylaws with respect to the removal of directors and to the removal of officers by the Board of Directors. Any other officers may be elected by the board from among such persons, and with such title, tenure, responsibilities and authorities, as the Board of Directors may from time to time deem advisable.

Section 3. Removal of Officers and Agents by the Board. Any officer or agent elected or appointed by the board may be removed by the board whenever in its judgment the best interests of the Cooperative will be served thereby.

Section 4. President. The President shall:

(a) be the principal executive officer of the Cooperative, and unless otherwise determined by the members of the board, shall preside at all meetings of the members and the board;

(b) sign, with the Secretary, evidences of membership, the issue of which shall have been authorized by the board or the members, and may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the board to be executed except in cases in which the signing and execution thereof shall be expressly delegated by the board or by these bylaws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed; and

(c) in general perform all duties incident to the office of President and such other duties as may be prescribed by the board from time to time.

Section 5. Vice President. In the absence of the President, or in the event of his inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall also perform such other duties as from time to time may be assigned to him by the board.

Section 6. Secretary. The Secretary shall be responsible for:

(a) keeping the minutes of the meetings of the members and of the board in books provided for that purpose;

(b) seeing that all notices are duly given in accordance with these bylaws or as required by law;

(c) the safekeeping of the corporate books and records and the seal of the Cooperative and affixing the seal of the Cooperative to documents on which it is legally necessary or appropriate to affix the seal and upon authorization by the board;

(d) keeping a register of the names and post office addresses of all members;

(e) keeping on file at all times a complete copy of the certificate of incorporation and bylaws of the Cooperative containing all amendments thereto (which copy shall always be open to the inspection of any member) and at the expense of the Cooperative, furnishing a copy of the bylaws and all amendments thereto to any member upon request; and

(f) in general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the board.

Section 7. Treasurer. The Treasurer shall be responsible for:

(a) custody of all funds and securities of the Cooperative;

(b) the receipt of and the issuance of receipts for all monies due and payable to the Cooperative and for the deposit of all such monies in the name of the Cooperative in such bank or banks as shall be selected in accordance with the provisions of these bylaws; and

91-13-131

(c) the general performance of all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the board.

Section 8. Manager. The board may appoint a manager who may be, but who shall not be required to be, a member of the Cooperative. The manager shall perform such duties and shall exercise such authority as the board may from time to time vest in him or her.

Section 9. Bonds of Officers. The Treasurer and any other officer or agent of the Cooperative charged with responsibility for the custody of any of its funds or property shall be bonded in such sum and with such surety as the board shall determine. The board in its discretion may also require any other officer, agent or employee of the Cooperative to be bonded in such amount and with such surety as it shall determine.

Section 10. Compensation. The powers, duties and compensation of officers, agents and employees shall be fixed by the board subject to the provisions of these bylaws with respect to compensation for a board member and close relatives of a board member. The Cooperative shall indemnify present and former directors, officers, including the General Manager, agents and employees and may purchase insurance to cover such indemnification, as provided in the Wyoming Business Corporation Act, Wyoming Statutes, Section 17-1-105.1.

Section 11. Reports. The officers of the Cooperative shall submit at each annual meeting of the members reports covering the business of the Cooperative for the previous fiscal year. Such reports shall set forth the condition of the Cooperative at the close of such fiscal year.

ARTICLE VII
NON-PROFIT OPERATION

Section 1. Interest or Dividends on Capital Prohibited. The Cooperative shall at all times be operated on a Cooperative non-profit basis for the mutual benefit of its members. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its members.

Section 2. Patronage Capital in Connection with Furnishing Electric Energy. In the furnishing of electric energy the Cooperative's operations shall be so conducted that all members, will through their patronage furnish capital for the Cooperative. In order to induce patronage and to assure that the Cooperative will operate on a non-profit basis the Cooperative is obligated to account on a patronage basis to all its members for all amounts received and receivable from the furnishing of electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric energy. The formula for determining the amount of such patronage capital for each member shall be determined by the Board of Directors. All such amounts in excess of operating costs and expenses at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the members as capital. The Cooperative is obligated to pay by credits to a capital account for each member all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each member is clearly reflected and credited in an appropriate record to the capital account of each member, and the Cooperative shall within a reasonable time after the close of the fiscal year notify each member of the amount of capital so credited to his account. All such amounts credited to the capital account of any member shall have the same status as though they had been paid to the member in cash in pursuance of a legal obligation to do so and the member had then furnished the Cooperative corresponding amounts for capital.

All other amounts received by the Cooperative from its operations in excess of costs and expenses shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, allocated to its members on a patronage basis and any amount so allocated shall be included as part of the capital credited to the accounts of members, as herein provided.

In the event of dissolution or liquidation of the Cooperative, the Cooperative will first pay all outstanding indebtedness of the Cooperative prior to the retiring of outstanding capital credits. Outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of the members. If, at any time prior to the dissolution or liquidation, the board shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital

91-13-131

credited to members' accounts may be retired in full or in part. Any such retirements of capital shall be made in order of priority that the board of directors determines appropriate. The Cooperative, before retiring any capital credited to any member's account, shall deduct therefrom any amount owing by such member to the Cooperative.

Notwithstanding any other provisions of the bylaws, if any member or former member fails to claim any cash retirement of capital credits or other payment from the Cooperative within two years after payment of the same has been made available to him by notice or check mailed to him at his last address furnished by him to the Cooperative, such failure shall be and constitutes an irrevocable assignment and gift by such member of such capital credit or other payment to the Cooperative. Failure to claim any such payment within the meaning of this section shall include the failure by such member or former member to cash any check mailed to him by the Cooperative at the last address furnished by him to the Cooperative. The assignment and gift provided for under this section shall become effective only upon the expiration of two (2) years from the date when such payment was made available to such member or former member without claim therefor and only after the further expiration of sixty (60) days following the giving of a notice by mail and publication that unless such payment is claimed within said sixty (60) day period, such gift to the Cooperative shall become effective. The notice by mail herein provided for shall be one (1) mailed by the Cooperative to such member or former member at the last known address and the notice by publication shall be two (2) consecutive insertions in a newspaper circulating in the service area of the Cooperative. The sixty (60) day period following the giving of such notice shall be deemed to terminate after the mailing of such notice or sixty (60) days following the last date of publication thereof, whichever is later.

Said funds are to be used, at the discretion of the Board of Directors, to promote educational programs and provide scholarships for students in Carbon's service area.

Capital credited to the account of each member shall be assignable only on the books of the Cooperative pursuant to written instruction from the assignor and only to successors in interest or successors in occupancy in all or a part of such member's premises served by the Cooperative unless the board, acting under policies of general application, shall determine otherwise.

