

120 FERC ¶ 61,175  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

In re Gexa Energy, L.L.C.

Docket No. IN07-31-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued August 21, 2007)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Gexa Energy, L.L.C., a Massachusetts limited liability company (Gexa). This order is in the public interest because it resolves all issues relating to a non-public, preliminary investigation conducted by Enforcement, pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2006). The matters investigated included violations of sections 203(a)<sup>1</sup> and 205<sup>2</sup> of the Federal Power Act (FPA), and the Commission's regulations. This Agreement resolves the investigation through a settlement that provides for: (1) Gexa's payment of a \$500,000 civil penalty; and (2) Gexa's disgorgement of \$12,481.41 in profits, with interest.

**Background**

2. Gexa is a competitive retail electricity service provider operating in the ISO New England, Inc. (ISO-NE) market. Gexa currently serves approximately 17 MW of load to residential and industrial customers in Maine and Massachusetts. Gexa owns no generation.

3. FPL Energy, LLC (FPLE), a wholly owned subsidiary of the FPL Group, Inc. (FPL Group), has subsidiaries that make wholesale sales in interstate commerce and currently provide or have under construction approximately 14,000 net MW of electric generation capacity in 25 states. FPLE does not own, operate, or control any

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<sup>1</sup> 16 U.S.C. § 824b.

<sup>2</sup> 16 U.S.C. § 824d.

transmission facilities other than the interconnection facilities necessary to reliably connect its subsidiaries' generating facilities to the transmission grid. FPLE acquired Gexa in June 2005.

4. In February 2006, FPLE first became aware that Gexa had market-based rate (MBR) authority for wholesale sales in interstate commerce<sup>3</sup> and that Gexa should have filed for merger authorization under section 203(a) of the FPA prior to its acquisition by FPLE.<sup>4</sup> Consequently, FPLE initiated an internal investigation to determine the extent of the irregularities. FPLE learned, among other things, that Gexa had falsely represented to FPLE that it was not subject to regulation under the FPA; and did not disclose to FPLE or the Commission that it had already commenced FERC-jurisdictional sales. In addition, Gexa had provided FPLE with an opinion letter from Gexa's regulatory counsel stating, albeit incorrectly, that Gexa was not subject to FPA regulation.

5. On February 22, 2006, FPLE self-reported to Enforcement that its subsidiary, Gexa, violated various provisions of the FPA and the Commission's regulations. Enforcement conducted a preliminary investigation and reviewed Gexa's actions over a two-year period confirming the facts and violations set forth below.

### **Summary of Violations**

6. Gexa violated FPA section 203(a), which required prior Commission approval of Gexa's June 17, 2005 disposition of its jurisdictional facilities to FPLE. Because Gexa obtained MBR authority in May 2005 and thus owned jurisdictional facilities consisting of a market-based rate schedule and books and records enabling it to engage in sales for resale in interstate commerce, it became a public utility subject to the Commission's jurisdiction under the FPA and, pursuant to FPA section 203(a), was required to seek Commission approval prior to its disposition of the facilities to FPLE. Accordingly, Gexa's failure to submit its FPA section 203(a) filing resulted in a violation of FPA section 203(a) that was continuing in nature. Gexa and FPLE submitted an application under FPA section 203(a) on June 20, 2007, in Docket No. EC07-109-000.

7. Gexa violated FPA section 205 by entering into a series of unauthorized wholesale balancing transactions to sell excess generation in interstate commerce into the ISO-NE's hourly or day ahead market. On March 1, 2005, Gexa commenced making such sales without MBR authority. Gexa did not seek MBR authority from the Commission until

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<sup>3</sup> *Gexa Energy, LLC*, Docket No. ER05-714-000, et al. (unpublished letter order granting Gexa market-based rate authority issued May 18, 2005 (MBR Order)).

<sup>4</sup> The Agreement and Plan of Merger, dated as of March 28, 2005, was among FPL Group, Inc., FRM Holdings, LLC, WPRM Acquisition Subsidiary, Inc., and Gexa's parent, Gexa Corporation (Merger Agreement).

