

FINAL -- May 24, 2004

NORTHERN ILLINOIS MUNICIPAL POWER AGENCY

AGENCY AGREEMENT

between and among

City of Batavia, Illinois
City of Geneva, Illinois
City of Rochelle, Illinois
City of Geneseo, Illinois

and any other qualified Illinois municipalities becoming a party to this agreement
pursuant to its terms after the date hereof

DATED

_____, 2004

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**AGENCY AGREEMENT ESTABLISHING THE
NORTHERN ILLINOIS MUNICIPAL POWER AGENCY**

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/11-119.1 (the "Act," which term includes any amendment thereof), permits two or more Illinois municipalities that operate electric utility systems to create a joint municipal electric power agency by the execution of an agency agreement authorized by an ordinance adopted by the Governing Body (as defined in the Act) of each such municipality; and

WHEREAS, the Act provides that an agency has certain rights and powers as provided in the Act and the agency agreement establishing the agency; and

WHEREAS, all of the parties to this agreement are Illinois municipalities that operate an electric utility system; and

WHEREAS, the Governing Body of each municipality that is a party to this agreement has determined that it is in the best interest of such municipality to create an agency for the purpose of jointly planning, financing, owning and operating certain facilities for the generation and transmission of electrical power and energy and related facilities or other facilities necessary or convenient for the planning and operation of an electric power system; and

WHEREAS, the Governing Body of each party to this agreement has approved this agreement by a duly adopted ordinance, certified copies of which are attached to this agreement; and

NOW, THEREFORE, on the basis of the foregoing premises and in consideration of the mutual promises contained herein, the parties hereto contract as follows:

ARTICLE ONE

CREATION AND NAME; PUBLIC CHARACTER

Pursuant to the Act, the ordinances attached hereto and this agreement, there is hereby created a municipal power agency called the Northern Illinois Municipal Power Agency ("NIMPA" or the "Agency"). The Agency constitutes a body public and corporate, municipal corporation and unit of local government of the State of Illinois, exercising public powers, and separate from the contracting municipalities. The Agency has the duties, privileges, immunities, rights, liabilities and disabilities of a public body politic and corporate but does not have taxing powers.

ARTICLE TWO

PURPOSE

The purpose of the Agency is to effect joint development of electric energy resources or the production, transmission and distribution of electric power and energy in whole or in part for the benefit of the contracting municipalities and to utilize to the fullest extent possible all powers granted by the Act to promote the interests of the contracting municipalities in the operation of their utilities through the development and implementation of Projects, as defined in 65 ILCS 5/11-119.1-3(7), on a joint basis. The activities of the Agency may include, without limitation by enumeration: the coordination and use of bulk power programs; the purchasing and selling of power, energy and transmission service from and to its members and other eligible utilities (as defined in the Act); the financing, participating in, constructing, owning and operation of Projects, and the exercise of any and all of the powers granted by the Act or this agreement to accomplish the purposes set forth in the Act or this agreement.

ARTICLE THREE

MEMBERS

The members of the Agency created by this agreement (hereafter, the “parties” or “members”) are the Illinois municipalities that have duly executed identical counterparts or copies of this agreement pursuant to ARTICLE FOUR hereof. Additional Illinois municipalities may become members of the Agency by becoming parties to this agreement pursuant to ARTICLE TEN hereof. Members may cease to be members and parties to this agreement pursuant to ARTICLE ELEVEN hereof.

ARTICLE FOUR

AUTHORITY

Section 4.1: This agreement is entered into pursuant to authority granted under the Act. Each municipality that has signed this agreement upon its transmittal to the Secretary of State shall be an “original” member or party; all other municipalities that later become members shall be “additional” members or parties. By ordinance of its Governing Body, each original member has authorized and directed an appropriate representative of the member to enter into this agreement on such member’s behalf. A certified copy of the authorizing ordinance for each original party to this agreement shall remain on file with the Agency. The municipalities which have initially approved and executed this agreement and are the original members of NIMPA are: Batavia, Geneva, Geneseo and Rochelle, Illinois. A municipality wishing to become an additional member shall provide an authorizing ordinance as provided in ARTICLE TEN, a certified copy of which shall remain on file with the Agency if such municipality is accepted as an additional member.

Section 4.2: The authorizing ordinance for each original and additional party to this agreement shall:

- (a) Agree to the terms and conditions of this agreement;
- (b) Authorize and direct the appropriate representative(s) of the member to execute this agreement on behalf of the member;
- (c) Appoint the member's representative and alternate representative on the Agency's Board of Directors; and
- (d) Indicate that the appointment of the member's representative shall be made by the mayor, or president, subject to the confirmation of the Governing Body of the member.