Notwithstanding any other provision of these bylaws, the board at its discretion, shall have the power at any time upon the death of any member, if the legal representatives of his estate shall request in writing that the capital credited to any such member be retired prior to the time such capital would otherwise be retired under the provisions of these bylaws, to retire capital credited to any such member upon such terms and conditions as the board, acting under policies of general application, and the legal representatives of such member's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby.

The members of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the article of incorporation and bylaws shall constitute and be a contract between the Cooperative and each member, and both the Cooperative and the members are bound by such contract, as fully as though each member had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the bylaws shall be called to the attention of each member of the Cooperative by posting in a conspicuous place in the Cooperative's office.

ARTICLE VIII
DISPOSITION OF PROPERTY

Section 1. The Cooperative may not sell, lease or otherwise dispose of all or any substantial portion of its property unless such sale, lease or other disposition is authorized at a meeting of the members thereof by the affirmative vote of not less than two-thirds of all of the members of the Cooperative, and unless the notice of such proposed sale, leased or other disposition shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, the board of the Cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board shall determine, to secure any indebtedness of the Cooperative.

Section 2. No sale, lease, lease-sale, exchange or other disposition of all or a substantial portion of the Cooperative's assets to any other entity shall be authorized except in conformity with the following

91-13-131

(a) If the Board of Directors looks with favor upon any proposal for such sale, lease, lease-sale, exchange or other disposition, it shall first cause three (3) independent appraisers, expert in such matters, to render their individual opinions as to the value of the Cooperative with respect to such a sale, lease, lease-sale, exchange or other disposition and as to any other terms and conditions which should be considered. The three (3) such appraisers shall be designated by a resident District Court Judge for the Second Judicial District, Albany or Carbon County, Wyoming. If such judge refuses to make such designations, they shall be made by the Board of Directors.

(b) If the Board of Directors, after receiving such appraisals (and other terms and conditions which are recommended, if any), determines that the proposal should be submitted for consideration by the members, it shall first give every other electric membership corporation corporately sited and operating in the state (which has not made such an offer for such sale, lease, lease-sale, exchange or other disposition) an opportunity to submit competing proposals. Such opportunity shall be in the form of a written notice to such electric membership corporations, which notice shall be attached to a copy of the proposal which the Cooperative has already received and a copy of the report(s) of the three (3) appraisers. Such electric membership corporations shall be given not less than thirty (30) days during which to submit competing proposals, and the actual minimum period within which proposals are to be submitted shall be stated in the written notice to them.

(c) If the board then determines that favorable consideration should be given to the initial or any subsequent proposal which has been submitted to it, it shall so notify the members, expressing in detail each of any such proposals, and shall call a special meeting of the members for consideration thereof which meeting shall not be held [illegible]er than one hundred eighty (180) days after the giving of such notice to the [illegible]rs. Provided, that consideration thereof by the members may be given at the [illegible]nual member meeting if the board so determines and if such annual meeting is [illegible]a sooner than one hundred eighty (180) days after the giving of such notice.

(d) Any fifty (50) or more members, by so petitioning the board not less than thirty (30) days prior to the date of such special or annual meeting, may cause the Cooperative, with the cost to be borne by the Cooperative, to mail to all members any opposing or alternative positions which they may have to the proposals that have been submitted or any recommendations that the board has made.

The foregoing provisions shall not apply to a sale, lease, lease-sale, exchange or other disposition to one or more other electric membership corporations if the substantive effect thereof is to merge or consolidate with such other one or more electric membership corporations.

Section 3. The Cooperative may not be dissolved except at an annual or special meeting called in accordance with these bylaws at which two-thirds of the total membership of the Cooperative votes for dissolution.

ARTICLE IX
SEAL

The corporate seal of the Cooperative shall have inscribed thereon the name of the Cooperative and the words "Corporate Seal, Wyoming."

ARTICLE X
FINANCIAL TRANSACTIONS

Section 1. Contracts. Except as otherwise provided in these bylaws, the board may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Cooperative, and such authority may be general or confined to instances.

Section 2. Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Cooperative shall be signed and/or countersigned by such officer or officers, agent or agents, employee or employees of the Cooperative and in such manner as shall from time to time be determined by resolution of the board.

Section 3. Deposits, Investments. All funds of the Cooperative shall be deposited or invested from time to time to the credit of the Cooperative in such bank or banks or in [illegible]inancial securities or institutions as the Board of Directors may select.

[illegible]n 4. Change in Rates. Written notice shall be given to the Administrator of [illegible] Electrification Administration of the United States of America not less than [illegible] (90) days prior to the date upon which any proposed change in the rates charged by the Cooperative for electric energy becomes effective.

Section 5. Fiscal Year. The fiscal year of the Cooperative shall begin on the first (1st) day of January of each year and shall end on the thirty-first (31st) day of December of the same year.

91-13-131

ARTICLE XI
MEMBERSHIP IN OTHER ORGANIZATIONS

The Cooperative shall not become a member of or purchase stock in any other organization without an affirmative vote of the members at a duly held meeting, the notice of which shall specify that action is to be taken upon such proposed membership or stock purchase, provided however, that the Cooperative may upon the authorization of the board, purchase stock in or become a member of any corporation or organization organized on a non-profit basis for the purpose of engaging in or furthering the cause of rural electrification, or with the approval of the Administrator of REA, or any other corporation for the purpose of acquiring electric facilities.

ARTICLE XII
WAIVER OF NOTICE

Any member or board member may waive in writing any notice of a meeting required to be given by these bylaws. The attendance of a member or board member at any meeting shall constitute a waiver of notice of such meeting by such member or board member, except in case a member or board member shall attend a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

ARTICLE XIII
POLICIES, RULES AND REGULATIONS

The board shall have the power to make and adopt such policies, rules and regulations, not inconsistent with law, the articles of incorporation or these bylaws, as it may deem advisable for the management of the business and affairs of the Cooperative.

ARTICLE XIV
AREA COVERAGE

The board shall make diligent effort to see that electric service is extended to all unserved persons within the Cooperative service area who (a) desire such service and (b) meet all reasonable requirements established by the Cooperative as a condition of such service.

ARTICLE XV
AMENDMENTS

These bylaws may be altered, amended or repealed by a vote of at least two-thirds (2/3) of all directors at any regular or special meeting of the board of directors. Advance publications of any proposed amendment shall be made at least thirty (30) days prior to the adoption thereof in a newspaper published in the Wyoming Counties in which the Cooperative serves.