March 21, 2005, three weeks after it commenced such sales. At the time Gexa submitted its application, it did not disclose to the Commission that it had already commenced making wholesale sales into the ISO-NE market, nor did Gexa disclose that it would continue making such sales during the pendency of its MBR application. By the time the Commission granted Gexa's MBR request making Gexa's MBR tariff effective on May 18, 2005, Gexa had already earned profits of \$12,498.41 related to the unauthorized MBR balancing sales.

8. Gexa violated the Commission's May 18, 2005 MBR Order which specifically directed Gexa to: (1) "timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority, consistent with Order No. 652;" and (2) revise its tariff within 30 days of issuance to reflect the requirement that Gexa file a change in status notice if a change in affiliation or corporate status occurred. Gexa did not comply with this directive until it submitted its revised MBR tariff and Code of Conduct on February 27, 2006, following its self-report.

9. Gexa violated section 35.10(b) of the Commission's regulations<sup>5</sup> and the Commission's MBR Order by failing to timely file Electric Quarterly Reports (EQRs) with the Commission for its MBR sales commencing March 1, 2005, until February 2006. The Commission's MBR Order specifically directed Gexa to begin making timely EQR filings no later than 30 days after the first quarter in which Gexa's rate schedule became effective, which was July 31, 2005. Gexa later submitted all of its delinquent EQR filings on February 28, 2006, subsequent to its self-report.

10. Gexa's violations did not result in a preference or undue discrimination and resulted in no harm to competitors or customers. Nonetheless, these violations resulted in harm to the integrity of the regulatory process, as good faith compliance with statutes and Commission orders is of vital importance to the administration of the Commission's duties under the FPA.

### **Stipulation and Consent Agreement**

11. Enforcement, Gexa and FPLE have entered into the attached Agreement to resolve Enforcement's investigation of FPLE's self-report. The Agreement, *inter alia*, requires Gexa to pay a \$500,000 civil penalty and to disgorge \$12,481.41 with interest.

12. On June 20, 2007, in Docket No. EC07-109-000, Gexa and FPLE jointly submitted an application pursuant to FPA section 203(a) requesting authorization for the upstream transfer to FPLE of Gexa's jurisdictional facilities, (including Gexa's MBR

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<sup>5</sup> 18 C.F.R. § 35.10(b) (2006).

tariff and related books and records), pursuant to FPLE's June 17, 2005 purchase of one hundred percent of the equity of Gexa's parent company, Gexa Corporation.<sup>6</sup>

### **Determination of the Appropriate Remedy**

13. The Commission may impose civil penalties of up to \$1 million per violation pursuant to section 316A of the FPA as amended by the Energy Policy Act of 2005.<sup>7</sup> Because of the continuing nature of the violations, the violations in this case occurred after August 8, 2005, the effective date of the Commission's civil penalty authority.

14. In approving the Agreement and the \$500,000 civil penalty, we considered the factors set forth in the FPA<sup>8</sup> and our Policy Statement on Enforcement.<sup>9</sup> We have accorded great weight to the fact that Gexa's new owner, FPLE, promptly investigated and self-reported these violations when it became aware of them, and that FPLE replaced Gexa's senior management involved in the violations. Moreover, FPLE implemented new procedures to prevent reoccurrence of such violations and self-imposed a six-month moratorium on making MBR sales. Absent the self-report and these remedial measures, the civil penalty would have been substantially higher.

15. We also note that there was no harm to the market or to market participants from Gexa's violations discussed here.

16. In light of the facts and circumstances, the Commission concludes that the civil penalty and the disgorgement agreed upon are appropriate and provide a fair and equitable resolution of these matters and are in the public interest.

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<sup>6</sup> Contemporaneous with the issuance of this order, the Commission is also issuing an order in Docket No. EC07-109-000 approving Gexa's and FPLE's application on a going forward basis.

<sup>7</sup> Section 1284(e) of the Energy Policy Act of 2005 amended section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), to grant the Commission authority to assess a civil penalty of not more \$1,000,000 for each day that a violation of any provision of Part II of the FPA or any provision of any rule or order there under continues.

