

P Book 87 Pg 79

PLEASE RETURN TO:
RONALD M. HARKAVY, ESQ.
ARMSTRONG ALLEN, PLLC
80 MONROE AVENUE, SUITE 700
MEMPHIS, TN 38103

AMENDMENT TO OPTION AGREEMENT

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THIS AMENDMENT to the Option Agreement is made and entered into this 20th day of April, 2000, by and between P & W PROPERTIES, L. L. C., P & W Partners, a Tennessee general partnership, and ROBERT D. PELTS, a Tennessee resident, hereinafter together referred to as "Owner", and COGENTRIX ENERGY, INC., a North Carolina Corporation, hereinafter referred to as "Buyer."

WITNESSETH

WHEREAS, Robert D Pelts, a Tennessee resident, and Buyer are parties to the Option Agreement dated May 21, 1999 which granted Buyer an exclusive right and option to purchase the Property in Shelby County, Tennessee described therein;

WHEREAS, Robert D. Pelts was described as "Owner" in the Option Agreement;

WHEREAS, Robert D. Pelts conveyed the Property to P & W Properties, L.L.C., a Tennessee limited liability company, owned in part by Robert D. Pelts, which conveyance was permitted by Section 5 (h) of the Option Agreement, thereby subjecting P & W Properties, L.L.C.'s interest in the Property to the terms and conditions of the Option Agreement and obligating P & W Properties, L.L.C. to execute the Option Agreement and to be bound by its terms;

WHEREAS, P & W Properties, LLC subsequently conveyed the Property to P & W Partners, a Tennessee general partnership composed of the same parties who are members of P & W Properties, LLC; said conveyance being evidenced by Quit Claim Deed dated December 17, 1999, filed of record in the Register's office of Shelby County, Tennessee under Register's Number JX6652; and,

WHEREAS, the Buyer agrees to the transfer of the Property to P & W Partners provided that P & W Partners agree to subject their interest in the Property to the terms and conditions of the Option Agreement and that P & W Partners agree to execute the Option Agreement and to be bound by its terms; and,

WHEREAS, Owner desired to sell the additional property (11 acres more or less) being adjacent to the Property described in the Option Agreement;

WHEREAS, Buyer desired to acquire an exclusive easement for staging construction work over property in DeSoto County, Mississippi which is described on Exhibit B of this amendment, which property includes, without limitation, the property which Buyer may acquire from H & M Properties, LLC and convey to Owner as described in that certain Option Agreement dated the 30th day of April, 1999 by and between Robert D. Pelts and Buyer pertaining to property in DeSoto County, Mississippi; and

WHEREAS, Owner agrees that the Buyer's agreement to amend the Option Agreement to include in the Option the purchase of the additional 11 acres more or less described in Exhibit A of this amendment which is not included in the Property described in the Option Agreement is

sufficient consideration for entering into this amendment without requiring the payment of any additional amount of option payment, either now or in the future.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained in the Option Agreement and the consideration hereinafter set forth and other good and valuable consideration paid by Buyer to the Owner, receipt and sufficiency of which are hereby acknowledged, the Option Agreement is hereby amended as follows:

- 1) Owner does hereby grant to Buyer, its successors and assigns, the exclusive right and option to purchase (the "Option"), upon the terms and conditions set forth in the Option Agreement, as amended herein, all of the right, title, and interest in and to property lying and being situated being in Shelby County, Tennessee and described in Exhibit A attached hereto and made a part hereof, and an exclusive easement for staging construction work over the property described on Exhibit B, all of the property subject to the easement lying and being situated in DeSoto County, Mississippi. The easement would terminate upon the date of receipt of written notice from the Buyer to the Owner that completion of construction of Owner's facilities in Southaven, Mississippi has occurred, or thirty (30) months from the date of Closing and such extensions as the parties may agree to, whichever is earlier.
- 2) All option payments required by the Option Agreement shall hereinafter be made payable to P & W Partners.
- 3) Robert D. Pelts and Wolf River Investments, Inc. represent and warrant that they are the general partners of P & W Partners; that they are now and have been since the conveyance of the Property to the partnership, the only general partners of P & W Partners; that they have all authority to act for the partnership and to bind the partnership to this Agreement and the Options Agreement; and that their execution of this document is binding on the partnerships.
- 4) The Property described in the Option Agreement is hereby amended to be described as set forth on Exhibit A attached hereto. The property described in Exhibit A includes any improvements thereon. The exclusive easement over the property in DeSoto County, Mississippi described in Exhibit B is also hereinafter included in the term "Property". All references in the Option Agreement to the term "Property" shall hereinafter refer to the property described in Exhibits A and B attached hereto.
- 5) The Purchase Price for the Property shall be increased by Twenty-Five Thousand and no/100 Dollars (\$25,000.00) per acre for the portion of the Property described in Exhibit A (11 acres more or less) which was not included in the original description of the term "Property" in the Option Agreement and shall be in cash. The Purchase Price for any fractional acre shall be prorated. The Purchase Price shall also be consideration for the grant of the easement over that portion of the Property described in Exhibit B.
- 6) The second sentence of subsection (a) Zoning of Section 7. Conditions of Sale is hereby deleted.