Section 4.3: This agreement may be executed in one or more identical counterparts or copies and execution by the members of such identical counterparts or copies shall have the same force and effect as execution of a single copy.

ARTICLE FIVE

EFFECTIVE DATE

Within three months after establishment of the Agency, a certified copy of this agreement and a list of the original members shall be filed by the president of the Agency with the recorder of deeds of the county in which the principal office of the Agency is located. Establishment of the Agency and the effective date of this Agreement shall be deemed to occur on the date the Governing Body of the last of the Agency's four original members adopts its authorizing ordinance. Pursuant to 65 ILCS 5/11-119.1-4(B), the certified copy and list of original members shall be recorded by the recorder of deeds and immediately transmitted to the Illinois Secretary of State. The Secretary of State shall file such documents and issue a certificate of approval.

ARTICLE SIX

BOARD OF DIRECTORS; VOTING

Section 6.1: All powers and duties of the Agency are vested in a Board of Directors (the "Board"), which shall consist of one Director appointed by the mayor or president with consent of the Governing Body of each member. The Board shall be the corporate authority of the Agency, shall exercise all the powers and manage and control all of the affairs and property of the Agency, and shall have full power to pass all necessary ordinances, resolutions, rules and regulations for the proper management and conduct of the business of the Board, and for carrying into effect the objects for which the Agency is established.

Section 6.2: Each member shall appoint one Director to hold office for a term of three years, or until a successor has been duly appointed and qualified, except that the directors so appointed shall determine by lot at their initial meeting the respective directors which shall serve for a term of one, two or three years from the date of that meeting. A vacancy shall be declared and filled by ordinance adopted by the Governing Body of the municipality for the balance of the unexpired term. Nothing in this agreement shall be construed to limit the right of the member to remove or replace its Director in its sole discretion.

Section 6.3: The Director and Alternate Director as set forth in Section 6.4, below, must be (a) an employee of the member's electric utility; (b) a member of the Governing Body; or (c) other qualified municipal official including public works director, city administrator or manager. Each appointment shall be selected by ordinance adopted by the Governing Body of the respective municipality and shall be made by the mayor, or president, subject to the confirmation of the Governing Body. Notice in writing, signed on behalf of each member as provided

for in the member's authorizing ordinance and delivered to the principal executive officer of the Agency, or such other officer as the Agency may designate in Bylaws, shall constitute appointment, removal or replacement of a Director. The Board may remove a Director from office in accordance with the Bylaws and only after a hearing and a finding by a two-thirds majority vote of the Director's malfeasance, misfeasance or nonfeasance in office, including any conflict of interest or ethics violation.

Section 6.4: Each member may appoint an Alternate Director in the same manner as it appoints a Director. The Alternate Director may act for the Director in the Director's absence.

Section 6.5: The initial meeting of the Board of Directors shall be held within thirty (30) days after the date the Agency is established pursuant to ARTICLE FIVE.

Section 6.6: At the initial meeting of the Board, each Director shall present evidence of his or her appointment to the initial agent for service of process for the Agency, identified herein, who shall prepare and sign a list of the appointed Directors, which shall constitute the registration of the Board. Upon registration, the Board shall convene immediately for the purpose of electing officers under ARTICLE EIGHT of this agreement and taking such other actions as the Board determines. Directors appointed subsequent to the initial meeting shall be registered by the Secretary of the Agency, or such other officer as the Agency may designate in Bylaws, upon presentation of satisfactory evidence of appointment.

Section 6.7: The Board shall adopt and may amend Bylaws of the Agency. Adoption and amendment of such Bylaws shall require a two-thirds majority vote of the Directors.

Section 6.8: Unless otherwise provided for herein or by requirement of law, the Directors shall vote upon matters in the following manner:

- (a) Voting by Members. All votes shall be by a majority of the members, which means that each Director shall have one vote, a majority of Directors shall constitute a quorum and shall be necessary for any action by the Board.
- (b) Voting by Weighted Votes. Weighted voting may be permitted if provided by the Bylaws or any amendment thereto.

Section 6.9: The members shall establish the compensation, if any, for Directors, and shall have discretion to reimburse a Director for reasonable expenses incurred in performing his or her duties as a Director.

