

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA**

**In re:** §  
§ **CASE NO. A10-00824**  
**Naknek Electric Association, Inc.,** §  
§ **(Chapter 11)**  
**Debtor.** §

**ORDER CONFIRMING SECOND AMENDED PLAN OF  
REORGANIZATION OF NAKNEK ELECTRIC ASSOCIATION, INC., DEBTOR (AS  
MODIFIED)**

Based upon the Findings of Fact and Conclusions of Law in Support of Second Amended Plan of Reorganization (the “Findings and Conclusions”)<sup>1</sup> issued by the Bankruptcy Court contemporaneously herewith, the Bankruptcy Court enters this Confirmation Order and hereby orders, determines, and decrees as follows:

**JURISDICTION**

1. The Bankruptcy Court has subject matter jurisdiction to confirm the Second Amended Plan of Reorganization, as Modified (the “Plan”) pursuant to 28 U.S.C. §§ 157 and 1334.

<sup>1</sup> Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan, the Disclosure Statement, or the Findings and Conclusions, as applicable; provided that in the event of any inconsistencies, the meanings in the final version of the Plan shall control.

2. Venue is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§1408 and 1409.

3. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(A), (L), (N) and (O).

### **CONFIRMATION OF THE PLAN**

4. Pursuant to section 1127 of the Bankruptcy Code, the Modifications are approved, and pursuant to section 1129 of the Bankruptcy Code, the Plan, as modified, is hereby **CONFIRMED**. Each of the objections to the Plan not otherwise withdrawn, resolved or expressly sustained herein, is **OVERRULED** and **DENIED**. All withdrawn objections are deemed withdrawn with prejudice.

5. The following are hereby incorporated by reference into, and are an integral part of, this Confirmation Order: (a) the Findings and Conclusions, (b) the Plan, (DE 497) and (c) the exhibits, including the appendices, to the Plan, and the Finding and Conclusions and this Order shall constitute modifications to the Plan, where necessary .

6. The Effective Date of the Plan shall occur upon such date as designated by the Reorganized Debtor, but not earlier than the date upon which distribution of the Class 10, Option 3 notes commences in accordance with the Plan. Substantial consummation of the Plan shall be deemed to have occurred upon commencement of distribution of the Class 10, Option 3 Notes.

7. Upon the entry of this Confirmation Order, the stay instituted pursuant to Bankruptcy Rule 3020(e) is terminated in all respects. Notwithstanding any otherwise applicable law, upon entry of this Confirmation Order, but subject to the occurrence of the Effective Date, the terms of the Plan (including the exhibits and appendices thereto and all documents and agreements executed pursuant to the Plan) and this Confirmation Order shall be binding upon the Debtor, the Reorganized Debtor, all holders of Claims against and Interests in the Debtor

(whether or not impaired under the Plan), each Person or entity acquiring property under the Plan, any other party in interest, any Person or entity making an appearance in this Chapter 11 Case, and each of the foregoing's respective heirs, successors, assigns, trustees, executors, administrators, affiliates, officers, directors, managers, members, partners, agents, representatives, attorneys, beneficiaries or guardians. To the extent that any provisions of this Confirmation Order may be inconsistent with the terms of the Plan, the terms of this Confirmation Order shall control, be binding and conclusive.

### **CLASSIFICATION AND TREATMENT**

8. All Claims and Interests shall be, and hereby are, classified and treated as set forth in the Plan. The Plan's classification of Claims and Interests shall be, and hereby is, approved in all respects.

9. The treatment of all Claims and Interests as provided in the Plan shall be, and hereby is, approved, with the following modifications:

(a) Mechanic & Mining Liens. Distributions in respect of those Class 10 claims which represent the unsecured deficiencies of lien claims in Classes 4, 7, 8 and 9 shall be escrowed until such liens are released or until the holder of such claim executes upon its lien and there is a determination of the allowed amount of such Class 10 claim. Distributions in respect of those Class 10 claims which represent the unsecured deficiencies of lien claims in Classes 3 and 5 shall be escrowed until there is final distribution to the holders of such claims from the sale of the Geothermal Assets, or 36 months from the date of this Order, whichever occurs first.

