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August 12, 2014

RECEIVED

AUG 12 2014

**PUBLIC SERVICE
COMMISSION**

Via Hand-Delivery

Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: In the Matter of: The Application of Duke Energy Kentucky Inc.
For Authorization to Enter Into a Transaction and Agreement with
an Affiliate or, in the Alternative, Approval of Deviations from the
Requirements of KRS 278.2207 and KRS 278.2213(6)
PSC Case No. 2014-_____

Dear Mr. Derouen:

Enclosed please find for filing with the Commission in the above-referenced case an original and ten (10) copies of Duke Energy Kentucky, Inc.'s Application For Authorization to Enter Into a Transaction and Agreement with an Affiliate or, in the Alternative, Approval of Deviations from the Requirements of KRS 278.2207 and KRS 278.2213(6). Please return a file-stamped copy to me.

Do not hesitate to contact me if you have any questions.

Very truly yours,

David S. Samford

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 12 2014

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

**THE APPLICATION OF DUKE ENERGY)
KENTUCKY, INC. FOR AUTHORIZATION)
TO ENTER INTO A TRANSACTION AND)
AGREEMENT WITH AN AFFILIATE)
OR, IN THE ALTERNATIVE, APPROVAL OF)
DEVIATIONS FROM THE REQUIREMENTS OF)
KRS 278.2207 AND KRS 278.2213(6))**

PSC CASE NO. _____

APPLICATION

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by and through counsel, pursuant to KRS 278.2207, KRS 278.2219, KAR 5:001, Section 14, and other applicable law, and for its Application requesting that the Kentucky Public Service Commission (Commission) enter an Order authorizing the Company to enter into a transaction and agreement with its affiliate, Duke Energy Miami Fort, LLC (Duke Energy Miami Fort), related to the continued operation of the Company's Miami Fort Unit 6 (MF6) generator or, in the alternative, approving deviations from the requirements prescribed in KRS 278.2207 and KRS 278.2213 associated with transactions among affiliates, Duke Energy Kentucky respectfully pleads as follows:

I. INTRODUCTION

1. Duke Energy Kentucky is an investor-owned utility engaged in the business of furnishing natural gas and electric services to various municipalities and unincorporated areas in

Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton Counties in the Commonwealth of Kentucky.

2. Pursuant to 807 KAR 5:001, Section 14(1), Duke Energy Kentucky states that its business address is 139 East Fourth Street, Cincinnati, Ohio 45202, and that its local office in Kentucky is located at Duke Energy Envision Center, 4580 Olympic Boulevard, Erlanger, Kentucky 41018. The Company further states that its electronic mail address for purposes of this matter is KYfilings@duke-energy.com.

3. Pursuant to 807 KAR 5:001, Section 14(2), Duke Energy Kentucky states that it was originally incorporated in the Commonwealth of Kentucky on March 20, 1901, and attests that it is currently in good standing in said Commonwealth.

4. Duke Energy Miami Fort is a Delaware limited liability company formed on May 31, 2012. Duke Energy Miami Fort is an affiliate of Duke Energy Kentucky.

II. BACKGROUND

5. MF6 is a coal-fired base/intermediate load generating unit with a turbine nameplate capacity of 168 MW and a net installed capacity of 163 MW. MF6 was commissioned in 1960 and is one of three coal-fired units currently operating at the Miami Fort Station located in North Bend, Hamilton County, Ohio.¹

6. On or about December 5, 2003, in Case No. 2003-00252, the Commission approved Duke Energy Kentucky's acquisition of MF6 (as well as two other generating stations)

¹ The proposed agreement for which approval is sought in this matter directly concerns only MF6; the other two generating units located at the Miami Fort Station, known as Unit 7 and Unit 8 (MF7 and MF8), are co-owned by Duke Energy Commercial Asset Management and The Dayton Power & Light Company (DP&L). However, MF6 does share coal handling and fuel oil storage systems, as well as other equipment, with MF7 and MF8, and MF7 and MF8 are operated by Duke Energy Miami Fort under a separate agreement with the owners of those units. The need for the relevant proposed agreement between Duke Energy Miami Fort and Duke Energy Kentucky is occasioned by, in part, the anticipated disposition of MF7 and MF8 by their owners. *See* numerical paragraph 11, *supra*.

from Duke Energy Ohio, Inc. (Duke Energy Ohio).² Duke Energy Kentucky remains the sole owner of MF6 at present.

7. On or about January 25, 2006, Duke Energy Kentucky (f/k/a The Union Light, Heat and Power Company (ULH&P)) and Duke Energy Miami Fort (as successor by assignment to The Cincinnati Gas & Electric Company (CG&E)) entered into that certain Miami Fort Unit 6 Operation Agreement (the Original Agreement), pursuant to which Duke Energy Miami Fort was retained by Duke Energy Kentucky to provide services relating to the operation and maintenance of MF6.³ The Original Agreement had an initial term of twenty (20) years⁴ and required Duke Energy Kentucky to reimburse Duke Energy Miami Fort for any and all expenses and costs, including applicable overheads, incurred by Duke Energy Miami Fort under the terms of the agreement.⁵