Section 6.10: Subject to the provisions of this Section 6.10, the Board may delegate any of its powers or duties to a committee of the Board, whether created by action of the Board or by Agency Bylaw, including an executive committee or a Project Committee, or to an officer or employee of the Agency. Except as authorized by ARTICLE SEVEN with respect to a Project Committee, the Board may not delegate the powers to take the following actions: authorization of construction or participation in a Project; approval of the annual budget, provided, however, that the power to amend any budget so approved may be delegated as the Board determines if such amendment does not result in increased costs to members; adoption or amendments of Agency Bylaws; imposition of any dues or special assessments upon members; approval of indebtedness not provided for by the annual budget; admission of additional members; expulsion of members; amendment or termination of this agreement; removal of an officer or Director; the

determination to hire or fire a chief executive officer for the Agency, as well as to set the terms of the compensation of such officer; and establishment of any fees, rates, rents or charges for functions, services, facilities or commodities sold or provided by the Agency to members or non-members, provided that any such fees, rates, rents or charges may be established by formulas approved by the Board with implementation of such formulas to be delegated as the Board determines.

Section 6.11: The Board shall hold an annual meeting between September 15 and November 15 of each year to elect officers, set the annual budget and take any other action deemed appropriate by the Board. The Board may hold such other meetings as provided in the Bylaws of the Agency. All meetings of the Board shall be held in compliance with the provisions of the Open Meetings Act, 5 ILCS 120/1.01, as amended.

Section 6.12: All Directors shall receive reasonable advance notice of all Board meetings. Notice shall be given as provided in the Agency Bylaws.

ARTICLE SEVEN

PROJECTS

Section 7.1: For any Project in which less than all members are participating, the Board shall establish a Project Committee.

Section 7.2: The Project Committee shall be made up of the Directors, or a person designated in writing by any Director, of each member electing to participate in the Project.

Section 7.3: The Agency Board of Directors by resolution may approve or disapprove, but not alter, amend or modify, proposed Agency action approved by a Project Committee.

Section 7.4. Unless otherwise agreed to by the members of a Project Committee, each member of a Project Committee shall have the percent of the total number of votes and fractions thereof (to the nearest one-tenth) that the amounts to be contributed to the Project by the participating member represented by such Project Committee member bears to the total amount to be contributed to the Project by all participating members; provided, however, that no member of a Project Committee shall have greater than 50% voting interest regardless of the amount contributed.

Section 7.5. The Bylaws of the Agency may establish other rules for the operation of Project Committees.

Section 7.6. Project members, jointly and severally, shall indemnify all Agency members who are not participants in the Project from any and all claims, rights or causes of action arising from or related to the Project, whether sounding in tort, contract, by statute or otherwise, including without any limitation liabilities, judgments, and costs of defense (including reasonable attorney's fees). Project members shall use their best efforts to limit contractual liabilities of the Project to Project members only.

ARTICLE EIGHT

OFFICERS

Section 8.1: The officers of the Agency are a President, a Vice President, and unless otherwise bifurcated by the Bylaws, a Secretary-Treasurer, as well as such other officers as the Board may designate. The President and Vice President shall be elected by the Directors from among the Directors and shall serve for the terms designated in the Bylaws unless removed pursuant to Section 8.6 hereof.

The Secretary-Treasurer need not be a Director. Other officers, employees and agents may but need not be Directors or residents of any of the municipalities that are members of the Agency, and shall serve at the pleasure of the Board, and shall give such bond as may be required by the Board.

Section 8.2: The President:

- (a) shall be the principal executive officer of the Agency and, unless otherwise determined by the Board, shall preside at all meetings of the Board;
- (b) may sign any deeds, mortgages, deeds of trust, notes, bonds, checks, 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 this agreement or the Agency's Bylaws to some other officer or agent of the Agency, or shall be required by law to be otherwise signed or executed; and,
- (c) shall perform all duties incident to the office of President and such other duties as may be assigned by the Board from time to time.

Section 8.3: The Vice President, in the absence of the President, or in the event of his inability or refusal to act, shall perform the duties of the President, and when so acting, shall have powers of and be subject to all the restrictions upon the President. The Vice President also shall perform such other duties as from time to time may be assigned to him by the Board.

Section 8.4: The Secretary-Treasurer:

- (a) shall keep minutes of the meetings of the Board in one or more books provided for that purpose;

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- (b) shall see that all notices are duly given in accordance with this agreement, the Agency's Bylaws or as required by law;
- (c) shall be custodian of the corporate records;
- (d) shall keep a register of the names and post office addresses of all members and of all Directors and Alternate Directors;
- (e) shall keep on file at all times a complete copy of this agreement and the Agency's Bylaws containing all amendments thereto (which copy shall always be open to the inspection of any Director) and forward a copy of this agreement or the Agency's Bylaws and of all amendments thereto to each Director;
- (f) shall determine the weighted votes of the members if provided for in the Agency's Bylaws;
- (g) shall take and count all votes taken by the Board at any meeting; and
- (h) shall in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Board.
- (i) shall have charge and custody of and be responsible for all funds and securities of the Agency;
- (j) shall be responsible for the receipt of and the issuance of receipts for all monies paid to the Agency and for the deposit of all such monies in the name of the Agency in such bank or banks as shall be selected by the Board;
- (k) shall have charge of the financial records of the Agency;
- (l) shall have the power and authority to sign checks on behalf of the Agency; and

(m) shall in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board.