ADOPTED this Twenty-fifth day of June, 1988.

Joe E. Jones, Secretary

Carbon Power & Light, Inc.

91-13-131

APPENDIX A

91-13-131

STATEMENT OF NONDISCRIMINATION

Carbon Power & Light, Inc. is the recipient of Federal financial assistance from the Rural Electrification Administration, an agency of the U.S. Department of Agriculture, and is subject to the provisions of Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, as amended, and the rules and regulations of the U.S. Department of Agriculture which state that no person in the United States on the basis of race, color, national origin, age, or handicap shall be excluded from participation in, admission or access to, denied the benefits of, or otherwise be subjected to discrimination under any of this organization's programs or activities.

The person responsible for coordinating this organization's nondiscrimination compliance efforts is Ardyce M. Hoem, General Manager. Any individual, or specific class of individuals, who feels that this organization has subjected them to discrimination may obtain further information about the statutes and regulations listed above from and/or file a written complaint with this organization; or the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250; or the Administrator, Rural Electrification Administration, Washington, D.C. 20250. Complaints must be filed within 180 days after the alleged discrimination. Confidentiality will be maintained to the extent possible.

91-13-132

Top O'Michigan Electric Company

1123 EAST DIVISION -:- P. O. BOX 70
BOYNE CITY, MICHIGAN 49712-0070

Local 616-582-6521 -:- Toll Free 1-800-748-0121

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, NW - Room 4041
Washington, D.C. 20405

Re: FAR Case 91-13

Gentlemen:

I am writing in response to your request for comments on these proposed rules.

I wish to comment on several sections of this proposed rule and then make some general comments.

41004-1 & 2 - Seem to provide escape clauses to avoid using the local supplier. Territorial disputes with IOU's are quite common in our state so we are very sensitive about any language that might open the door for an IOU to further invade our territory.

52241-1 - Michigan utilities are bound by Public Service Commission laws and rules of procedure. We can not comply with this rule.

52241-5 - Addresses what to do for metering errors. Again, our Public Service Commission strictly dictates what we must do, or not do, to correct metering errors and resultant billing corrections.

52241-6 - Conflicts over regulations. We are bound to operate by the state's laws and rules.

52241-8 - Refund of contributions. We refund our contributions if they are the refundable type, by the dictates of Public Service Commission laws and rules. Your proposal conflicts with what we do for thousands of other customers.

52241-13 - Patronage capital refunds. Our board determines annually when and if capital credits can be paid. It is not possible to notify you on a specific date and the amount of the refund.

JUL 23 1991

91-13-132

We fully respect the government's desire to place some rules of procedure on its dealings with utility suppliers; however, Michigan utilities are heavily regulated and the rules you are trying to promulgate, we already have in place in much different format and context, but with the same basic results.

We urge you, if you must have these rules, to allow escape clauses wherever states adequately regulate the utility's actions to accomplish the same goals you seek.

Yours truly,

Thomas W. Masserang

Thomas W. Masserang, Manager
Office Services

TWM:po

91-13-133

San Luis Valley Rural Electric Cooperative, Inc.
3625 WEST U.S. HWY. 160 • MONTE VISTA, COLORADO 81144 • TEL (719) 852-3538
1-800-332-7634
FAX (719) 852-4333

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N.W.
Room 4041
Washington, D.C. 20405

Re: **FAR Case 91-13.**

Gentlemen:

The General Services Administration (GSA) recently published a proposed rule on the acquisition of services from utilities (56 Federal Register 23982). As part of this rule, the GSA is proposing at section 41.007(j), the same language be added to all contracts between Federal facilities and cooperatives as substantiated in section 52.241-13 Capital Credits.

> (a) The Government is a member of the (cooperative name) _____, and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.
>
> (b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing a list of accrued credits by contract number, year and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made.
>
> (c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

JUL 23 1991

91-13-133

(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____, unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

The SLVREC finds the proposed new section very troubling and unfair to other cooperative members. We believe that the Federal Government along with all cooperative members, are entitled to their capital credits. The return of any profits above expenses is the very basis that Cooperatives are founded upon. However, we believe that all members of a cooperative should be treated fairly and evenly while having the capital credits retired in a systematic order without giving anyone preference or early payment. Paying the Federal Government capital credits would give them preferential treatment. We believe the government is to serve the people, not the people to serve the government.

We ask that GSA reconsider their proposal and adopt a policy of payment of capital credits in the same order as all other cooperative members.

Thank you for your time and consideration regarding this matter.

Sincerely,

Charles M. Archer
General Manager

CMA/mc

cc: Bob Bergland, NRECA

EDS Electronic Data Systems Corporation

91-13-134

July 18, 1991

General Services Administration
ATTN: FAR Secretariat (VRS)
18th and F Streets, NW
Room 4041
Washington, DC 20405

Reference FAR Case 91-20

Dear Ms. Fayson:

Electronic Data Systems Corporation (EDS) is extremely concerned about the proposed addition of FAR 52.215-39, Notification of Ownership Changes. We feel that the proposed clause is unnecessary and should be eliminated. The intended purpose of this clause is to assure that the Government receives timely notification of planned and completed ownership changes and any cost increases which might result therefrom. This is not a valid justification.

There are currently sufficient provisions in the FAR that protect the Government from paying increased costs resulting from ownership changes. Cost principles at FAR 31.205-27, Organization costs; FAR 31.205-49, Goodwill; and FAR 31.205-52, Asset valuations resulting from business combinations, provide sufficient assurance that unallowable costs resulting from ownership changes will not be passed on to the Government. Furthermore, if a successor in interest is necessary as a result of an ownership change, FAR 42.12, Novation and Change of Name Agreements, sets forth the conditions under which the Government will recognize the successor, one of which is an agreement that increased costs resulting from the transaction will not be passed on to the Government.

If the proposed rule is not withdrawn, we recommend that several changes be made. Paragraph (a)(1) requires the contractor to notify the ACO within 30 days after a change in ownership has occurred or is certain to occur. In our opinion, any notification prior to an actual change in ownership may violate SEC as well as buy/sell agreements. We recommend deletion of the words, "or is certain to occur."

Paragraph (a)(2) requires the contractor to notify the ACO whenever asset valuation increases or any other cost increases related to a change of ownership have occurred or are certain to occur. We recommend deletion of the words, "or any other cost increases," since various cost increases, unrelated to asset valuation increases may result from ownership changes. It appears that the primary intent of the proposed clause is the implementation of

JUL 23 1991

91-13-134

FAR 31.205-52, Asset Valuations Resulting from Business Combinations. Accordingly, the proposed clause should be limited to that subject and not "other cost increases."

