

Resolution 08-023

A RESOLUTION AUTHORIZING AN "AGREEMENT REGARDING LEASEHOLD CLASSIFICATION AND TRANSACTION TERMS AND CONDITIONS" ("MOU") WITH YELLOW PINE ENERGY COMPANY, LLC ("YELLOW PINE"), REPEALING 07-024, WHICH SUPERSEDED 06-001, AND SPECIFYING THE INTENDED KEY ECONOMIC TERMS OF SAID MOU, INCLUDING NEW LEASE PAYMENT SCHEDULES, LEASE PAYMENTS, SUPPLEMENTAL PAYMENTS, AND COMMUNITY GRANTS

BE IT RESOLVED by the BOARD OF COMMISSIONERS of Clay County, Georgia in a meeting duly assembled, and it is hereby resolved by the authority of same to repeal the above referenced ordinances as follows:

To repeal Resolution 07-024 authorizing and approving the terms of a Memorandum of Understanding by and between the Clay County Board of Commissioners, the Development Authority of Clay County, the Clay County Tax Assessors, and Yellow Pine Energy Company, LLC, which superseded Resolution 06-001, to expressly repeal Resolution 06-001, and to adopt this Resolution for the purpose of authorizing a multiparty agreement among said parties, which shall be entitled an "Agreement Regarding Leasehold Classification and Transaction Terms And Conditions", which Agreement is sometimes referred to herein as an "**MOU**"; the MOU shall provide for the terms of a Lease Payment (Payment in Lieu of Property Tax) Schedule, the creation of two new payment schedules, one consisting of payments of Supplemental Payments and the other consisting of payments for a Community Grant program, to re-affirm the existing guaranteed Minimum Sales and Use Tax on Supplemental Fuels (Coal, Petroleum Coke, TDF, fuel oil, and propane), and other Taxation Matters and Undertakings;

and,

To authorize the Clay County Board of Commissioners, the Development Authority of Clay County and the Clay County Tax Assessors to negotiate and enter into the MOU, which shall be a binding Agreement reflecting the key economic terms intended therefore, as follows:

Modified Lease Payment, New Schedules.

The schedules contemplated for the MOU in Resolution 07-024 are hereby deleted and replaced with new schedules as indicated below:

YEAR or EVENT	DELETED LEASE PAYMENT	REVISED LEASE PAYMENT	EDA SUPPLEMENTAL PAYMENTS	GRANT PAYMENTS	MINIMUM FOSSIL FUEL SALES & USE TAX (Unchanged)
Commencement of Construction	-	-	30,000	5,000	-
Const. Year 1	-	-	30,000	5,000	-
Const. Year 2	-	-	30,000	5,000	-
Operating Year 1	71,668	64,501	30,000	5,000	39,000
Operating Year 2	78,118	70,306	30,000	5,000	40,000
Operating Year 3	85,149	76,634	30,000	5,000	41,000
Operating Year 4	92,813	83,532	30,000	5,000	43,000
Operating Year 5	101,166	91,049	30,000	5,000	44,000
Operating Year 6	110,271	99,244	30,000	5,000	45,000
Operating Year 7	120,195	108,176	30,000	5,000	47,000
Operating Year 8	131,012	117,911	40,000	5,000	48,000
Operating Year 9	142,804	128,524	40,000	5,000	49,000
Operating Year 10	155,656	140,090	40,000	5,000	51,000
Operating Year 11	200,613	180,552	40,000	5,000	52,000
Operating Year 12	212,650	187,650	40,000	5,000	54,000
Operating Year 13	225,409	200,409	40,000	5,000	56,000
Operating Year 14	238,933	213,933	45,000	5,000	57,000
Operating Year 15	253,269	228,269	45,000	5,000	59,000
Operating Year 16	268,466	243,466	45,000	5,000	61,000
Operating Year 17	284,574	259,574	45,000	5,000	63,000
Operating Year 18	301,648	276,648	45,000	5,000	65,000
Operating Year 19	319,747	294,747	45,000	5,000	66,000
Operating Year 20	338,932	313,932	45,000	5,000	68,000
	\$ 3,733,093	\$ 3,379,147	\$ 855,000	\$ 115,000	\$ 1,048,000

Totals from Old Resolution 07-024 \$ 4,781,093
 New Totals for Revised / Supplemental / Grants / Fossil Fuels \$ 5,397,147

The foregoing schedules, and the related relief of Yellow Pine from normal property tax for its fixed assets on which the same is predicated, are dependent upon the implementation through the Development Authority of Clay County of a proper bond-financed sale-leaseback structure for the subject project, approved and recognized as such by the appropriate public bodies. Such approval and recognition by the Development Authority of Clay County, the Clay County Board of Commissioners and the Clay County Tax Assessors shall be afforded through the MOU and the bond documents.