Section 8.6: An officer may be removed from office with or without cause upon a majority vote of the Directors.

Section 8.7: Any chief executive officer hired for the Agency shall be considered an officer.

ARTICLE NINE

POWERS AND DUTIES OF THE AGENCY

Section 9.1: The Agency has all of the powers available to it under the Act. The members hereby provide that payments may be made to the Agency by them or by other persons for any of the purposes and in any of the manners set forth in the Act.

Section 9.2: Matters not governed by this agreement or the Act may be regulated by such Bylaws, rules or regulations, as the Board shall adopt. The power to adopt, amend and repeal such Bylaws, rules or regulations is lodged in the Board.

ARTICLE TEN

NEW MEMBERS; AMENDMENT OF AGREEMENT

Section 10.1: Any additional Illinois municipality that owns or operates an electric utility may join the Agency upon approval by ordinance adopted by the Governing Body of the majority of municipalities which are then members of the Agency. Any new member shall agree to assume its proportionate share of the outstanding obligations of the Agency. The Agency may place such terms and conditions on the approval of any application as the Board deems in the interests of

the Agency and its existing members, including but not limited to, conditions i) requiring the new member to make a special payment to the Agency for costs paid and risks taken by existing members in laying the groundwork for the Agency and in forming and operating the Agency; ii) imposing different rates for the sale of power and energy to the new member than to other members; and iii) imposing other charges on the new member so that existing members will not be adversely affected by the admission of the new member. The municipality shall agree to all terms and conditions imposed by the Board or its application shall be deemed denied. Upon approval of the Board of any application, and acceptance of any terms and conditions of approval by the municipality, the municipality shall file with the Secretary of the Agency an ordinance of its Governing Body in accordance with Section 4.2. An amendment to this agreement, making the municipality a member of the Agency and a party to this agreement shall then be executed by the Agency and shall become effective upon transmittal to the Secretary of State by the recorder of deeds of the county in which the principal office of the Agency is located.

Section 10.2: The admission of any original or additional member of the Agency shall not constitute a promise by the Agency to supply power or energy to any member.

Section 10.3: This agreement may be amended as proposed at any meeting of the Board of Directors for which notice, stating the purpose, shall be given to each Director and the municipal clerk of each member at least 30 days prior to the meeting at which the amendment will be presented. The amendment shall be presented to the Board by a Director. A two-thirds majority vote is required for approval of the amendment by the Board. Any such amendment shall become

effective when ratified by ordinances adopted by the Governing Bodies of a two-thirds majority of the Members. Any amendment passed by the Board and ratified by the Governing Bodies in accordance with this Section 10.3 shall be duly certified and transmitted to the Secretary of State by the recorder of deeds of the county in which the principal office of the Agency is located.

ARTICLE ELEVEN

TERM OF AGREEMENT

Section 11.1: This agreement and the Agency created by it shall continue in existence until this agreement is terminated as provided in this Article.

Section 11.2: This agreement shall be terminated and the Agency shall cease to exist, except for the limited purposes of ARTICLE TWELVE, only upon adoption of an ordinance declaring the Agency to be dissolved adopted by the Board of Directors and the Governing Bodies of at least two-thirds of the Agency members, provided, however, that (i) no such termination shall be effective so long as the Agency shall have indebtedness of any form outstanding, unless provision for full payment of such indebtedness, by escrow or otherwise, has been made pursuant to the terms of such indebtedness or the resolution, trust indenture or security instrument securing such indebtedness, and (ii) prior to consideration of any termination ordinances, written notice of such consideration shall have been sent to each Director and the municipal clerk of each Agency member 30 days prior to the meeting at which such ordinance is intended to be introduced. The termination shall become effective on the date of dissolution as set forth in the dissolution ordinances.

