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**GENERAL COUNSEL'S OFFICE**

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair  
Bernie Smith  
Patricia M. DeMarco  
Will Abbott  
James S. Strandberg

In the Matter of the Investigation into the Effect )  
of the Nonfirm Energy Agreement Between )  
GOLDEN VALLEY ELECTRIC ASSOCIATION, )  
INC., and CHUGACH ELECTRIC ASSOCIA- )  
TION, INC., on the Acquisition by GOLDEN )  
VALLEY ELECTRIC ASSOCIATION, INC., of )  
the Electrical System Formerly Owned by the )  
CITY OF FAIRBANKS d/b/a FAIRBANKS )  
MUNICIPAL UTILITIES SYSTEM )

U-97-188

ORDER NO. 6

ORDER ACCEPTING SETTLEMENT AGREEMENT,  
SUBJECT TO CONDITIONS; APPROVING AMENDATORY AGREEMENT;  
VACATING SUSPENSION OF TA203-8; AND DISMISSING TA203-8

BY THE COMMISSION:

Introduction

On July 26, 1999, GOLDEN VALLEY ELECTRIC ASSOCIATION, INC. (GVEA), filed a motion to close docket U-97-188. GVEA asserted that the parties had entered into a Settlement Agreement that resolved all issues or disputes in this proceeding. GVEA attached a copy of the Settlement Agreement (Settlement) entered into between GVEA, CHUGACH ELECTRIC ASSOCIATION, INC. (Chugach), and the

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1 MUNICIPALITY OF ANCHORAGE d/b/a MUNICIPAL LIGHT & POWER (ML&P).<sup>1</sup> A copy  
2 of the Settlement is attached hereto as Appendix A, and by this reference, incorporated  
3 herein.  
4

5 On August 2, 1999, GVEA filed a copy of the Amendatory Agreement No. 2  
6 (Agreement) to Agreement for the Sale and Purchase of Nonfirm Energy between GVEA  
7 and Chugach. The Agreement was inadvertently omitted when the Settlement was filed.<sup>2</sup>

8 A copy of the Agreement is attached hereto as Appendix B and, by this reference,  
9 incorporated herein.  
10

11 On August 10, 1999, the Public Advocacy Section<sup>3</sup> (PAS) filed a  
12 nonopposition to the motion to close docket.<sup>4</sup>

13 On August 15, 1999, Chugach filed a motion to consider Tariff Advice Letter  
14 No. 203-8 concurrently with the Settlement.<sup>5</sup> In TA203-8, Chugach sought approval of  
15 Amendatory Agreement No. 2.  
16

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19 <sup>1</sup>The Settlement was filed in this proceeding and U-97-200. Docket U-97-200 is  
20 entitled *In the Matter of the Tariff Revision, Designated as TA226-121, Filed by the*  
21 *MUNICIPALITY OF ANCHORAGE d/b/a MUNICIPAL LIGHT & POWER DEPARTMENT*  
*for Approval of a Power Sales Agreement with GOLDEN VALLEY ELECTRIC*  
*ASSOCIATION, INC.*

22 <sup>2</sup>See note 1.

23 <sup>3</sup>By Order U-97-188(7), dated January 3, 2000, the Commission, among other  
24 things, excused the Staff Advocacy Team (SAT) and designated the PAS a party. While  
25 the nonopposition was initially filed by the SAT, the Public Advocacy Section assumed the  
26 role formerly performed by the SAT.

<sup>4</sup>The pleading was filed in Dockets U-97-188 and U-97-200 although the motion to  
close docket was only filed in U-97-188.

<sup>5</sup>TA203-8 had not been filed or previously referenced in this proceeding.

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1 By Order U-97-188(4)/U-97-200(6), dated October 15, 1999, the  
2 Commission, among other things, suspended operation of the Agreement. The  
3 Commission also consolidated consideration of TA203-8 with these proceedings.  
4

5 By Order U-97-188(5)/U-97-200(7), dated January 3, 2000, the  
6 Commission, among other things, consolidated this matter with Docket U-97-200 and  
7 TA203-8 for oral argument. Oral argument convened, as scheduled, on  
8 January 19, 2000.