Paragraph (b) requires contractors to maintain current, accurate, and complete inventory records of assets and their costs, both prior and subsequent to all ownership changes. This onerous requirement may necessitate another set of books as well as physical identification (e.g., double tagging) of such assets until retirement. Contractors may not always be able to comply with such a requirement since an acquired company may have had incomplete or inaccurate inventory and/or accounting records. Moreover, we believe the proposed clause would result in a paperwork burden for EDS that is significantly greater than the Government's estimate of 100 hours per year per contractor. We recommend that such a detailed record keeping requirement be dropped completely, or at least changed to allow for summary level information.

If you would like to discuss these recommendations in more detail, please do not hesitate to contact either Michael Quint (703/742-2268) or me (703/742-2739).

Sincerely,

Gary W. Hill

Gary W. Hill
Manager, Government Liaison
and Compliance

Iowa Lakes Electric
Cooperative

1724 Central Avenue
P.O. Box 77
Estherville, Iowa 51334-0077

91-13-135

J. Bruce Bosworth
General Manager
(712) 362-2694

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Dear Sir:

Re: FAR Case 91-13

The following comments are in response to General Services Administration, Federal Acquisition Regulations for Acquisition of Utility Services (FAR Case 91-13) as it concerns a proposal rule on the acquisition of services from utilities (56 Federal Register 23982) Section 41.007(J), specifically paragraphs (B), (C), and (D).

Paragraph (B)

The contractor (Cooperative) would be unable to notify or furnish to the contracting officer with sixty (60) days after the close of the contractor's (Cooperative's) fiscal year, written notice of accrued credits (patronage).

The reason(s) for this is usually due to delayed billing of electric service accounts until the following calendar month of the business year and the larger than normal work load requirements at the end of the fiscal year.

Cooperatives who use the option of offsetting (netting) gains and losses are permitted by IRC Code, Section 1388, to provide patrons with a written allocation notice on or before the 15th day of the ninth month following the close of the fiscal (tax) year.

Additionally, IRC Code, Section 6044, exempts cooperatives who furnish electricity or telephone service in rural areas from filing and providing information returns (Form 1099 PATR) to patrons when patronage dividends are paid.

Recommendation

Allow the contractor (Cooperative) to continue its existing practices in accordance with the Internal Revenue Code and current Cooperative policy.

JUL 23

91-13-135

Paragraph (C)

This paragraph would be inconsistent with current state law (Iowa) governing the provision for payment of deferred patronage dividends.

As such, this retirement would be considered a violation of law when payments are provided in advance of the normal or general retirement, and could/would establish harmful precedents where a Cooperative would have a diminished capital or equity base to carry on its day-to-day operations if all of its patrons, who no longer were actively engaged in the purchase of electricity, were paid dividends. Additionally, any requirement for payment of dividends could be in violation of the Cooperative's REA loan covenants, depending upon the Cooperative's current financial condition.

Recommendation

Any payment of deferred patronage dividends should be in compliance with existing state law and be at the discretion of the Cooperative's Board of Directors and consistent with Cooperative's established equity and general retirement plan.

Paragraph (D)

Payments of capital credits in the form of a certified check creates an additional administrative burden and expense on behalf of the paying entity, i.e., Cooperative.

Recommendation

All payments of capital credits should be in a manner consistent and equal with other payments provided by the contractor (Cooperative) in the normal course of business transactions, i.e., general funds business check.

Thank you for allowing the Cooperative the opportunity to provide its comments and recommendations as it concerns this proposal.

Sincerely,

J. Bruce Bosworth
General Manager

JBB/ss

Osage Valley Electric Cooperative

Business Highway 71 North P.O. Box 151 Butler, Missouri 64730-0151
Phone: 816-679-3131

91-13-136

July 18, 1991

General Services Administration
FAR Scretariat (VRS)
18th and F Streets, NW, Room 4041
Washington DC 20405

RE: FAR Case 91-13

You recently published a proposed rule on the acquisition of services from utilities (56 Federal Register 23982). As a part of this rule, you propose a section 41.007(j) that some new language be added to all contracts between Federal facilities and our facilities.

We have a contract with the Air Force for electricity served at twenty-four missile sites. We find paragraphs (b) and (c) to be specifically troubling.

In paragraph (b), you propose that we provide a list of accrued credits by delivery points: Although we do have twenty-four delivery points, we combine all the readings each month and provide the Contracting Officer with one combined bill. It will be impossible for us to provide this information by delivery point.

You also propose in paragraph (b) that we state the amount of capital credits to be paid that year and the date the payment is to be made within 60 days after the close of our fiscal year. We are not prepared to make this determination so soon after the close of our fiscal year. It is at least four months after the close, when we make this determination.

Paragraph (c) is particularly troubling. You propose that all unpaid capital credits be paid upon the termination or expiration of a contract. We do not do this for the estates of deceased members. We do not do this for business entities that fail. We do not do this for any entity that disconnects from our service. The government should not be treated any differently than any other member.

Thank you for allowing me to submit these comments.

Darold Wulfekoetter

Darold Wulfekoetter, Manager

DW:dc

JUL 23 1991

91-13-137

LOWER VALLEY
POWER & LIGHT INC

July 18, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Reference: FAR Case 91-13

To Whom It May Concern:

Please accept for the official record Lower Valley's comments on your proposed rule on the acquisition of services from utilities (56 Federal Register 23982), section 41.007(j).

52.241-13 (b) would require a cooperative to furnish allocated capital credits within 60 days after the close of the fiscal year. Since an audit of the cooperative's books by an independent firm is always conducted after the close of the fiscal year, allocations are not performed until after that audit to assure accuracy in accounting for margins. It would be practical to provide a list of allocated capital credits within 60 days after the fiscal year's records have been audited by an independent firm. Cooperative's would be more willing to act rapidly on this request if the Government put forth greater effort to pay all bills received within 60 days after the close of the billing period. This same paragraph would also require the cooperative to state the date payment of allocated capital credits would be made. This is not possible and would be in violation of the cooperative's Bylaws and Articles of Incorporation. Most cooperative Bylaws and Articles of Incorporation provide authority for the Cooperative's Board of Directors to determine the time of payment which also depends on the cooperative's financial condition.

52.241-13 (c) would require a cooperative to make payment of unpaid capital credits at the completion of a contract. Such a practice would give the Government preferential treatment over the cooperative's other members. It could be accomplished if the Government would consider this to be an early payment of capital credits and take a discounted amount.