Section 11.3: Any member may withdraw from this agreement upon approval by ordinance adopted by the Governing Body of the majority of

municipalities which are then members of the Agency. Such withdrawal shall be effective six months after a certified copy of the resolution authorizing the withdrawal shall have been presented to the Board and transmitted to the Secretary of State by the recorder of deeds of the county in which the principal office of the Agency is located, provided that no such withdrawal may be filed until one year after a member has joined the Agency, and providing further that a Member's withdrawal shall not become effective until the withdrawing Member has discharged all of its duties and obligations to NIMPA through the date of withdrawal. A withdrawal from this agreement shall not affect any obligations of the member under any other agreement, including any power supply contract, between the Agency and the withdrawing member.

Section 11.4: The Board may recommend that a member be expelled from the Agency for failure to comply with the terms of the Act, this agreement, or the Bylaws, rules, regulations or orders of the Agency or for breach of any power supply contract or other agreement with the Agency. The recommendation of expulsion shall be by a two-thirds majority vote. Within sixty days of any recommendation of expulsion, a special meeting of the Board shall be held. Following a hearing, the Board shall vote on the expulsion of the member. Expulsion shall require a two-thirds majority vote. A member shall not be entitled to vote upon its own expulsion nor shall the member's vote be considered in computing the necessary majorities. Expulsion from the Agency shall not affect any obligation of the expelled member under any other contract, including any power supply contract, between the Agency and the expelled member.

ARTICLE TWELVE
DISTRIBUTION OF ASSETS

Upon the termination of this agreement as set forth in Section 11.2, or otherwise, the assets of any Project theretofore undertaken shall be distributed to those members who are participants in the Project (after payment of Project debts by said participating members) in proportion to the members' participation in the Project as set forth in contractual commitments. The assets of the Agency which are not assets of a Project, if any, shall be distributed to the members as they may agree, and in the absence of an agreement, equally.

In the event of a sale or liquidation of a Project other than in connection with the termination of this agreement, the assets of the Project shall be distributed to those members who are participants in the Project, after payment of Project debts by said participating members, in proportion to the members' participation in the Project as set forth in contractual commitments.

ARTICLE THIRTEEN
ANNUAL BUDGET; AGENCY REVENUES

Section 13.1: The Agency shall operate on a fiscal year of January 1 to December 31, unless altered by Bylaw, rule or regulation.

Section 13.2: The annual budget shall be approved by the Board at its annual meeting. The budget shall be subject to amendment from time to time by the Board or such committee thereof which has been delegated the power to amend the budget, provided no such amendment shall result in an increase in costs to members unless approved by the Board.

Section 13.3: All bonds, obligations and liabilities of the Agency shall be its bonds, obligations and liabilities and shall not constitute debt of the municipalities

which are parties to this agreement or of the state of Illinois, and neither the state of Illinois nor any such municipality shall be liable thereon nor in any event shall such bonds, obligations or liabilities be payable out of funds or properties other than those of the Agency.

Section 13.4: The rates and charges of the Agency for sales of power and energy to members shall be reasonable and nondiscriminatory. The Agency may make special arrangements with any member having its own generation for sale, lease, purchase of, or credit for, such generation. Rates and charges of the Agency for sales of power and energy to non-members shall be set at the discretion of the Agency for the benefit of members.

ARTICLE FOURTEEN

LIBERAL INTERPRETATION

This agreement shall be interpreted liberally to effect the purposes of the Act and the Agency. To that end, the parties to this agreement intend that substantial compliance with the terms and conditions of this agreement be sufficient for all purposes. In the event that any of the terms, covenants or conditions of this agreement or their application shall be found invalid as to any person, corporation, member, the Agency or any circumstance by any court having jurisdiction, the remainder of this agreement and the application and effect of its terms, covenants or conditions shall not be affected thereby and shall remain in full force and effect. Any dispute over this agreement shall be brought in the circuit court of any county in which a member municipality is located and shall be governed by Illinois law.

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ARTICLE FIFTEEN

PRINCIPAL OFFICE AND AGENT

The principal office of the Agency shall be at Rochelle Municipal Utilities, located at 333 Lincoln Highway, P.O. Box 456 in Rochelle, Illinois 61068, and the initial agent for service of process shall be Attorney Alan Cooper, 400 May Mart Drive, P.O. Box 194, Rochelle, Illinois 61068. The Board may change the office and agent for service of process at any time by majority vote and the filing of a certificate of change of location, stating the new address and the effective date of the change, with the Secretary of State.

EXECUTED BY THE FOLLOWING MUNICIPALITIES ON THE FOLLOWING DATES:

<u>Municipality</u>	<u>Date</u>
Rochelle, Illinois	May, 24, 2004
Batavia, Illinois	June 7, 2004
Geneseo, Illinois	June 16, 2004
Geneva, Illinois,	June 21, 2004