- 6) Section 15 Notice is amended to change the name and address of the party entitled to receive notice as the Owner to:

P & W Partners
 c/o Robert D. Pelts, Partner
 5118 Park Avenue
 Suite 202
 Memphis, Tennessee 38117

By execution of this amendment, P & W Properties, L.L.C. and P & W Partners signify the agreement to be bound, jointly and severally with Robert D. Pelts, by the terms of the Option Agreement effective from and after June 23, 1999.

Except as specifically amended hereby, all terms and conditions of the Option Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Option Agreement effective as of the date and year first set forth above.

Owners:

P & W Partners
 by its partners

By: Robert D. Pelts
 Robert D. Pelts

WOLF RIVER INVESTMENTS, INC.
 a Nevada corporation

By: David J. Johnson
 Title: President

P & W PROPERTIES, L. L. C.
 by its Managing Member,

BY: Robert D. Pelts
 Managing Member

ROBERT D. PELTS
Robert D. Pelts

Buyer:

COGENTRIX ENERGY, INC.

BY:

Mark A. Pearson

TITLE:

VICE PRESIDENT

ACKNOWLEDGMENTS

STATE OF Tennessee

COUNTY OF Shelby

Personally appeared before me, the undersigned authority in and for said county and state, on this the 20th day of April, 2000, within my jurisdiction, the within named Robert D. Pelts, who acknowledged that he is a general partner of P & W Partners, a Tennessee general partnership, and that in that capacity he executed the above and foregoing instrument, after first having been duly authorized by said partnership so to do.



Penny B. Kissee
Notary Public

My commission expires:

(SEAL)

STATE OF Tennessee

COUNTY OF Shelby

Personally appeared before me, the undersigned authority in and for said county and state, on this the 21st day of April, 2000, within my jurisdiction, the within named David J. Johnson, who acknowledged that he/she is President of Wolf River Investments, Inc., a Nevada corporation, said corporation being a general partner of P & W Partners, a Tennessee general partnership, and as its act and deed he/she executed the above and foregoing instrument, after first having been duly authorized by said corporation and said partnership so to do.

Penny B. Kissee
Notary Public

My commission expires:



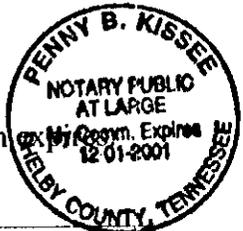
(SEAL)

STATE OF Tennessee

COUNTY OF Shelby

Personally appeared before me, the undersigned authority in and for said county and state, on this the 20th day of April, 2000, within my jurisdiction, the within named Robert D. Pelts, who acknowledged that he is Chief Manager of P & W Properties, L.L.C. a Tennessee limited liability company, as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said limited liability company so to do.

Penny B. Kisse
Notary Public



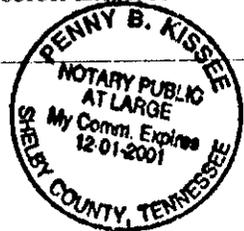
My commission expires

STATE OF Tennessee

COUNTY OF Shelby

Personally appeared before me, the undersigned authority in and for said county and state, on this 20th day of April, 2000, within my jurisdiction, the within named ROBERT D. PELTS, who acknowledged that he executed the above and foregoing instrument as and for his act and deed.