(b) The Class 10 claim of CoBank shall be credited in the amount of \$10,310.96, which represents the value of Debtor's CoBank stock, which stock is hereby assigned to and shall be retained by CoBank.

(c) Certain Persons holding allowed Professional Fee Claims and certain Persons holding allowed Administrative Claims have agreed to be paid their allowed claims after the Effective Date in order to facilitate and aid in the implementation and consummation of the Plan. Such deferral of payment shall not delay the Effective Date. Any payments of such Allowed Administrative Claims will be paid pro rata among all deferred Claims and all Claims will be paid in full not later than July 15, 2013.

### **ADMINISTRATIVE CLAIMS**

10. The holder of any Administrative Claim (other than a Professional Fee Claim or an Administrative Claim that has been Allowed on or before the Effective Date) must file notice of such Administrative Claim with the Bankruptcy Court no later than thirty (30) days after entry of this Order (the "Administrative Claims Bar Date"), unless extended by order of the Bankruptcy Court. Such notice must be served on the Reorganized Debtor, its counsel, and other necessary parties-in-interest. Additionally, such notice must include at a minimum (a) the name of the holder of the Claim, (b) the amount of the Claim, and (c) the basis of the Claim (including any documentation or evidence supporting such claim). ***Failure to timely and properly file a notice required hereunder and pursuant to the Plan shall result in the Administrative Claim being forever barred and discharged.*** An Administrative Claim with respect to which notice has been properly filed and served may become an Allowed Administrative Claim if no objection is filed before the later of (a) twenty (20) days after its filing and service, or (b) twenty (20) days after entry of this Order. If an objection is filed within such twenty (20) day period, the Administrative Claim shall become an Allowed Administrative Claim only to the extent Allowed by Order of the Bankruptcy Court.

11. Each Professional who holds, or asserts, an Administrative Claim that is a Professional Fee Claim for compensation for services rendered and reimbursement of expenses

incurred prior to the Effective Date shall, unless expressly stated otherwise herein, be required to file with the Bankruptcy Court and serve on all parties required to receive such notice, a fee application (a "Fee Application") within thirty (30) days after entry of this Order, unless such date is extended by order of the Bankruptcy Court before the expiration of such thirty (30) day period. *Failure to timely and properly file a Fee Application as required hereunder and pursuant to the Plan shall result in the Professional Fee Claim being forever barred and discharged.* The deadline to file an objection to any Fee Application shall be twenty (20) days after the filing and service of a Fee Application. An Administrative Claim that is a Professional Fee Claim, and where a Fee Application has been properly filed, shall become an Allowed Administrative Claim only to the extent allowed by Order of the Bankruptcy Court.

12. The Reorganized Debtor is authorized to pay all Administrative Claims Allowed by Order of the Bankruptcy Court, notwithstanding any appeal or motion for reconsideration of such Order, unless a court of competent jurisdiction has issued a stay pending appeal or reconsideration of such Order.

### **ENFORCEABILITY OF PLAN**

13. Pursuant to sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and all Plan-related documents (including, but not limited to, the Fuel Loan documents, the Class 10, Option 3 notes and security documents, provided such documents shall be prepared and executed substantially in accordance with the term sheets contained in Appendix E and Appendix F of the Plan), shall be, and hereby are, valid, binding and enforceable notwithstanding any otherwise applicable non-bankruptcy law. Each of the Plan and all Plan-related documents (including, but not limited to, the Fuel Loan documents, the Class 10, Option 3 notes and security documents, provided such documents shall be prepared and executed substantially in accordance with the term sheets contained in Appendix

E and Appendix F of the Plan) is hereby approved. The Debtor reserves the right to alter, amend, or modify the Plan at any time prior to the Effective Date in accordance with applicable law.