<sup>8</sup> Section 316A(b) of the FPA, 16 U.S.C. § 8250-1(b).

<sup>9</sup> Enforcement of Statutes, Orders, Rules, and Regulations, 113 FERC ¶ 61,068 (2006).

The Commission orders:

The attached Agreement is hereby approved without modification.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Gexa Energy L.L.C. )

Docket No. IN07-31-000

**STIPULATION AND CONSENT AGREEMENT**

**I. INTRODUCTION**

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Gexa Energy L.L.C., a Massachusetts limited liability company (Gexa), enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic investigation conducted by Enforcement, pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2006). Following a February 22, 2006 self-report by Gexa's indirect parent, FPL Energy, LLC (FPLE), Enforcement investigated Gexa's possible violations of sections 203 and 205 of the Federal Power Act (FPA),<sup>1</sup> and the Commission's regulations.

**II. STIPULATIONS**

Enforcement and Gexa hereby stipulate and agree to the following:

**A. Background and Self-Report**

2. Gexa is a competitive retail electricity service provider operating in the ISO New England, Inc. (ISO-NE) market. Gexa's small commercial and industrial retail load in Massachusetts and Maine has ranged from 2 MW to approximately 17 MW. Prior to its acquisition by FPLE, Gexa was a wholly-owned subsidiary of Gexa Corp., which then served approximately 1,200 MW of peak retail load in Texas. Gexa Corp.'s retail service was subsequently transferred into Gexa Energy, LP (Gexa Energy). Gexa's business interests are solely limited to ISO-NE, while the business interests of Gexa's affiliate, Gexa Energy, are solely limited to ERCOT. Neither Gexa nor Gexa Energy owns generation.

3. FPLE, a wholly owned indirect subsidiary of FPL Group, Inc. (FPL Group), is the parent of various public utility subsidiaries and qualifying facilities that make sales in interstate commerce and currently provide or have under construction approximately 14,000 net MW of electric generation capacity located in 25 states. The FPLE subsidiaries do not own, operate, or control, directly or indirectly, any transmission

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<sup>1</sup> 16 U.S.C. § 824b and 16 U.S.C. § 824d.

facilities other than the interconnection facilities necessary to reliably connect generating facilities to the transmission grid. As discussed in greater detail below, FPLE acquired Gexa in June 2005.

4. In February 2006, while preparing a merger application for a different matter, FPLE's FERC counsel became aware, for the first time, that Gexa had previously received market-based rate (MBR) authorization.<sup>2</sup> As a result of that authorization, Gexa should have filed for merger authorization under FPA section 203(a) prior to its acquisition by FPLE in June 2005.<sup>3</sup> Upon learning of this issue, FPLE immediately commenced an internal investigation and provided the results to Enforcement in a self report on February 22, 2006. In the self-report, FPLE explained that it had learned that its subsidiary, Gexa: (1) failed to file an application under FPA section 203(a) and Part 33 of the Commission's regulations prior to Gexa's acquisition by FPLE; (2) failed to obtain MBR authorization from the Commission prior to selling electricity in interstate commerce; (3) failed to timely submit Electric Quarterly Reports (EQRs) under 18 C.F.R. § 35.10(b) (2006); and (4) failed to notify the Commission of the resulting change in status of the relationship when FPLE acquired Gexa in violation of the MBR Order and Order No. 652.<sup>4</sup>

#### **B. Gexa's Unauthorized Market-Based Rate Sales**

5. In December 2004, Gexa entered into purchase power agreements totaling 2 MW to serve its retail load in Maine and Massachusetts. In January 2005, Gexa's then president executed the ISO-NE Market Participant Service Agreement in order to make sales in the ISO-NE market. Gexa, pursuant to that agreement, warranted that it either would obtain MBR authority before initiating sales into the ISO-NE market or was exempt from the requirement to have rates on file with the Commission, which it was not.