In general, capital credits are the only source of equity capital a cooperative has and should be managed for the best interest of all members of the cooperative.

Thank you for the opportunity to comment.

Yours very truly,

Winston G. Allred
Staff Assistant

JUL 23 1991

A Utility Enterprise Providing Quality Services

91-13-138

WEST RIVER ELECTRIC ASSOCIATION, INC.

BOX 412 WALL SOUTH DAKOTA 57790
TEL [illegible]

BRANCH OFFICE [illegible]
RAPID CITY SOUTH DAKOTA
TEL [illegible]

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Gentlemen:

I am writing on behalf of West River Electric Association regarding the changes you are requesting pertaining to electric service for the Federal Government.

It appears to me you are trying to achieve benefits for the U.S. Government that are not available to our members, which will cause our members to pay more for their services, and in general will probably make us illegal in some aspects of the operation of our business.

Part 52.241-13 Capital Credits.
I believe it would be impossible to meet the requirements of parts (b) and (c).

Part (b) requiring us to state, within 60 days after the close of our fiscal year, the amount of capital credits to be paid and when they would be paid would be impossible for us to comply with. First, in addition to having our books audited, we earn capital credits from our Generation and Transmission Cooperative and we need their information before we can close our books. Besides not being able to meet the proposed deadline, it would create extra bookkeeping to try and comply with the requirement.

Regarding when the capital credits would be retired, the proposed rules would make capital credits available to the Federal Government sooner, instead of on the same basis as the other members of the cooperative would receive theirs. We believe the Federal Government, as a member of the Cooperative should receive its capital credits back on the same basis as the rest of the membership. In addition, this proposed rule could put us in violation of our by-laws, Articles of Incorporation, state laws and our mortgage contracts with the Rural Electrification Administration, and our supplemental lender, the National Rural Utilities Cooperative Finance Corporation.

JUL 23 1991

91-13-138

Part 52.241-8 Connection Charge.
We feel under the proposed rule, the cost of providing facilities for the Federal Government would be shifted from the government to our other members. We feel this is unfair to our members, and in fact may violate our by-laws and state statutes which govern the way we operate.

The same is true for the proposed provision requiring monthly credit be give for advanced connection charges made. Again, this would shift the cost of providing service to the government, to the other members of the cooperative.

Part 52-241-5 Service Provisions
Under part (a) (1), Measurement of Service, here again the Federal Government is asking for something that is not available to the rest of our membership with conjunctive billing. If the government wished to have single meter billing, then we feel they should have planned for it when originally installing the service.

Under part (a) (2), we again feel this is an unreasonable request which would only create additional bookkeeping.

Under part (b), meter test, we feel is an unreasonable request, and not available to the rest of our membership as the proposed rule requires. We feel the government should abide by the same rules and regulations that govern the cooperative and its members.

Under part (d) (1) (2) continuity of service and consumption, here again we feel the government should abide by the same rules the rest of our membership abides by. While outages are regrettable they do happen, and we don't feel the government is entitled to anymore of an adjustment then the rest of the membership would get. The same is true for (2), why should the government be a special case? This cost would have to be borne by the remaining membership.

Sincerely,

James J. Pahl

James J. Pahl
General Manager

JJP/jb

Niobrara Valley Electric Membership Corporation
Box 60 O'NEILL, NEBRASKA 68763 402-336-2803

91-13-139

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W. Room 4041
Washington, D.C. 20405

RE: FAR Case 91-13

Dear Sirs,

In reviewing your recently published proposed rule on the acquisition of services from utilities, section 41.007(j.). I became concerned that the person writing it did not understand how rural electric cooperatives account for capital credits.

Section 52.241-13 concerns capital credits due to the Government. Paragraph b states that 60 days after the cooperative closes its books we must send to the government in writing the amount of capital credits to be paid and the date the payment is to be paid. Under the terms of our by-laws of incorporation capital credits do not become due and payable until the board of directors declares that they are to be retired.

We currently pay capital credits on a twenty year cycle. Capital credits accrued in 1971 will be paid in 1991. However, if the financial situation of the cooperative is such that capital credits can not be repaid, then a general retirement will not be declared by the board and the retirement will wait until the financial situation improves. This insures that the board and management of the cooperative can spend those dollars on plant or in other areas to insure that service to our customers doesn't deteriorate.

Section C is also of concern. As I understand it, when the government terminates service with the cooperative you would like all capital credits to be paid. This means that all other members of the cooperative will be stand in line behind the government to be paid their capital credits. The customer/citizen on our electric lines must wait twenty years to be paid. Meanwhile they pay higher electric rates to pay the government capital credits this year. I'm sure that was not the intention of the proposed rule.

Please modify section B by dropping the requirement that we provide you with the date the payment will be made. We

JUL 23 1991

91-13-139

would be unable to determine twenty years into the future if our financial condition will allow payment at that time.

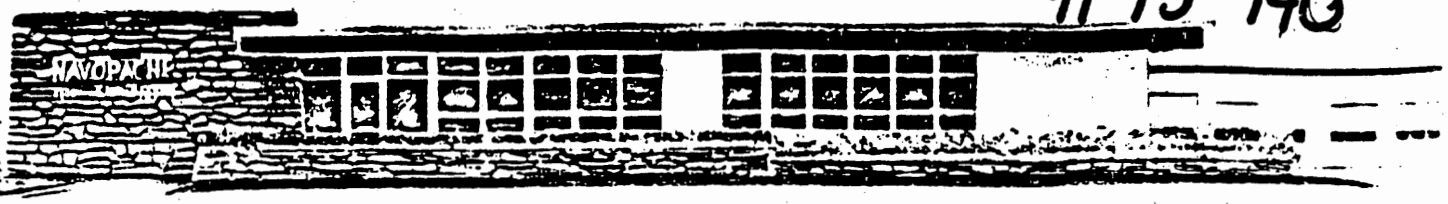
Also please drop section C. We will gladly pay the government the capital credits we owe them, however, we feel they should be treated no differently than any other member.

Sincerely,

John Hoke

John Hoke
General Manger

91-13-140



NAVOPACHE ELECTRIC CO-OPERATIVE, Inc.

P.O. Box 3
Lakeside, Arizona 85
Phone: 368-51

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N.W. Room 4041
Washington, D.C. 20405

RE: FAR CASE 91-13

Gentlemen:

GSA has published a proposed rule on acquisition of services from utilities (56 Federal Register) 23982). I wish to comment on the proposed wording regarding capital credits.

52.241-13 Capital Credits
(b) and (c) are specifically troubling to us. These have apparently been drafted by someone who does not understand completely how the capital credit system of a cooperative works. (a) of the proposed wording should be sufficient. Any federal facility will receive its capital credits consistent with the bylaws of the cooperative.