14. To the extent the succession to assets of the Debtor or the Estate by the Reorganized Debtor is deemed to constitute “transfers” of property, such transfers of property (a) are legal, valid and effective transfers of property, (b) vest or shall vest in the Reorganized Debtor with good, clean title to such property, free and clear of all Liens, charges, Claims, encumbrances and interests (except as may otherwise be provided for in the Plan), (c) do not and shall not constitute avoidable transfers under the Bankruptcy Code or under applicable non-bankruptcy law, and (d) do not and shall not subject the entity to whom such property was transferred to any liability by reason of such transfer under the Bankruptcy Code or under applicable non-bankruptcy law, including, without limitation, any laws directly or indirectly affecting successor or transferee liability of any kind or nature whatsoever.

**AUTHORIZATION TO IMPLEMENT PLAN**

15. Upon the entry of this Confirmation Order, the Debtor and the Reorganized Debtor and their representatives are authorized and directed to take or cause to be taken all corporate actions necessary or appropriate to implement and consummate all provisions of the Plan and to execute, enter into, or otherwise make effective all documents arising in connection therewith, including, without limitation, the Fuel Loan and the Class 10, Option 3 notes and security documents prior to, on, or after the Effective Date substantially consistent with the provisions of Appendix E and Appendix F to the Plan. All such actions taken or caused to be taken consistent herewith shall be, and hereby are, authorized and approved by the Bankruptcy Court such that no further approval, act or action needs to be taken under any applicable law, order, rule or regulation, including without limitation, any action otherwise required by the

members or directors of the Debtor or the Reorganized Debtor.

16. The approvals and authorizations specifically set forth in this Confirmation Order are not intended to limit the authority of any Debtor or the Reorganized Debtor, or any officer, director or other duly authorized representative thereof, to take any and all action necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order.

17. The Board of the Reorganized Debtor is authorized to serve, is duly qualified and shall be empowered to act as permitted by applicable non-bankruptcy law on the Effective Date without further reference to the Bankruptcy Court.

**NEW FUEL LOAN AGREEMENT AND CLASS 10, OPTION 3 NOTES**

18. The Debtors and/or the Reorganize Debtor has, and is granted hereunder, all requisite corporate power, authority and approval to enter into, deliver and perform their respective obligations under the new Fuel Loan agreement, the Class 10, Option 3 notes and any ancillary or related documents entered into in connection therewith.

19. The Reorganized Debtors are authorized to grant all liens and security interests to secure the obligations under the new Fuel Loan agreement, the Class 10, Option 3 notes and any ancillary or related documents executed in connection therewith, in each case consistent and in accordance with the provisions of the Term Sheets attached as Appendix E and Appendix F to the Plan.

**REVESTING OF ASSETS**

20. Upon the occurrence of the Effective Date, pursuant to section 1141(b) and (c) of the Bankruptcy Code, except as otherwise provided in the Plan, all property of the Debtor's Estates shall vest in the Reorganized Debtor free and clear of all Liens, Claims, causes of action, interests, security interests and other encumbrances and without further order of the Bankruptcy

Court. On and after the occurrence of the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtor may operate its business and may use, acquire and dispose of its assets free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for all fees, disbursements, expenses or related support services of Professionals (including fees relating to the preparation of Professional Fee Applications) without application to, or approval of, the Bankruptcy Court.

### **RETENTION OF CAUSES OF ACTION**

21. Except as otherwise provided in the Plan, upon the occurrence of the Effective Date, all claims and causes of action asserted by the Debtor and still pending shall be vested in the Reorganized Debtor. The Debtor has retained no other claims or causes of action.

22. Except as otherwise provided in the Plan, (a) the Reorganized Debtors' rights to commence, prosecute or settle such pending claims and causes of action Rights shall be, and hereby are, preserved notwithstanding the occurrence of the Effective Date. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, the Reorganized Debtor is hereby designated as the Debtor's and the Estate's representative and the successor in interest to the Debtor and the Estates for all purposes with respect to all such claims and causes of action, including, without limitation, the commencement, prosecution, settlement and collection thereof.

23. No Person or entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any claims or causes of action pending against it as any indication that the Debtor or the Reorganized Debtor will not pursue any and all available claims or causes of action against such Person or entity.

24. Except as provided in the Plan, nothing in this Confirmation Order, the Plan, or the Findings and Conclusions, shall be deemed a waiver or relinquishment of any claim, cause of



action, right of setoff, or other legal or equitable defense which the Debtors had immediately prior to the Effective Date.