6. On March 1, 2005, Gexa commenced making retail sales in Massachusetts. At the same time, Gexa also commenced wholesale power balancing sales to sell excess generation into the ISO-NE hourly or day-ahead market to minimize or eliminate any daily operating losses where actual retail requirements were less than the power that

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<sup>2</sup> *Gexa Energy L.L.C.*, Docket No. ER05-714-000, et al. (unpublished letter order issued May 18, 2005) (MBR Order).

<sup>3</sup> The Agreement and Plan of Merger, dated as of March 28, 2005, was among FPL Group, Inc., FRM Holdings, LLC, WPRM Acquisition Subsidiary, Inc. and Gexa Corp. (Agreement and Plan of Merger). FRM Holdings, LLC, is a wholly-owned indirect subsidiary of FPLE.

<sup>4</sup> Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

Gexa nominated to take from its suppliers.<sup>5</sup> However, Gexa commenced these sales without having obtained MBR authority from the Commission.

7. In early March 2005, Gexa's analyst assigned to the Northeast markets conferred with NEPOOL's counsel and learned and verified that FERC MBR authority was required for Gexa's balancing sales. He then informed Gexa's president of this requirement. In addition, in mid-March, 2005, after conferring with FERC staff, Gexa's analyst confirmed this requirement and informed Gexa's president and management that Gexa needed to file for MBR authority.

8. On March 21, 2005, Gexa filed for MBR authority in Docket No. ER05-714-000. Gexa did not disclose to the Commission that it had already commenced MBR sales, nor did it disclose that it would continue such sales during the pendency of the application. Gexa did not request waiver of the Commission's regulations to permit an earlier effective date for making MBR sales, nor did the application request a waiver from the Commission's EQR filing requirements.

9. On May 18, 2005, the Commission issued a letter order making Gexa's MBR tariff effective as of the date of the MBR Order, and requiring Gexa to submit EQRs and notifications of any changes in corporate status.

10. FPLE self-reported Gexa's unauthorized sales on February 22, 2006, and calculated that from March 1 through May 17, 2005, Gexa's profits from these unauthorized sales totaled \$12,498.41. Shortly thereafter, on February 27, 2006, Gexa made a FPA section 205 tariff filing that: (1) amended its MBR tariffs; (2) submitted a Code of Conduct; and (3) informed the Commission of its change in corporate status because of the merger. On February 28, 2006, Gexa submitted all overdue delinquent EQRs. The MBR tariff amendments became effective by operation of law under FPA section 205(d).

### **C. Merger of Gexa and FPLE**

11. During the spring of 2005, Gexa Corp. (then the parent of Gexa) and FPLE were finalizing their merger discussions. Gexa represented to FPLE that it was not subject to regulation under the FPA. Specifically, in a March 20, 2005 draft of the Agreement and Plan of Merger, Gexa Corp. represented and warranted that: (1) no governmental authorizations were required as a result of the merger other than those listed or disclosed as part of the merger agreement (and no Commission authorizations were either listed or disclosed); (2) neither Gexa Corp. nor any of its subsidiaries (including Gexa) were

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<sup>5</sup> Except for one "book-out" sale made by Gexa to Calpine in order to correct a scheduling error made by the provider, all wholesale power sales were made exclusively to ISO-NE.

subject to regulation under the Federal Power Act, as amended; and (3) the consummation of the merger would not result in the violation of any law or permit.

12. On March 26, 2005, the night before the Agreement and Plan of Merger was signed, Gexa Corp. added a provision to a Disclosure Schedule which stated: "Gexa has recently filed an application with the [FERC] for a rate-based approval from FERC which is required for its operations in Massachusetts." Gexa Corp. did not disclose that Gexa had already commenced the FERC-jurisdictional sales. Neither Gexa Corp.'s nor FPLE's deal team and counsel recognized the significance of this revision and no one brought it to the attention of FPLE's internal FERC counsel. Had they done so, FPLE's internal FERC counsel would have realized that because of Gexa's MBR status, Gexa became a "public utility" for FPA purposes and was required to file a FPA section 203(a) merger application with the Commission. Further compounding the problem was the fact that, contemporaneous with the closing date of the merger on June 17, 2005, Gexa Corp.'s regulatory counsel issued an opinion letter reconfirming (albeit erroneously) that neither Gexa Corp. nor any of its subsidiaries (including Gexa) was subject to FPA regulation.

