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SECRETARY OF STATE
STATE OF MISSOURI

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MATTHEW D. KITZI
COMMISSIONER OF SECURITIES
(573) 751-4136

September 1, 2010

VIA FACSIMILE & U.S. MAIL

Herbert J. Short
Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, GA 30309-3996

Re: Request for a No-Action Determination under Section 409.6-605(d), RSMo.
Missouri File No. R2010-1332

Dear Mr. Short,

This letter responds to your June 29, 2010 letter in which you asked for no-action relief in connection with an offering of investment grade bonds from Oglethorpe Power Corporation. Specifically, you asked this office to confirm that it will not institute enforcement proceedings if Oglethorpe does not, as otherwise required by the Missouri Securities Act of 2003, register its offering of securities in this State and instead relies upon an exemption under section 409.2-201(5), RSMo (Cum. Supp. 2009). A copy of your letter has been enclosed for your reference.

Based solely on the representations you made in the enclosed letter, the Commissioner will take no action against Oglethorpe if it commences the proposed offering in Missouri. This "no-action" position does not constitute an exclusion from the anti-fraud provisions of the Missouri Securities Act of 2003. This position is based on the facts presented, and, should the facts prove to differ from those presented in any manner, the position of the Commissioner may differ. This determination is applicable only to the matter at hand and the specific facts related to the same by the requesting party. This determination sets no precedent and is no way binding on the Commissioner when applied to any other matter, requesting party, or set of facts.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew D. Kitzi".

Matthew D. Kitzi
Commissioner of Securities

Encl.



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SECURITIES DIVISION

June 29, 2010

JUN 30 2010

MISSOURI
SECRETARY OF STATE

VIA FEDERAL EXPRESS

Secretary of State
Securities Division
Attention: Interpretive Opinion
600 W. Main Street
P.O. Box 1276
Jefferson City, MO 65012

COPY

Re: Oglethorpe Power Corporation (An Electric Membership Corporation) –
Request for Interpretive Opinion or No-Action Position

Dear Sir or Madam:

We are writing on behalf of Oglethorpe Power Corporation (An Electric Membership Corporation) to request an interpretive opinion or no-action position from the staff of your office with respect to the applicability of the public utility exemption contained in § 409.2-201(5) of the Missouri Revised Statutes (the "*Public Utility Exemption*") to the proposed offer and sale in your state by Oglethorpe Power, including through one or more registered broker-dealers, of investment grade first mortgage bonds registered on a Form S-3 registration statement with the Securities and Exchange Commission. Enclosed with this request letter is the \$100.00 mandatory filing fee.

I. Factual Background

A. General

Oglethorpe Power is a Georgia electric membership corporation that was incorporated in 1974 under Title 46 – Public Utilities and Public Transportation of the Georgia Code.¹ Oglethorpe Power is owned by 39 retail electric distribution cooperative members. Its principal business is providing wholesale electric power to its members. As with cooperatives generally, Oglethorpe Power operates on a not-for-profit basis. Oglethorpe Power is the largest electric cooperative in the United States in terms of assets, kilowatt-hour sales to members and, through

¹ See Ga. Code Ann. § 46-3-200.

Interpretive Opinion 1303-09

CV# 57700

Simon

its members, consumers served. Oglethorpe Power is also the second largest power supplier in the state of Georgia.

B. Cooperative Principles

Cooperatives like Oglethorpe Power are business organizations owned by their members, which are also either their wholesale or retail customers. As not-for-profit organizations, cooperatives are intended to provide services to their members at the lowest possible cost, in part by eliminating the need to produce profits or a return on equity. Cooperatives may make sales to non-members, the effect of which is generally to reduce costs to members. Today, cooperatives operate throughout the United States in such diverse areas as utilities, agriculture, irrigation, insurance and credit. A utility cooperative is a type of cooperative that is tasked with the delivery of a public utility such as electricity, water or telecommunications to its members.

All cooperatives are based on similar business principles and legal foundations. Generally, an electric cooperative designs its rates to recover its cost-of-service and to collect a reasonable amount of revenues in excess of expenses, which constitutes margins. The margins increase patronage capital, which is the equity component of a cooperative's capitalization. These margins are considered capital contributions (that is, equity) from the members and are held for the accounts of the members and returned to them when the board of directors of the cooperative deems it prudent to do so. The timing and amount of any actual return of capital to the members depends on the financial goals of the cooperative and the cooperative's loan and security agreements.