### **DISTRIBUTIONS**

25. Pursuant to the terms and provisions of the Plan, the Reorganized Debtor shall make the required distributions specified under the Plan on the relevant dates therefor; provided that the Reorganized Debtor may establish, as necessary a reasonable reserve for any disputed claims or claims not ripe for distribution to allow such initial and interim distributions to be made.

26. The Reorganized Debtor is authorized to rely on Orders of the Bankruptcy Court in making distributions to all creditors, notwithstanding an appeal or motion for reconsideration of such Order, unless a court of competent jurisdiction has issued a stay pending appeal or reconsideration of such Order.

27. The Reorganized Debtor shall be responsible for completing and providing the appropriate Internal Revenue Service Form 1099's for all distributions to creditors under the Plan.

### **PROCEDURES FOR DISPUTED CLAIMS**

28. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, the deadline to object to Claims is 45 days after the Effective Date.

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

29. Except as otherwise provided for herein or in the Plan in regard to the assumption of the prepetition executory contracts, on the Effective Date, all prepetition executory contracts and unexpired leases of the Debtor which have not been assumed shall be, and hereby are, rejected. To the extent the Debtor's special contract for electric service with the Air Force is in any part a pre-petition executory contract, the debtor is authorized to assume that contract.

30. Rejection of any prepetition executory contract or unexpired lease pursuant to the Plan and this Confirmation Order shall constitute adequate and sufficient notice that (a) any Claims arising thereunder or related thereto shall be treated as Class 10, Option 1 Unsecured Claims under the Plan, and (b) the Debtors are not bound by, or otherwise obligated to perform, any such obligations, transactions, or undertakings relating thereto or arising thereunder. The inclusion of a contract, lease or other agreement in the Plan or the Disclosure Statement shall not constitute an admission by the Debtors as to the characterization of whether any such included contract, lease, or other agreement is, or is not, an executory contract or unexpired lease or whether any claimants under any such contract, lease or other agreement are time-barred from asserting Claims against the Debtors. The Debtors reserve all rights with respect to the characterization of any such agreements.

31. Holders of all tax Claims, whether or not a Claim was scheduled or filed in the Chapter 11 Cases are bound and prohibited by the terms of the Plan and this Confirmation Order from commencing or continuing any action or proceeding against any responsible person, officer or director of the Debtors that otherwise would be liable to such holders for payment of such Claims, so long as the Debtor or Reorganized Debtor is in compliance with the Plan and this Confirmation Order.

32. Upon the Effective Date, all Persons and entities are forever prohibited and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Debtor, the Estate or the Reorganized Debtor, or their successors and assigns, with respect to any (a) Lien, Claims or encumbrance arising under, out of, in connection with or in any way relating to the Debtor, or (b) successor liability, including, without limitation, the

following actions: (i) commencing or continuing in any manner any action or other proceeding against the Debtor, the Estate or the Reorganized Debtor, their successors and assigns, assets or properties; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor, their Estate or the Reorganized Debtor, their successors and assigns, assets or properties; (iii) creating, perfecting or enforcing any Liens, Claims or encumbrance against the Debtor, the Estate or the Reorganized Debtor, their successors and assigns, assets or properties; (iv) asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Debtor, the Estate or the Reorganized Debtor, or their successors and assigns; or (v) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of the Plan, this Confirmation Order or other orders of the Bankruptcy Court, or the agreements or actions contemplated or taken in respect thereof.

### **EFFECT OF CONFIRMATION**

33. The discharge provisions set forth in Section 9 of the Plan (a) are hereby incorporated into this Confirmation Order by reference and (b) shall be, and hereby are, approved and shall be effective without further action upon the occurrence of the Effective Date.