We, as a cooperative, would hate to refuse service to a Federal facility because of this suggested misguided wording of the contract.

Sincerely,

Wayne A. Retzlaff
General Manager

WAR/ms

pc: NRECA - Bob Bergland

JUL 23 1991

LPEA
La Plata Electric Association, Inc.

91-13-141

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 10405

RE: FAR Case 91-13

Dear Sir or Madam:

I am responding to FAR Case 91-13, published as a proposed rule 56 Federal Registrar 23981, Section 52.241-13 Capital Credits. I need to express particular concern to the language proposed to be added to all contracts at section 41.007 (j).

> "(a) The Government is a member of the (cooperative name) _____, and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment."

The key phrase in the paragraph is "consistent with the by-laws of the cooperative." There are several contradictions to this paragraph in later paragraphs. I will identify those as I comment on those individual paragraphs.

> "(b) Within 60 days after the close of the Contractors's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made."

There are several items that need to be pointed out in the language of this paragraph. First, it would provide an extreme hardship on many cooperatives to have capital credits allocated within 60 days after the close of their fiscal year. Second it would be impossible to designate the date payments are to be made. Some of the reasons that this would be impossible to do include but not limited to the need to meet the USDA mortgage requirements for REA Loans, cash position of the cooperative, by-law requirements for refunding capital credits, and other mortgage institution requirements for refunds. If a refund date were designated and these requirements could not be met at that time, cooperatives would be in violation of their mortgage contracts (government

JUL 23 1991

91-13-141

included) and their by-laws.

"(c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits."

Because of the times involved between capital allocations and refunds, a great deal of time and expense is expended to insure that current and accurate records are maintained. If the government chooses to shift capital credits from one contract to another it could become extremely time consuming as well as the possibility of loosing the ability to track the original transactions and allocations. This is important to be able to track these transactions to original contracts. Also, to make payment on demand would be in violation of by-laws and very possibly in violation of REA and other mortgage contracts.

"(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at_____, unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

The problem with this paragraph would be the certified check requirement. To pull refund checks, transfer funds and issue certified checks would be extremely time consuming and unnecessary. There is simply no reason for this additional expense to consumer owned cooperatives.

Should you have any questions or comments concerning my response please contact me.

Sincerely,

John Bloom

John Bloom, Jr.
Finance Manager

JB/sf

91-13-142 James R. Young, President
Donald A. Widder, General Mgr.

UNITED ELECTRIC COOPERATIVE, INC.

P.O. BOX 688, DuBOIS, PENNSYLVANIA 15801
PHONE: 814/371-8570

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Gentlemen:

Re: FAR Case 91-13

It would be impossible for our cooperative to conform to the additional language proposed in Section 41.007(j) concerning 52.241-13 Capital Credits, Items (b) and (c).

Item (b) would request a 60-day notice of accrued capital credits. This could not be adhered to at United Electric Cooperative because our audit is not completed until March 31st after the close of our fiscal calendar year. Also, capital credits by law cannot be paid on a requested date until the Board of Directors has analyzed the fiscal condition of the Cooperative to see if capital credit refunds can be made.

Item (c) - REA Bulletin 102.1-402-3 Section, Disconnected Accounts, recommends that accounts which are terminated for whatever reason shall not be given priority for capital credit retirement over other patrons who continue to take service either by immediate cash refund or application against unpaid bills. However, those capital credits can be assigned to another account or the successor of the account to be refunded under the general retirement by the Cooperative.

Trusting you will give serious consideration to removing Sections (b) and (c) from this proposed rule, I am,

Sincerely yours,

UNITED ELECTRIC COOPERATIVE, INC.

Donald A. Widder
General Manager

JUL 23 1991

mar

copy: Bob Bergland, NRECA General Manager

Dixie Electric Power Association

91-13-143

Service Area:
Clarke County
Covington County
Forrest County
Jasper County
Jones County
Perry County
Wayne County

"Working Together For The Good of All"

Offices:
Laurel
Petal
P O Box 706
Petal, MS 39465
Waynesboro
P O Box

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W. Room 4041
Washington, D. C. 20405

RE: FAR Case 91-13

Dear Sir:

In response to the proposed changes in Volumn 56, Federal Register 23982 to Section 41.007(j), we feel the addition of the clause 52.241-13 Capital Credits, would have a profound affect on the accounting system of electric cooperatives. It would be impossible to meet some of the timetables set forth in this clause. Below are commits on the proposed rule change and also suggested changes to the rule.

(A) Dixie Electric's by-laws does not state the obligation to pay capital credits nor do they specify the method and time of payment. The by-laws does address the accumulation and assignment of capital credits but the method of retirement and time of payment is left to the discretion of the Board of Directors.

We suggest that Paragraph A read as follows:
The Government is a member of the (cooperative name)_____ and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative.

(B) Dixie Electric cannot furnish to the contracting officer a list of accrued credits within 60 days after the close of our fiscal year. We do not receive our independent audited financial statement until three months after fiscal year closing. REA requires a copy of the audited statement within four months of fiscal year closing. We would need at least six months before we could furnish a list of capital credits. We would be unable to furnish the date that payment would be made because we are not on a regular rotating retirement plan.

We suggest that Paragraph B read as follows:
Within six months after the close of the contractor's fiscal year, the contractor shall furnish to the contracting officer, or the designated representative of the contracting officer, in writing, a list of accrued credits by contract number, year and delivery point.

JUL 23 1991

91-13-143

(C) Upon termination or expiration of this contract, Dixie Electric cannot apply unpaid capital credits to another contract.

We suggest that Paragraph C read as follows:

Upon termination or expiration of this contract, the contractor shall make payment to the government for the unpaid capital credits in accordance with the by-laws of the cooperative.

(D) In retiring and paying capital credits, Dixie Electric does not use certified checks.

We suggest that Paragraph D read as follows:

Payment of capital credits will be made by General Fund checks, payable to the Treasurer of the United States; and forwarded to the contracting officer at_____ unless otherwise directed in writing by the contracting officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

We ask that you please consider the adverse affect this proposed rule would have on the electric cooperatives and also consider the suggested changes that we have made.

Sincerely yours,

Benton Pitts

Benton Pitts
Office Manager

BP:el

Rayle
Electric Membership Corporation
616 Lexington Ave. • P.O. Box 250 • Washington, GA 30673-0250
(404) 678-2116 • FAX: (404) 678-5381

91-13-144

July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW
Room 4041
Washington, DC 20405

Dear Sir:

I would like to comment on proposed Federal Acquisitions Regulations: Acquisition of Utility Services, 56 Fed. Reg. 23982 (1991) (FAR Case 91-13).