#### 9 Discussion

10 The Commission has considered the oral argument presented by the  
11 parties, reviewed the Settlement Agreement, and determined that the Settlement  
12 Agreement should be accepted. Acceptance of the Settlement Agreement is subject to  
13 the express condition that for the purpose of resolving electric supply sales issues in the  
14 future, no issue should be considered to have been finally determined or adjudicated by  
15 virtue of Commission acceptance of the Settlement.  
16

17 In particular, the Settlement provides that GVEA, Chugach, and ML&P  
18 desire to create an open market for certain nonfirm energy transactions. As such, the  
19 parties entered into an Amendatory Agreement No. 2 to the Agreement for the Sale and  
20 Purchase of Nonfirm Energy between Chugach and GVEA (Nonfirm Energy Agreement).  
21 The Nonfirm Energy Agreement defines certain terms such as "firm" and "nonfirm" power.  
22 The definition of those terms is found in the Nonfirm Energy Agreement as follows:  
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1                    SECTION 30. DEFINITIONS

2                    (k)(l) Firm Power means electric capacity and associated electric energy  
3                    which the seller is obligated by contract to provide to the buyer  
4                    without the right to interrupt delivery except as required by  
5                    Uncontrollable Force, and event of force majeure, or similar cause  
6                    outside the control of the seller.

7                    (k)(o) Nonfirm Energy. All electric energy to be sold and purchased under  
8                    this Agreement, and not other electric energy or electric capacity  
9                    regardless of the terms and conditions under which such other  
10                    energy or capacity is sold or purchased.

11                    The Agreement modifies the definition of those terms as follows:

12                    (f) [F]or purposes of this Agreement, any and all electric power  
13                    that GVEA obtains from generators owned by others shall be  
14                    considered 'nonfirm or economy or similar energy' and not  
15                    'Firm Power' unless the following conditions, as well as the  
16                    definition of 'Firm Power,' have been met:

- 17                    (1) The power will be generated by the capacity of a  
18                    machine or portion of the capacity of a machine that is  
19                    dedicated to the sale to GVEA and is in excess of any  
20                    requirement of the owner for generation or reserves;
- 21                    (2) For 'Firm Power' to be produced using ML&P's  
22                    generators, Chugach shall be provided either (A) a  
23                    ruling from the Internal Revenue Service that the  
24                    proposed contract is consistent with provisions of the  
25                    Internal Revenue Code applicable to ML&P's  
26                    generation and any tax-exempt financing thereof,  
                     together with a copy of ML&P's request for that ruling,  
                     or (B) an opinion by ML&P's bond counsel that such  
                     contract is consistent with such provisions, including a  
                     reasonable explanation of the basis for that opinion;  
                     and
- (3) GVEA shall have requested competitive proposals for  
                     the desired Firm Power and shall have selected the  
                     lowest cost responsive proposal.

                     The Commission recognizes that the definitions of "firm power" and "nonfirm  
power," as modified by the Agreement, have the potential for significantly altering the  
energy market in Alaska. The definitions determine the type and quantity of energy that

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1 can be sold and/or purchased in a given market. The definitions, as well as other  
2 provisions in the Agreement, also impact the price paid for that energy. In addition, those  
3 definitions have the potential for dictating resource management within a particular utility.  
4 According to the definitions, the usage of particular generation facilities can impact  
5 whether the power produced is categorized as firm or nonfirm.  
6

7 The Commission determined earlier in this Order that acceptance of the  
8 Settlement and approval of the Agreement will not be considered precedent in future  
9 proceedings. Because of the potential far-reaching impact of the definitions of firm and  
10 nonfirm power, the Commission finds it necessary to reiterate the limitations on these  
11 definitions. These definitions are applicable exclusively to the Settlement and Agreement  
12 and are not controlling in any other context. With the aforementioned conditions, the  
13 Commission has determined that the Agreement is reasonable and should be approved  
14 effective the date of this Order.  
15