Penny B. Kisse
NOTARY PUBLIC



My Commission Expires:

(SEAL)

STATE OF Louisiana
COUNTY OF Parish of St. Tamary

Personally appeared before me, the undersigned authority in and for said county and state, on this the 3rd day of May, 2000, within my jurisdiction, the within named Frank C. Peacock who acknowledged that he is vice president of Cogentrix Energy, Inc., a North Carolina corporation, as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

[Signature]
NOTARY PUBLIC

My Commission Expires:

at death

(SEAL)

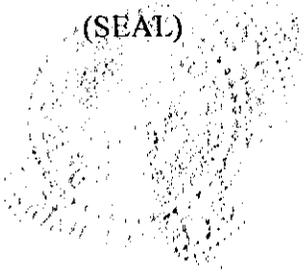


EXHIBIT A

Beginning at the centerline intersection of Tulane Road (50' R.O.W.) And Windsor Road (50' R.O.W.); Thence along said centerline of Tulane Road $S00^{\circ}49'56''W$ a distance of 1641.88 feet to a point on the Tennessee/Mississippi State Line; Thence along said State Line $N89^{\circ}07'55''W$ a distance of 571.27 feet to a point; Thence $N00^{\circ}48'54''E$ a distance of 1660.50 feet to a point on the centerline of said Windsor Road; Thence along said centerline $S87^{\circ}13'06''E$ a distance of 752.60 feet to the point of beginning and containing 944,656 S.F. or 21.686 acres.

Exhibit B

Land situated in Section 15, Township 1, Range 8 West of DeSoto County, Mississippi described as follows:

Commencing at the intersection of the existing north right-of-way line of Stateline Road(40' CL-Row) and the existing east right-of-way line of Tulane Road (40' CL-Row) thence along the said north line of Stateline Road S89° 18'54"E, 1671.50 feet to the "point of beginning"; thence along said north line of Stateline Road S89°18'54"E 350 feet to a point; thence N00°41'06"E, 1114.66 feet to a point on the Tennessee-Mississippi state line; thence along the said state line N89° 07'55"W 350 feet to a point; thence S00°41'06"W, 1114.66 feet to the "point of beginning". All bearings are relative.

Property is subject to a 10'slope easement as recorded in Book 80, page 369.

And

BEING A 6.925 ACRE TRACT SITUATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1, RANGE 8 WEST, IN DESOTO COUNTY, MISSISSIPPI AND CONSISTING OF A PORTION OF A 91.222 ACRE TRACT DESCRIBED IN DEED BOOK 328, PAGE 533, AND A PORTION OF A 22.034 ACRE TRACT DESCRIBED IN DEED BOOK 328, PAGE 697 IN THE OFFICE OF THE CHANCERY COURT CLERK OF SAID COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EXISTING NORTH RIGHT OF WAY LINE OF STATELINE ROAD (40'CL-ROW) AND THE EXISTING EAST RIGHT OF WAY LINE OF TULANE ROAD (40'CL-ROW) THENCE ALONG SAID EAST LINE OF TULANE ROAD NORTH 00 DEGREES 49 MINUTES 56 SECONDS EAST 220.00 FEET; THENCE SOUTH 89 DEGREES 18 MINUTES 54 SECONDS EAST 1370.93 FEET TO THE EAST LINE OF SAID 22.034 ACRE TRACT; THENCE ALONG SAID EAST LINE SOUTH 00 DEGREES 41 MINUTES 06 SECONDS WEST 220.00 FEET TO THE NORTH RIGHT OF WAY LINE OF STATELINE ROAD; THENCE ALONG THE SAID NORTH RIGHT OF WAY LINE OF STATELINE ROAD NORTH 89 DEGREES 16 MINUTES 54 SECONDS WEST 1371.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 6.925 ACRES, MORE OR LESS.

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INDEXING INSTRUCTIONS:

Section 15, Township 1
Range 8 West,
DeSoto County, Mississippi

PREPARED BY:

Stephen H. Leech, Jr., Esquire
Attorney At Law
850 East River Place, Suite 300
Jackson, MS 39202
Post Office Box 3623
Jackson, MS 39207
(601) 355-4013

STATE MS. - DESOTO CO.
FILED

OCT 9 9 48 AM '00

BK 87 PG 79
W.F. DAVIS & SONS, INC.