I. Significant problems: (Part 52.241-13 Capital Credits)

* Governments entitlement to capital credits "consistent with the bylaws of the cooperative..." as stated in subsection (a) is acceptable, but it is not entitled to become a privileged class of customer.

* Furnishing a list of accrued capital credits is not acceptable, because with subsidiary (G & T) capital credits to consider it would be impossible to determine. Also, in subsection (c) upon termination all unpaid capital credits would have to be paid to the government. Subsections (b) and (c) would cause bylaws to be violated in most cases. Also, this could violate the FIFO requirement in most cooperative bylaws. If so it would impair a vested contractual obligation and violate the constitutional prohibition against laws impairing vested contractual rights in private contracts.

* This sets a precedent which jeopardizes the basic means of capitalizing a cooperative. The capital credit in reality would become a liability rather than equity.

* Mandatory payment erodes capital and credit ratios which REA requires in its mortgage instrument and other lenders rely upon in their loan underwriting considerations for cooperatives. Eroding capital ratios is counter productive to any effort to move EMCs into private financial markets.

23 1991

91-13-144

* Stating the "date payment is to be made..." for cooperatives which do not have a regular cycle would be a problem. This problem could be handled if the rules made clear that this requirement applies only if the cooperative has some regular cycle that it tries to follow and that circumstances could change that. For example: "Cooperative anticipates that payment will be made on or about December 1, 2001."

* This out-of-turn payment is unfair to the other cooperative members who cannot have their capital credit until many years later or upon death instances where cooperatives pay "deceased capital credits." This requirement of the IRS for cooperative status, that the cooperative operates on a "cooperative basis."

II. Significant Problems: (Part 52.241-8 Connection Charge)

* Under the proposed rules, the cost of providing connection facilities for the government would be shifted from the government to the other members. Unfairness is an issue, but probably this is also a violation of the bylaws and state statutes which govern the cooperative. The cooperative could also be exposed to unethical and maybe unlawful disbursement of capital credits. The procedure that would be created from this rule would be inconsistent with the way in which cooperatives operate as member-owned capital credit systems, not patronage dividend systems.

Thank you for allowing us to express our views for consideration.

Sincerely,

Marvin L. White
President/CEO

MLW:tlw

J-A-C

91-13-145

ELECTRIC COOPERATIVE, INC.

OFFICERS

PRESIDENT
BERNARD HILBERS

VICE PRESIDENT
HAROLD LEE

SECRETARY-TREASURER
HARRY J. FLYNN

DIRECTORS

ROBERT WOLF
A.J. PEEK
JAMES D. MORGAN
EDWARD A. LEACH

SARAH T. SEARS
GENERAL MANAGER

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N. W. Room 4041
Washington, D. C., 20405

RE: FAR CASE 91-13

July 19, 1991

Dear Sir:

Concerning the recently published proposed rule on the acquisition of services from utilities (56 Federal Register 23982), we find paragraphs (b) and (c) specifically contrary to our cooperative policies and bylaws.

We historically have paid our members capital credits, first in-first out.

We urge that these two paragraphs (b) and (c) be deleted from agreements for electric service between electric cooperatives and government facilities. Electric cooperatives generally are unable to return capital credits without being on a time lag due to the area coverage policy of REA borrowers which places them at a cash flow level that requires capital credits to be returned when the cooperative's board of directors deem if financially prudent.

Thank you very much.

Sincerely,

Sarah Sears

Sarah Sears
General Manager

SS/jr

JUL 23 1991

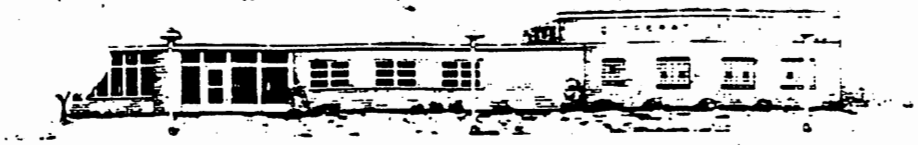
P.O. BOX 278 • BLUEGROVE, TEXAS 76352 • (817) 895-3311 / SCOTLAND • (817) 541-2211

PHONE 579-4191

91-13-146

Slope Electric

COOPERATIVE, INC.
P. O. BOX 338
NEW ENGLAND, NORTH DAKOTA
58647-0338



July 19, 1991

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Attention: General Services Administration

Following are comments in reference to FAR Case 91-13

Slope Electric Cooperative is deeply concerned over the proposed language added to contracts between Federal facilities and cooperative utilities in 41.007(j).

We specially are opposed to sections in 52.241-13 Capital Credits.

We agree with that the government should be treated just as any other members and be obligated to the bylaws of the cooperative.

However, b) and c) are asking for treatment unlike any other member. B. asks for a date the payment is to be made. This is unknown at the close of the fiscal year and a decision made by the cooperative board members with approval from REA on a yearly basis.

C. is asking that at termination or expiration of this contract, unpaid capital shall be made to the Government. This is inconsistent with most cooperative's bylaws as no other member receives there capital credits when they leave the system.

We feel we should treat the government accounts like the rest of the capital credits on the normal rotation of retirement.

Capital credits provide capital for the cooperative's to operate with which lowers the cost of service to all members. Early retirement of government capital credits would have a detrimental effect on cooperative's who serve many government contracts.

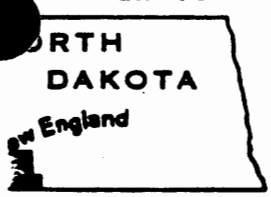
We ask you to consider these concerns and drop the proposed changes.

Sincerely,

Lynette Nieuwsma

Lynette Nieuwsma
General Manager

LN:lf



JUL 23 1991

SERVING THE RURAL AREAS OF SOUTHWESTERN NORTH DAKOTA

Directors:
Robert Boop
Temple
Nathaniel Foote Jr
Gatesville
Bobby Navara
Bruceville
Cortez Smith
Valley Mills
[illegible] Lightmore
China Spring
Alfred Wiethorn
McGregor

McLennan County Electric Cooperative, Inc.