16 On August 31, 1999, Chugach filed TA203-8 requesting that the  
17 Commission approve the Agreement. The Commission has reviewed TA203-8, and it  
18 appears that the sole relief sought in that filing is the same relief sought in Docket  
19 U-97-200 and this proceeding. The Commission has accepted the Settlement and  
20 approved the Agreement as discussed previously in this Order. Therefore, no further  
21 action should be required in TA203-8. The Commission vacates the suspension of  
22 TA203-8, and it is dismissed.  
23

24 This Order constitutes the final substantive decision by the Commission.  
25 This decision is appealable within thirty days of the date of this Order in accordance with  
26

1 AS 22.10.020(d) and the *Alaska Rules of Court*, Rules of Appellate Procedures, Rule  
2 602(a)(2). In addition to the appellate rights afforded by the aforementioned statute, a  
3 party may file a petition for reconsideration in accordance with 3 AAC 48.105. If such a  
4 petition is filed, the time period for filing an appeal is then calculated in accordance with  
5 *Alaska Rules of Court*, Rules of Appellate Procedure, Rule 602(a)(2).  
6

7 The Commission recognizes that there is one outstanding procedural  
8 matter. The motion to close docket will be addressed in a subsequent Order when no  
9 further matters could be considered in this Docket.  
10

11 **ORDER**

12 THE COMMISSION FURTHER ORDERS:

13 1. The Settlement Agreement filed on July 26, 1999, by Golden Valley  
14 Electric Association, Inc.; Chugach Electric Association, Inc.; and the Municipality of  
15 Anchorage d/b/a Municipal Light & Power, is accepted. Acceptance of the Settlement  
16 Agreement is subject to the express condition that for the purpose of resolving electric  
17 supply sales issues in the future, no issue should be considered to have been finally  
18 determined or adjudicated by virtue of acceptance of the Settlement Agreement.  
19

20 2. The Amendatory Agreement No. 2 to the Agreement for the Sale and  
21 Purchase of Nonfirm Energy between Chugach Electric Association, Inc., and Golden  
22 Valley Electric Association, Inc., filed on July 30, 1999, is approved effective the date of  
23 this Order.  
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3. The suspension of TA203-8 is vacated and TA203-8 is dismissed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 25<sup>th</sup> day of February, 2000.

BY DIRECTION OF THE COMMISSION  
(Commissioners James S. Strandberg and  
Patricia M. DeMarco, not participating.)



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## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and among GOLDEN VALLEY ELECTRIC ASSOCIATION, INC. ("GVEA"), CHUGACH ELECTRIC ASSOCIATION, INC. ("Chugach") and the MUNICIPALITY OF ANCHORAGE, d/b/a ANCHORAGE MUNICIPAL LIGHT & POWER ("ML&P").

### RECITALS:

WHEREAS, GVEA and Chugach are parties to the Chugach-GVEA Nonfirm Energy Agreement ("Nonfirm Energy Agreement") dated May 18, 1989; and

WHEREAS, on September 24, 1997, the APUC issued an Order authorizing GVEA to acquire the electric utility loads formerly served by Fairbanks Municipal Utilities System; and

WHEREAS, GVEA, Chugach and ML&P desire to create an open market for certain nonfirm energy transactions;

NOW, THEREFORE, in consideration of mutual covenants contained herein, the parties agrees as follows:

1. This Agreement shall become effective on the date when Amendatory Agreement No. 2 to Agreement for the Sale and Purchase of Nonfirm Energy between Chugach Electric Association, Inc. and Golden Valley Electric Association, Inc. ("Amended Chugach-Golden Valley Nonfirm Agreement") and this Agreement are approved by an Order of the Alaska Public Utilities Commission ("Commission") and upon approval by the Commission of payment by GVEA to ML&P for power previously delivered pursuant to the contract at issue in Docket No. U-97-200.