#### **D. Violations**

13. Gexa violated section 203(a) of the FPA and Part 33 of the Commission's regulations, 18 C.F.R. Part 33 (2006), by failing to seek prior approval for the June 17, 2005 merger with FPLE.

14. Gexa violated section 205 of the FPA by entering into a series of unauthorized wholesale sales to sell excess generation into ISO-NE's hourly or day ahead market without MBR authority. Gexa did not seek MBR authority from the Commission until March 21, 2005, three weeks after it commenced such sales. At the time Gexa submitted its application, it did not inform the Commission that it had already commenced making wholesale sales into the ISO-NE markets, nor did Gexa cease making such wholesale sales during the pendency of its MBR application. The Commission granted Gexa's MBR request on May 18, 2005. However, Gexa had already earned profits of \$12,498.41 related to the unauthorized MBR balancing sales.

15. Gexa violated section 35.10(b) of the Commission's regulations 18 C.F.R. § 35.10(b) (2006), and the Commission's May 18, 2005 MBR Order by failing to timely file EQRs with the Commission for its MBR sales from May 2005, until February 2006.

16. Gexa violated the Commission's May 18, 2005 MBR Order by failing to (1) timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority, consistent with Order No. 652; and (2) revise its tariff within 30 days of issuance to reflect the requirement that Gexa file a change in status notice if a change in affiliation or

corporate status occurred. Gexa did not comply with this directive until it submitted its revised MBR tariff and Code of Conduct on February 27, 2006.

17. Gexa's violations of section 203(a) of the FPA, the Commission's MBR Order and the Commission's regulations did not result in harm to any market or customers.

#### **E. Remedial Actions**

18. Since submitting the self report, FPLE established a new organization for FPLE's Commodities Marketing and Retail Businesses. This new organization now encompasses the activities of FPL Energy Power Marketing, Inc. (FPLE Power Marketing) and the retail portfolios of Gexa and Gexa Energy, as well as a portfolio of new emerging businesses thereby providing for a closer integration of retail businesses in the FPLE business structure.

19. In addition, following the realization of Gexa's misrepresentation regarding MBR authority, Gexa and FPLE implemented a checklist procedure that requires regulatory counsel sign-off before a merger or acquisition transaction may be consummated. Internal merger and acquisition counsel also received training regarding FPA section 203 reporting requirements.

20. Immediately following the submittal of the February 22, 2006 self-report, Gexa and FPLE unilaterally took additional steps to rectify the problems caused by Gexa's prior management by undertaking the following: (1) removing senior executives of Gexa that were the principal cause of its violations; (2) immediately filing an FPA section 205 tariff filing and Code of Conduct to reflect Gexa's affiliation with FPLE; (3) submitting all delinquent EQRs; (4) enhancing its regulatory compliance and standards of conduct training program; (5) self-imposing a six-month moratorium on making MBR sales; and (6) offering unilaterally to disgorge with interest the \$12,481.41 in unauthorized MBR balancing sales.

21. On June 20, 2007, in Docket No. EC07-109-000, Gexa and FPLE submitted a merger application under section 203(a) of the FPA requesting authorization, on a prospective basis, for transfer of Gexa's assets to FPLE.

22. Since the self-report, FPLE voluntarily entered into an arrangement whereby its affiliate, FPLE Power Marketing, provides wholesale electric power and related products and services to Gexa, on a load following basis, for Gexa's retail sales in Maine and Massachusetts. Gexa continues to make about 2 MW of wholesale energy sales to FPLE Power Marketing associated with certain Calpine contracts. But, in effect, Gexa voluntarily removed itself from making wholesale market sales to third parties since July 2006.