The Minimum Sales and Use Tax on Supplemental Fossil Fuels (Coal, Petroleum Coke TDF, fuel oil and propane) schedule that is contemplated for the MOU is unchanged from Resolution 07-024 and hereby approved as reflecting a key economic term intended therefore as shown above. The \$50,000 higher education grant program to fund merit scholarships for Clay County citizens to be contributed by Yellow Pine on or about the date of the commencement of construction that is contemplated for the MOU is also unchanged and hereby approved as reflecting a key economic term intended therefore as shown above. In consideration of the above noted payments to be made by Yellow Pine, the MOU shall provide for the Clay County Board of Commissioners to agree, and the Clay County Board of Commissioners hereby calls on the Development Authority of Clay County also to agree in the MOU, as follows: (i) to seek grant funding from the State of Georgia on behalf of Yellow Pine and low interest loans to finance certain electrical infrastructure, right of way acquisition, transfer cost of an existing 46 KV transmission line, and costs, fees and interest related thereto reasonably incurred to construct and place into service a new 115 KV transmission line to connect the Yellow Pine plant to the Georgia Integrated Transmission System grid; (ii) to seek other State, Federal or Agency grants or financing; (iii) to the extent possible, to include in the bond-financed sale-leaseback structure described above, said electric transmission infrastructure and fixed assets comprising part of the abovementioned project purchased with said grant or loan funds; (iv) as part of the abovementioned revenue bond issue, or if requested by Yellow Pine in addition thereto, to seek any and all tax exempt conduit debt financing applicable to waste wood handling facilities, pollution control, water and sewage treatment plants as may be applicable; (v) to limit any and all building or other impact fees, levies or assessments attributable to the activities undertaken by or on behalf of Yellow Pine to \$10,000 payable at the commencement of construction; (vi) to the extent legally permissible, to support the State's continuing to exempt from taxation, fee or levy biomass fuel procured by Yellow Pine as now provided in O.C.G.A. Sec. 48-8-3(83); (vii) for the parties to the MOU to mutually cooperate with each other


in furtherance of the foregoing; (viii) for the parties to the MOU to mutually negotiate in good faith all documentation incorporating the foregoing, and in connection therewith, to cap Yellow Pine's liability for legal services reimbursement to Clay County and the Development Authority of Clay County in the amount of \$20,000 and in connection with services to date and completion of the MOU, provided that there are no further negotiations, and provided further, that such cap does not apply to matters related to the issuance of the abovementioned bonds. Legal fees, administrative costs, consultant costs, closing costs and other costs reasonably incurred or required by the agency providing such grants and loans or by the Economic Development Authority to close finance on behalf of Yellow Pine shall be borne by Yellow Pine provided that Economic Development Authority and Yellow Pine agree to reasonable budget(s), on market terms, prior to incurring costs thereto, such agreement not to be unreasonably withheld. The foregoing notwithstanding: (i) the MOU and abovementioned bond documents shall be subject to the approval of the parties to the MOU and the legal counsel of each; (ii) the incurring of any liability or obligation by the Clay County Board of Commissioners or the Development Authority of Clay County under or related to any of the abovementioned loans or grants shall be subject to its prior written approval; (iii) Yellow Pine shall be exclusively responsible for the repayment of any such loans; (iv) the Clay County Board of Commissioners and the Development Authority of Clay County shall not incur any costs, expenses or liabilities in connection with seeking or obtaining any of the aforementioned loans or grants; (v) the MOU shall provide for it to become effective upon its being documented in accordance with the foregoing and approved and executed by all of the intended parties thereto, and for its termination under certain circumstances, including if the subject project has not been placed into service by a specified date; (vi) the subject project (counting all fixed asset investments, whether or not subject to property taxation) of the MOU is defined as an electric plant with a capacity of 110 megawatts costing approximately \$220 million, and (vii) should the subject project change resulting in an increase in capacity it shall be treated as a new phase of the project to which no relief from property taxation is available except pursuant to such amendment to the MOU as the parties thereto in their discretion may negotiate and agree to in writing; and shall contain such other or additional terms and conditions as shall be negotiated by the parties thereto, whether or not mentioned above, including, without limitation, relating to non-violation of laws, the permitting and operation of the subject project and satisfactory protection of the parties to the MOU other than Yellow Pine.

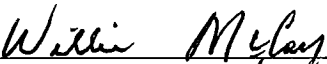
NOW, THEREFORE, BE IT RESOLVED that an MOU, by and between the Clay County Board of Commissioners and the other parties thereto contemplated above, is hereby approved and agreed to,

provided that it conforms to its description above in all material respects, but subject to such changes, insertions or omissions as may be approved by the Chairman of the Clay County Board of Commissioners. The execution of the MOU by the Chairman of the Clay County Board of Commissioners shall conclusively evidence that it conforms to such description in all material respects and that any such changes, insertions or omissions have been so approved. The Chairman of the Clay County Board of Commissioners is hereby authorized to execute, and the Clerk of the Board of Commissioners is hereby authorized to attest, such MOU, without further action of this Board.


This Resolution shall be effective upon approval.

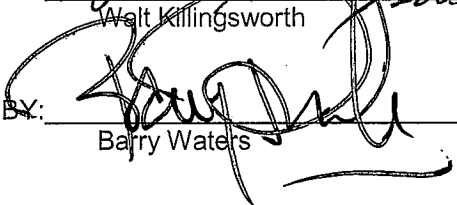
OFFERED FOR ADOPTION BY AND INITIATED BY THE BOARD OF COMMISSIONERS OF CLAY COUNTY, GEORGIA, on this 10th day of June, 2008.
CLAY COUNTY BOARD OF COMMISSIONERS

BY:  Yea ___ Nay
Gerald Von Anderson III, Chairman

BY:  Yea ___ Nay
Willie McCoy, Vice Chairman

BY:  Yea ___ Nay
David Shivers

BY:  Yea ___ Nay
Walt Killingsworth

BY:  Yea ___ Nay
Barry Waters

CLERK'S CERTIFICATE

I, the undersigned Clerk of the Board of Commissioners of Clay County, keeper of the records and seal thereof, hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Board of Commissioners of Clay County in public meeting assembled on June 10, 2008, the original of which ordinance has been entered in the official records of said political subdivision under my supervision and is in my official possession, custody and control.


Teresa Smith, County Clerk