2. Golden Valley and Chugach have agreed to amend the Chugach-Golden Valley Nonfirm Agreement to permit GVEA to purchase a portion of its nonfirm energy requirements on the Economy Energy Spot Market in amounts representing nonfirm energy associated with GVEA's FMUS system acquisition.

3. Participation in the ~~competitive~~ market created by the Amended Chugach-Golden Valley Nonfirm Agreement will be open to, but not limited to, ML&P, Chugach, and such other electric utilities, independent power producers, power marketers, and other entities as may be willing and able to sell electric

energy to GVEA in accordance with applicable law and Commission regulations. A copy of the Amendatory Agreement No. 2 to Agreement for the Sale and Purchase of Nonfirm Energy between Chugach Electric Association, Inc. and Golden Valley Electric Association, Inc. is attached hereto.

4. Upon this Settlement Agreement becoming effective, the following proceedings and disputes shall be deemed to be settled by and among the parties, who will take appropriate steps to terminate such proceedings without request for any other action or relief from the court or the Commission, as the case may be:

- A. Chugach Electric Association, Inc. v. Golden Valley Electric Association, Inc., Case No. 3AN-97-8552CI;
- B. ML&P-GVEA Contract Docket U-97-200 before APUC; and
- C. A "FMUS Market - Nonfirm Energy Agreement" Docket U-97-188].

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or representatives.

GOLDEN VALLEY ELECTRIC ASSOCIATION,  
INC.

By: *Mike Kelly*

Title: *President + CEO*

CHUGACH ELECTRIC ASSOCIATION, INC.

By: *Eugene A. Bjornstad*

Title: *General Manager*

ANCHORAGE MUNICIPAL LIGHT & POWER

By: *[Signature]*

Title: *Municipal Manager*

AMENDATORY AGREEMENT NO. 2  
TO  
AGREEMENT FOR THE SALE AND PURCHASE OF NONFIRM ENERGY  
BETWEEN  
CHUGACH ELECTRIC ASSOCIATION INC.  
AND  
GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.  
Dated February 8, 1999

WHEREAS, Chugach Electric Association, Inc. ("Chugach") and Golden Valley Electric Association, Inc. ("GVEA") entered into an Agreement for the Sale and Purchase of Nonfirm Energy dated May 18, 1989 ("Agreement"); and

WHEREAS, Chugach and GVEA amended such Agreement by letter agreement dated January 18, 1996 (Tier II Agreement), and the Agreement and Tier II Agreement together constitute the current amended agreement ("Amended Agreement"); and

WHEREAS, Chugach and GVEA now wish to revise the various terms of the Amended Agreement;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the Parties agree as follows:

1. Section 5(b) is amended to read as follows:

(b) GVEA's Requirements for Nonfirm Energy. GVEA's requirements for Nonfirm Energy in any hour shall be the difference, expressed in kilowatt-hours (kWh), between (1) GVEA's overall system load (including sales of electric power at wholesale) and (2) the energy generated and delivered to GVEA from GVEA's Power Resources or purchased by GVEA on the Economy Energy Spot Market, in accordance with the final proviso of Section 5(c). For purposes of this Agreement, GVEA shall not schedule electric energy from its Power Resources in any hour except to the extent that Nonfirm Energy is not available to GVEA under this Agreement, or GVEA reasonably and in good faith determines that (1) the operation of a specific GVEA generating resource is necessary or prudent to provide system reserves, system stability, or other system reliability or security needs, or because transmission capacity for Nonfirm Energy is unavailable or limited; (2) the cost of Nonfirm Energy hereunder exceeds GVEA's cost of energy from GVEA's Power Resources; or (3) such energy is provided by a Qualifying Facility or from another resource from which GVEA is obligated by contract to accept delivery of such energy.