C. Wholesale Power Contracts and Rate Regulation

Oglethorpe Power provides wholesale electric service to its members pursuant to long-term, take-or-pay wholesale power contracts. The wholesale power contracts obligate Oglethorpe Power's members jointly and severally to pay rates sufficient for it to recover all the costs of owning and operating its power supply business, including the payment of principal and interest on its indebtedness. These rates are established in a formulary rate set forth in a rate schedule to the wholesale power contracts. Each of Oglethorpe Power's wholesale power contracts with its 39 members was approved by the Rural Utilities Service, an agency of the United States Department of Agriculture charged with providing public utilities (e.g., electricity, telephone, water and sewer) to rural areas in the United States, and any changes to the wholesale power contract and the rate schedule in the wholesale power contracts are generally subject to Rural Utilities Service approval. The Rural Utilities Service also has approval rights over certain other significant actions and arrangements of Oglethorpe Power, including, without limitation, the following:

- significant additions to or dispositions of system assets,
- significant power purchase and sale contracts,

- changes to plant ownership and operating agreements,
- amounts of short-term debt outstanding exceeding 30% of its total utility plant through December 31, 2014 and 15% of total capitalization thereafter, and
- in limited circumstances, issuance of additional secured and unsecured debt.

These approval rights are contained in a loan agreement that Oglethorpe Power initially entered into with the Rural Utilities Service (formerly known as the Rural Electrification Administration) in the 1970s, which agreement has been subsequently amended and restated over the years.

In the event that Oglethorpe Power repays all \$1.7 billion outstanding under the loan agreement with the Rural Utilities Service and terminates such agreement, then the formulary rate set forth in the rate schedule to Oglethorpe Power's wholesale power contracts with each of its 39 members will be required to be filed with, and accepted by, the United States Federal Energy Regulatory Commission. At this time, Oglethorpe Power does not have any intention on terminating its participation in the loan programs administered by the Rural Utilities Service.

D. SEC Reporting History and Form S-3 Registration Statement

Oglethorpe Power is subject to the reporting requirements under the Securities Exchange Act of 1934 and has filed reports thereunder since 1986. On May 27, 2010, Oglethorpe Power filed a registration statement on Form S-3 (File No. 333-167135) with the SEC in connection with its proposed offer and sale from time to time of investment grade first mortgage bonds in one or more transactions up to an aggregate principal amount of \$1 billion. The first mortgage bonds will be secured equally and ratably under Oglethorpe Power's mortgage indenture by a lien on substantially all of its tangible and some of its intangible assets, including those it acquires in the future. The SEC staff has informed Oglethorpe Power that the SEC staff is in a position to accelerate the effectiveness of the registration statement on Form S-3 upon Oglethorpe Power's submission of an acceleration request to do so. However, in order to maintain the option of using the registration by coordination process if it needs to do so, Oglethorpe Power has decided to delay the submission of such an acceleration request to the SEC staff until it has received a response from your office with respect to the request set forth herein. For your convenience, we have attached a letter that Oglethorpe Power received from the SEC staff to the effect set forth above.

II. Request for Interpretive Opinion or No-Action Position

Because the offer and sale of the first mortgage bonds by Oglethorpe Power will not fall within the definition of a "covered security" under Section 18 of the Securities Act of 1933, Oglethorpe Power will need to register (by coordination, qualification or other appropriate means) the offer and sale of the first mortgage bonds in your state or avail itself to an exemption from such registration requirement. In this regard, we believe that the offer and sale of the first mortgage bonds by Oglethorpe Power (or other bonds that it may issue in the future) should fall

within the Public Utility Exemption because Oglethorpe Power is a public utility that is regulated in respect of its rates by an agency of the United States (i.e., the Rural Utilities Service). However, given that the rate regulation of Oglethorpe Power by the Rural Utilities Service differs somewhat from the conventional notion of rate regulation, we request that your office issue an interpretive opinion to the effect that Oglethorpe Power may rely on the Public Utility Exemption in connection with the offer and sale of its bonds, including the first mortgage bonds, in your state. Alternatively, we request assurance that your office would not take enforcement action against Oglethorpe Power if it were to offer and sell its bonds, including the first mortgage bonds, in your state in reliance on the Public Utility Exemption.