RONALD J. GOLDEN, MANAGER

PHONE (817) 840-2871
P. O. BOX 357
McGREGOR, TEXAS 76657-0357

91-13-147

Officers
President
[illegible]
Gatesville
Sec.-Treas.
Paul Alexander
Moody

JULY 19, 1991

GENERAL SERVICES ADMINISTRATION
FAR SECRETARIAT (VRS)
18TH AND F STREETS NW, ROOM 4041
WASHINGTON, D.C. 20405

RE: YOUR CASE NUMBER: FAR CASE 91-13
ACQUISITION OF UTILITY SERVICES -- RULE 41.007(J)

GENTLEMEN:

LET ME OFFER THE FOLLOWING COMMENTS ON YOUR PROPOSED RULE 41.007(J) PERTAINING TO THE ACQUISITION OF SERVICES FROM UTILITIES. MY COMMENTS WILL PARTICULARLY BE DIRECTED TO PARAGRAPHS (B) AND (C) OF THE RULE IN SECTION 52.241-13 DEALING WITH CAPITAL CREDITS.

THERE ARE MUTUALLY EXCLUSIVE PROVISIONS IN THE PROPOSED RULE AS IT IS NOW DRAFTED. LET ME EXPLAIN. THE FIRST PARAGRAPH OF THE RULES PROVIDES THAT THE GOVERNMENT -- LIKE ANY OTHER MEMBER OF A COOPERATIVE -- IS ENTITLED TO CAPITAL CREDITS "CONSISTENT WITH THE BYLAWS OF THE COOPERATIVE." THIS IS A TRUE STATEMENT IN THAT THE GOVERNMENT, LIKE ANY OTHER MEMBER, IS ENTITLED TO ITS CAPITAL CREDITS ON A NON-DISCRIMINATORY BASIS WITH OTHER MEMBERS. CONTRARY, HOWEVER, TO THE BYLAWS OF MOST COOPERATIVES, SUBPARAGRAPHS (B) AND (C) PROVIDE THAT CAPITAL CREDITS MUST BE ASSIGNED TO THE GOVERNMENT WITH A FIXED DATE OF PAYMENT; AND UPON TERMINATION FOR SERVICE UNDER A CONTRACT, THE COOPERATIVE IS REQUIRED TO MAKE PAYMENT TO THE GOVERNMENT FOR THE UNPAID CAPITAL CREDITS. THIS IS A DISCRIMINATORY RIGHT IN FAVOR OF THE GOVERNMENT WHICH IS NOT APPLICABLE TO ANY OTHER COOPERATIVE MEMBER.

JUL 23 1991

91-13-147

CAPITAL CREDITS REPRESENT THE MARGIN EARNED ON SERVICE TO A MEMBER OVER AND ABOVE THE ACTUAL COST OF SERVICE. SO THAT THIS MARGIN (OR A PROFIT) IS NOT TAXED AS INCOME FOR A TAX-EXEMPT ENTITY, IT MUST BE CONTRIBUTED BACK TO THE ENTITY AS A CONTRIBUTION OF CAPITAL FROM THE MEMBER. MOST COOPERATIVE BYLAWS WITH WHICH I AM FAMILIAR PROVIDE THAT THE BOARD OF DIRECTORS OF THE COOPERATIVE DETERMINES SOLELY WITHIN THEIR COLLECTIVE JUDGEMENT WHEN THESE CONTRIBUTIONS OF CAPITAL SHALL BE REPAID TO THE MEMBERS. THEIR JUDGEMENT MUST BE BASED UPON THE FINANCIAL CONDITION OF THE COOPERATIVE.

THE DECISION MADE BY THE BOARDS AS TO THE METHOD AND AMOUNT OF REPAYMENT OF CAPITAL CREDITS ALWAYS BALANCES THE WISDOM OF PAYING BACK MEMBER-CONTRIBUTED CAPITAL AGAINST THE COST OF BORROWED CAPITAL NECESSARY TO REPLACE SUCH CONTRIBUTIONS. MANY BOARDS, IN THEIR SOUND JUDGEMENT, DECIDE THAT IT IS IN THE BEST INTEREST OF THEIR MEMBER-CONSUMERS TO RETAIN SUBSTANTIAL PORTIONS OF THE MEMBER-CONTRIBUTED CAPITAL RATHER THAN BORROW HIGHER COST DEBT CAPITAL. THE PROPOSED RULE AS NOW DRAFTED TAKES AWAY THIS DISCRETION FROM THE BOARDS.

THE PROPOSED RULE ALSO WILL COME INTO CONFLICT WITH MOST STATE PUBLIC UTILITY REGULATORY LAWS APPLICABLE TO COOPERATIVES IN THAT THE RULE WILL SET UP A DIFFERENT REQUIREMENT FOR PAYMENT OF CAPITAL CREDITS TO THE GOVERNMENT AS OPPOSED TO THE OTHER MEMBERS OF A COOPERATIVE. MOST STATE LAWS REQUIRE THAT THE TREATMENT OF CAPITAL CREDITS BE ON A NON-DISCRIMINATORY BASIS REQUIRING THAT YOU TREAT EVERY CATEGORY OF LIKE MEMBERS IN THE SAME MANNER. TO REQUIRE THAT A GOVERNMENT MEMBER HAVE A FIXED RIGHT OF REPAYMENT OF ITS CAPITAL CONTRIBUTION WITHOUT REGARD TO THE RIGHTS OF OTHER MEMBERS WOULD VIOLATE THE "NON-DISCRIMINATORY PROVISIONS" PROVIDED BY MOST STATE LAWS.

IT WOULD SERVE THE GOVERNMENT WELL AND ADEQUATELY PROTECT ITS RIGHTS TO SIMPLY PROVIDE THAT: (1) TO RECOGNIZE IN THE CONTRACT THE OBLIGATION TO PAY CAPITAL CREDITS; (2) THAT SUCH CAPITAL CREDITS WILL BE PAID CONSISTENT WITH THE BYLAWS OF THE COOPERATIVE; (3) DESIGNATE A PERSON OR ENTITY TO WHOM THE CREDITS SHOULD BE PAID; AND (4) SPECIFY WHATEVER ACCOUNTING INFORMATION IS REQUIRED FOR THE PROPER ALLOCATION OF SUCH CREDITS. THIS WOULD SECURE FOR THE GOVERNMENT ITS RIGHT TO RECEIVE CAPITAL CREDITS AND IT WOULD PROVIDE FOR THEIR PAYMENT ON A NON-DISCRIMINATORY BASIS CONSISTENT WITH APPLICABLE LAW.

WE BELIEVE THESE ARE THE PROPER GOALS OF THE GENERAL SERVICES ADMINISTRATION AND WE WILL APPRECIATE YOUR CONSIDERATION OF THESE COMMENTS.

SINCERELY,

Ron Golden

RON GOLDEN
MANAGER

RG/LZ