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February 3, 1999

2. Section 5(c) is amended to read as follows:

(c) Limitations On Other Purchases. In consideration of Chugach's agreement to sell Nonfirm Energy to GVEA on the basis of GVEA's requirements for Nonfirm Energy, rather than on the basis of specified maximum and/or minimum purchase amounts, and in furtherance of GVEA's intention that Chugach and Marathon rely on this Agreement in entering into the Marathon Contract, GVEA agrees that (1) GVEA will not enter into any new Firm Power purchase agreement that would reduce GVEA's purchases of Nonfirm Energy under this Agreement in the period prior to December 31, 1995, unless GVEA is required by law or by order of a regulatory agency to do so; (2) GVEA will not at any time purchase or otherwise obtain nonfirm or economy or other similar energy from other suppliers (except QFs), regardless of the price(s) at which such energy may be available to GVEA from such suppliers, if the effect of GVEA doing so would be to reduce GVEA's purchases of Nonfirm Energy under this Agreement; provided, that in addition to purchasing energy from QFs, GVEA shall be entitled to purchase particular increments of nonfirm, economy, or other similar energy from suppliers other than QFs if and to the extent that Chugach is unable to make Nonfirm Energy available to meet such increments of GVEA's requirements for Nonfirm Energy; and provided further, that whenever GVEA is entitled under Exhibit B (attached hereto and incorporated by reference herein) to purchase energy from another supplier in circumstances requiring such supplier to start up one or more generating units for GVEA, GVEA shall also be entitled to commit to such supplier that GVEA will purchase such energy produced by such units for some reasonable continuous period, not to exceed seventy-two (72) hours; and provided further, GVEA shall be entitled to purchase up to one-third (1/3rd) of the first 450,000,000 kilowatt-hours and twenty percent (20%) of amounts over 450,000,000 kWh of its annual requirement for nonfirm energy as Spot Market Economy Energy.

3. Section 5 is amended to add new subsections (d), (e) and (f) as follows:

(d) To the extent GVEA's purchases of nonfirm energy from Chugach in any calendar year are less than two-third (2/3rds) of GVEA's annual purchase of nonfirm energy from all sources, GVEA's purchase obligation in the succeeding year shall be increased by such amount; provided however, that GVEA shall operate in good faith under this Agreement to take in each year those amounts of nonfirm energy which it is capable, with a reasonable amount of care and planning, of taking from Chugach in fulfillment of GVEA's obligations under this Agreement.

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February 3, 1999

(e) From the energy that GVEA would otherwise have been entitled to purchase in the Economy Energy Spot Market, GVEA will instead purchase from Chugach on a one-time basis during the first twelve (12) months of this Settlement Agreement, under a mutually acceptable schedule, and in addition to any other purchases that GVEA is obligated or entitled to make from Chugach under the Nonfirm Energy Agreement, a quantity of energy equal to 9,236,000 kilowatt-hours. This represents energy that GVEA did not purchase from Chugach under the Nonfirm Energy Agreement in September and October of 1997 because GVEA instead took delivery of power from ML&P.

(f) For purposes of this Agreement, any and all electric power that GVEA obtains from generators owned by others shall be considered "nonfirm or economy or similar energy" and not "Firm Power" unless the following conditions, as well as the definition of "Firm Power," have been met:

- (1) The power will be generated by the capacity of a machine or portion of the capacity of a machine that is dedicated to the sale to GVEA and is in excess of any requirement of the owner for generation or reserves;
- (2) For "Firm Power" to be produced using ML&P's generators, Chugach shall be provided either (A) a ruling from the Internal Revenue Service that the proposed contract is consistent with provisions of the Internal Revenue Code applicable to ML&P's generation and any tax-exempt financing thereof, together with a copy of ML&P's request for that ruling, or (B) an opinion by ML&P's bond counsel that such contract is consistent with such provisions, including a reasonable explanation of the basis for that opinion; and
- (3) GVEA shall have requested competitive proposals for the desired Firm Power and shall have selected the lowest cost responsive proposal.

4. Section 7(a) is amended to read as follows:

(a) In General. Except as provided in the Tier II Agreement, rates for the sale and purchase of Nonfirm Energy and any Spot Market Economy Energy sold by Chugach shall be established in accordance with this Section 7 and with the provisions of Exhibits B, C, and E attached hereto and incorporated by reference herein; provided that for hours GVEA requests proposals for Spot

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February 3, 1999

Market Economy Energy and suppliers other than Chugach offer sales of incremental generation from otherwise operating generation facilities in quantities sufficient to meet GVEA's request, Chugach may elect to offer Spot Market Economy Energy at such price as Chugach determines.