The conventional notion of rate regulation is that in which the government or representatives of the government regulate rates charged to consumers in order to:

- protect consumers from excessive or unreasonable rates;
- ensure that basic rates are fixed at low costs to make them accessible for people of low income; and
- prevent collusion or price fixing among companies which charge rates for their services.

Some examples of industries which may be subject to rate regulation include: insurance, electric utilities, and cable companies. In these industries, schedules of rates are subject to review by government representatives who can determine whether or not the rates are fair, or if the rates meet the standards set by the government. Companies which violate rate regulation standards may be fined.

Conversely, rate regulation of Oglethorpe Power by the Rural Utilities Service is directed at ensuring that Oglethorpe Power is able to repay loans made to it by the Rural Utilities Service to fund electricity service projects. This rate regulation is accomplished by the requirement in Oglethorpe Power's loan agreement with the Rural Utilities Service that any changes to the wholesale power contracts that Oglethorpe Power has with its members, including the rate schedule contained in the wholesale power contracts, be approved by the Rural Utilities Service. We believe that the form of rate regulation to which Oglethorpe Power is subjected by the Rural Utilities Service is consistent with the investor protection purpose of your state's securities laws. In this regard, the rate schedule set forth in the wholesale power contracts is intended to ensure that Oglethorpe Power collects rates from its members in amounts sufficient for it to, among other things, pay the principal and interest on its indebtedness, including any bonds sold in your state. As a result, rate regulation by the Rural Utilities Service of Oglethorpe Power will inure to the benefit of the purchasers of the bonds, including the first mortgage bonds, sold in your state (as opposed to the more conventional notion of rate regulation which is intended to protect the consumers of the public utility).

In addition, it is important to highlight that the SEC staff has held in a number of no-action letters that the role of the Rural Electrification Administration, which is now known as the

transactions from Rule 7(d)(1)(C) under the Public Utility Holding Company Act of 1935.² In particular, Rule 7(d)(1)(C) provided that “[a] company shall not be deemed to be an electric utility company . . . [p]rovided, [t]hat: . . . [t]he terms of the lease have been expressly authorized or approved by a regulatory authority having jurisdiction over **the rates and service of the public utility company** which leases such facility.” [Emphasis added.] We believe that these SEC no-action letters further support our position that the rate regulation by the Rural Utilities Service, formerly known as the Rural Electrification Administration, of Oglethorpe Power should be sufficient to permit Oglethorpe Power to avail itself to the Public Utility Exemption in connection with the offer and sale of bonds in your state. For your convenience, we have attached the above-referenced SEC no-action letters hereto.

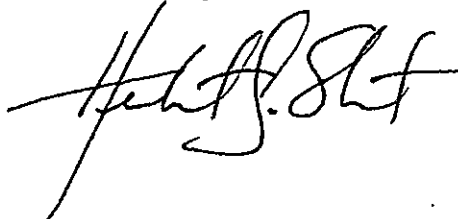
III. Conclusion

Accordingly, for the reasons set forth in this letter, we believe that it is appropriate for your office to issue an interpretive opinion to the effect that Oglethorpe Power may rely on the Public Utility Exemption in connection with the offer and sale by Oglethorpe Power or registered broker-dealers acting on its behalf of Oglethorpe Power’s bonds, including the first mortgage bonds, in your state. Alternatively, we request assurance that your office would not take enforcement action against Oglethorpe Power, or any registered broker-dealer acting on its behalf, in connection with the offer and sale of Oglethorpe Power’s bonds, including the first mortgage bonds, in your state in reliance on the Public Utility Exemption. For your convenience, we have attached a form of interpretive opinion and no-action letter response hereto.

* * *

In the event that any member of your office desires additional information or has questions concerning this request, he or she should contact the undersigned at 404.853.8491 or Darryl Smith at 404.853.8060.

Sincerely,



² See SEC No-Action Letters Issued to Square Butte Electric Cooperative (February 14, 1975); Basin Electric Power Cooperative (May 9, 1983); Seminole Electric Cooperative, Inc. (November 23, 1984); and Oglethorpe Power Corporation (January 27, 1986).