34. The rights afforded in the Plan and the treatment of all Claims and Interests therein shall be, and hereby are, in exchange for a complete discharge of all (a) Claims of any nature whatsoever, against the Debtor, or the Estate, assets, properties or interests in property and (b) the members' Interests. Except as otherwise provided in the Plan, on the Effective Date, all Claims against and Interests in the Debtor shall be discharged, and the Reorganized Debtor shall not be responsible for any pre-Effective Date obligations of the Debtor except those required to be paid under the Plan, as applicable. Except as otherwise provided in the Plan, all Persons and entities shall be precluded and forever barred from asserting against the Debtor, the Reorganized

Debtor, the Estate, the Debtor's assets, properties, or interests in property, any event, occurrence, condition, thing, or other or further Claims or causes of action based upon any act, omission, transaction, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases thereof were known or existed prior to the Effective Date.

35. Except as otherwise provided herein or in the Plan, upon the occurrence of the Effective Date, the Debtor shall be discharged from all Claims and causes of action to the fullest extent permitted by section 1141 of the Bankruptcy Code.

#### **RETENTION OF JURISDICTION**

36. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court shall retain and shall have exclusive jurisdiction over any matter arising in or related to the Chapter 11 case or the Plan,

#### **MISCELLANEOUS PROVISIONS**

37. The stay in effect in the Chapter 11 Cases pursuant to section 362(a) of the Bankruptcy Code shall continue to be in effect until the Effective Date, and at that time shall be dissolved and of no further force or effect, subject to the injunctions set forth in this Confirmation Order and/or sections 524 and 1141 of the Bankruptcy Code.

38. The terms and provisions of this Confirmation Order shall be binding in all respects upon the Debtor, the Estate, the Reorganized Debtor, all holders of Claims against or Interests in the Debtor (whether known or unknown), any holders of encumbrances against or on all or any portion of the Debtor's assets, all non-debtor parties to assumed contracts, and all of their successors and assigns, and any trustee subsequently appointed upon a conversion to chapter 7 under the Bankruptcy Code of the Chapter 11 Cases.

39. During the period from the conclusion of the Confirmation Hearing through and until the Effective Date, the Debtors shall continue to operate their businesses as debtors-in-possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules and all Orders of the Bankruptcy Court that are then in full force and effect.

40. Except with respect to the treatment of any Claim, nothing in the Plan or the Confirmation Order shall be construed to modify, discharge, alter, amend, or impair the terms of, or rights under or reserved in, any agreement (including any reservations of rights contained therein) between Debtor and any party-in-interest that has been previously approved by a Final Order of the Bankruptcy Court.

41. A certified copy of this Confirmation Order may be filed with the appropriate clerk and/or recorded in order to cancel any of the Liens, Claims or encumbrances of record, although such recordation shall not be required in order to effectuate the provisions of the Plan.

42. On the Effective Date, the Creditors Committee and the Members Committee shall automatically dissolve.

43. The failure to specifically include any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, as it is the intent of the Bankruptcy Court that the Plan be and hereby is authorized and approved in its entirety, and the provisions of the Plan be and hereby are incorporated herein by reference.

44. To the extent there are any inconsistencies between the terms of this Confirmation Order and the Plan or any related agreements, documents or other instruments, the terms of this Confirmation Order shall control.

45. After its entry, the Debtors will serve notice of the entry of this Confirmation Order including, among other things, notice of (a) relevant deadlines and dates on those parties required to be served by Bankruptcy Rule 2002 and (b) the occurrence of the Effective Date.

46. All time periods set forth in this Confirmation Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

47. The Bankruptcy Court specifically retains jurisdiction to determine whether or not any claim or right has been affected by the Plan or this Confirmation Order.

DATED: April 1, 2013

/s/ Gary Spraker  
GARY SPRAKER  
United States Bankruptcy Judge

Serve: E. LeRoy, Esq.  
D. Bundy, Esq.  
S. Sneed, Esq.  
T. Gerber, Esq.  
W. Courshon, Esq.  
ECF Participants per NEF

Submitted by:

Erik LeRoy, P.C.  
Attorney for Debtor

Form of Order is approved by:

David H. Bundy  
Attorney for Members Committee

/s/ David H. Bundy

Spencer Sneed  
Attorney for CoBank

/s/ Spencer Sneed

Toby Gerber  
Attorney for National Rural Utilities Cooperative Finance Corporation

/s/ Toby Gerber