For purposes of determining the application of Tier I and Tier II pricing under the Tier II Agreement, sales by Chugach for "FMUS loads" shall be deemed to be any GVEA purchases of Spot Market Economy Energy from Chugach. In addition, pursuant to the Tier II Agreement, all GVEA purchases of nonfirm energy other than from Chugach's spinning reserves shall continue to be Tier II purchases, as set forth in the Tier II Agreement.

5. Section 7(b) is amended to read as follows:

(b) Nonfirm Energy Rate. Except as provided in Section 7(a), the rate per kWh for all Nonfirm Energy or Spot Market Economy Energy sold by Chugach in any given day . . . .

6. Section 10 is amended to add new subsections (c) and (d) as follows:

(c) GVEA and Chugach dispatchers will coordinate with any other entities desiring to make sales in the Economy Energy Spot Market to maximize availability of Spot Market Economy Energy and Nonfirm Energy to GVEA.

(d) Subject to GVEA's purchase obligations under this Agreement and to Section 10(c) above, GVEA shall decide the final schedule for purchases from Chugach and the Economy Energy Spot Market.

7. Section 30 is amended to add the following definitions:

(i)(2) Economy Energy Spot Market. The market of nonfirm energy suppliers for sales to GVEA other than GVEA's required purchases from Chugach under this Agreement. The Economy Energy Spot Market shall be a competitive market open to participation by any and all qualified sellers on a fair and non-discriminatory basis. Such sellers shall include, but not necessarily be limited to, Chugach, ML&P, and such other electric utilities, independent power producers, power marketers, and other entities as may be willing and able to sell electric power to GVEA in accordance with applicable law and Commission regulations.

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February 3, 1999

(w)(2) Spot Market Economy Energy. Energy purchased by GVEA in the Economy Energy Spot Market.

CHUGACH ELECTRIC ASSOCIATION, INC.

Dated: February 8, 1999

By: Eugene N. Bjornstad  
Eugene N. Bjornstad, General Manager

GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.

Dated: February 5, 1999

By: Michael P. Kelly  
Michael P. Kelly, President & CEO

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair  
Bernie Smith  
Patricia M. DeMarco  
Will Abbott  
James S. Strandberg

In the Matter of the Investigation into the Effect )  
of the Nonfirm Energy Agreement Between )  
GOLDEN VALLEY ELECTRIC ASSOCIATION, )  
INC., and CHUGACH ELECTRIC ASSOCIA- )  
TION, INC., on the Acquisition by GOLDEN )  
VALLEY ELECTRIC ASSOCIATION, INC., of )  
the Electrical System Formerly Owned by the )  
CITY OF FAIRBANKS d/b/a FAIRBANKS )  
MUNICIPAL UTILITIES SYSTEM )

U-97-188

CERTIFICATION OF MAILING

I, Joyce McGowan, certify as follows:

I am Administrative Supervisor in the offices of the Regulatory

Commission of Alaska, 1016 West Sixth Avenue, Suite 400, Anchorage, Alaska 99501.

On February 29, 2000, I mailed copies of

ORDER NO. 6, entitled:

ORDER ACCEPTING SETTLEMENT AGREEMENT,  
SUBJECT TO CONDITIONS; APPROVING AMENDATORY AGREEMENT;  
VACATING SUSPENSION OF TA203-8; AND DISMISSING TA203-8

(Issued February 25, 2000)

in the proceeding identified above to the persons indicated on the attached service list.

DATED at Anchorage, Alaska, this 29th day of February, 2000.

Joyce McGowan

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SERVICE LIST  
U-97-188

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**COURTESY LIST**  
**U-97-188**

**February 28, 2000**  
**Page 2 of 3**

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**U-97-188**

**February 28, 2000**  
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