### III. REMEDIES AND SANCTIONS

23. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation of Gexa's violations of FPA sections 203, 205, the Commission's May 18, 2005 MBR Order and the Commission's regulations related thereto, and in lieu of any other remedy that the Commission might assess, determine, initiate, or pursue, concerning any of the matters referred to above, Gexa agrees that after the Commission issues an order approving this Agreement without modification, it shall take the following actions:

#### A. Civil Penalty

24. Gexa shall pay a civil penalty in the amount of \$500,000 payable to the United States Treasury, within 10 days of the Commission issuing an order approving this Agreement without modification.

25. The civil penalty shall not be passed through, directly or indirectly, to any present or future customers or ratepayers.

#### B. Disgorgement

26. Gexa shall disgorge \$12,498.41, with appropriate interest calculated pursuant to section 35.19a(2)(iii) of the Commission's regulations, 18 C.F.R. § 35.19(a)(2)(iii) (2006), arising from its unauthorized MBR sales and distribute by payment or credit those disgorged profits to Gexa's then-existing retail customers served in the Massachusetts market at the time such sales were made. Such disgorgement shall be made to those customers that can be located using reasonable efforts within 60 days of the Commission issuing an order approving this Agreement without modification. Upon the distribution of the disgorged amounts, Gexa shall notify the Massachusetts Department of Telecommunications and Energy of the purpose and nature of such payments or credits. Additionally, Gexa shall submit a report to the Commission indicating that the distribution of such payments or credits has been made within 90 days of the date the Commission issues an order approving this Agreement without modification.

### IV. TERMS OF CONSENT AGREEMENT

27. The Effective Date of this Agreement shall be the date on which the Commission issues an order approving this Agreement without modification.

28. Unless the Commission issues an order approving the Agreement in its entirety and without modification, the Agreement shall be null and void and of no effect

whatsoever, and neither Enforcement nor Gexa shall be bound by any provision or term of the Agreement, unless otherwise agreed in writing by Enforcement and Gexa.

29. The Agreement binds Gexa and its agents, successors and assigns. The Agreement does not create or impose any additional or independent obligations on Gexa, or any affiliated entity, its agents, officers, directors or employees, other than the obligations identified in Sections III.A. and III.B. of this Agreement.

30. In connection with the payment of the civil penalty provided for herein, Gexa agrees that the Commission's order approving the Agreement without modification shall be a final order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended. Gexa further waives rehearing of any Commission order approving the Agreement without modification, and judicial review by any court of any Commission order approving the Agreement without modification.

31. Commission approval of this Agreement without modification shall release Gexa, its agents, officers, directors and employees, both past and present, and any successor in interest to Gexa from, and forever bar the Commission from bringing against Gexa, any and all administrative or civil claims arising out of, related to or connected with the alleged violations addressed herein in Docket No. IN07-31-000. Upon the Effective Date of this Agreement, Enforcement's investigation of Gexa shall terminate in Docket No. IN07-31-000.

32. Failure to make a timely payment or to comply with any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. § 792, *et seq.*, and may subject Gexa to additional action under the enforcement and penalty provisions of the FPA.

33. If Gexa does not make the payment above at or before the time agreed by the parties, interest payable to the United States Treasury will begin to accrue, pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii), from the date that payment is due.

34. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or Gexa has been made to induce the signatories or any other party to enter into the Agreement.

35. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

36. The undersigned representative of Gexa affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

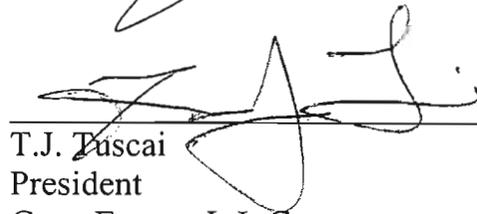
37. The Agreement may be signed in counterparts.

38. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

  
\_\_\_\_\_  
Susan J. Court, Director  
Office of Enforcement

8/7/07  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
T.J. Tuscai  
President  
Gexa Energy L.L.C.

August 3, 2007  
\_\_\_\_\_  
Date