8. As detailed in the following Section III, *supra*, the circumstances that surround MF6 and related units MF7 and MF8 have materially changed since the Original Agreement was drafted and executed nearly a decade ago. In order to address certain existing and anticipated developments, and to ensure that a detailed and comprehensive operation agreement is in place between Duke Energy Kentucky and the operator of MF6 (whether said operator is Duke Energy Miami Fort or some other affiliated or unaffiliated party), the Original Agreement requires amendment. To that end, Duke Energy Kentucky and Duke Energy Miami Fort have negotiated and drafted a proposed Amended and Restated Miami Fort Unit 6 Operation Agreement (the

² *In the Matter of the Application of The Union Light, Heat, and Power Company for a Certificate of Public Convenience and Necessity to Acquire Certain Generation Resources and Related Property, for Approval of Certain Accounting Treatment, and for Approval of Deviation from Requirements of KRS 278.2207 and 278.2213(6)*, Case No. 2003-00252, Order (December 5, 2003). The asset acquisition was completed on January 25, 2006.

³ A copy of the Original Agreement is attached hereto and incorporated herein as Exhibit 1.

⁴ See Exhibit 1, at Section E., paragraph 1.

⁵ See Exhibit 1, at Section D.

Amended and Restated Agreement).⁶ Duke Energy Kentucky seeks Commission authorization to enter into this transaction and agreement.

III. CONSIDERATIONS THAT PRECIPITATED THE AMENDED AND RESTATED AGREEMENT

A. Anticipated Retirement of MF6

9. When the Commission approved Duke Energy Kentucky's acquisition of MF6 in 2003, MF6 was estimated as having a remaining useful life of approximately seventeen (17) years, or through 2020.⁷ However, as discussed in Duke Energy Kentucky's 2011 Integrated Resource Plan (IRP), the need to conform with new federal environmental compliance regulations—in particular, the Mercury and Air Toxics Standards (MATS) rule—may necessitate the early retirement of MF6.⁸ Duke Energy Kentucky continues to evaluate whether and when MF6 should be retired.⁹

10. Unlike the Original Agreement, the proposed Amended and Restated Agreement contemplates the possible retirement of MF6 in the foreseeable future.¹⁰ The proposed Amended

⁶ A copy of the proposed Amended and Restated Agreement is attached hereto and incorporated herein as Exhibit 2.

⁷ See note 2, *supra*.

⁸ *In the Matter of Duke Energy Kentucky's 2011 Integrated Resource Plan*, Case No. 2011-00235 (July 1, 2011). At the time of the filing of Duke Energy Kentucky's IRP in 2011, the MATS regulation was assumed to be effective January 1, 2015. Now, the MATS regulation is currently scheduled to become effective April 15, 2015. On or about December 12, 2013, Duke Energy Kentucky obtained a 45-day extension of compliance to align with the planning year cycle of PJM. As such, MF6 must either retire or comply with MATS by June 1, 2015.

⁹ In light of the fact the MF6 may be economically retired by June 1, 2015 (due to the MATS rule) or otherwise as early as approximately 2020 (due to a suite of other pending federal environmental regulations and station age), Duke Energy Kentucky has recently applied to the Commission for approval to acquire DP&L's interest in the East Bend Unit 2 Generating Station. See *In the Matter of the Application of Duke Energy Kentucky, Inc., For (1) A Certificate of Public Convenience And Necessity Authorizing the Acquisition of the Dayton Power & Light Company's 31% Interest in the East Bend Generating Station; (2) Approval of Duke Energy Kentucky, Inc.'s Assumption of Certain Liabilities in Connection with the Acquisition; (3) Deferral of Costs Incurred as Part of the Acquisition; and (4) All Other Necessary Waivers, Approvals, and Relief*, Case No. 2014-00201 (filed June 24, 2014).

¹⁰ See, e.g., Exhibit 2, at Section 3.2.

and Restated Agreement also specifically delineates the services that are to be performed by the operator of MF6 upon and after the unit's retirement, should that event occur.¹¹

B. Anticipated Sale of MF7 and MF8

11. Duke Energy Kentucky anticipates that MF7 and MF8 will be sold by their current majority owner, Duke Energy Commercial Asset Management, to an unaffiliated third party or parties in the foreseeable future. This conclusion is based on the known desire of Duke Energy Corporation (of which Duke Energy Commercial Asset Management is a subsidiary) to divest itself of its non-regulated generation fleet. Upon the sale of MF7 and MF8, it is anticipated that the agreement pursuant to which Duke Energy Miami Fort operates and maintains those units will be assumed by the purchaser(s) of MF7 and MF8 or an operator chosen by said purchaser(s). In order to retain uniformity and economies of scale, and in light of the interrelated nature of MF6, MF7, and MF8, it is also anticipated that the proposed Amended and Restated Agreement pursuant to which Duke Energy Miami Fort may operate and maintain MF6 would be assumed by the purchaser of MF7 and MF8 or an operator chosen by said purchaser(s).

12. Unlike the Original Agreement, which restricted the assignment thereof to only affiliated entities,¹² the proposed Amended and Restated Agreement permits the assignment thereof to any entity (i) upon attainment of the non-assigning party's written consent, which consent may not be unreasonably withheld or delayed; or (ii) without the non-assigning party's consent under certain delineated circumstances.¹³

¹¹ See Exhibit 2, Appendix A.

¹² See Exhibit 1, at Section E., paragraph 5.

¹³ See Exhibit 2, at Section 14.1.

13. The proposed Amended and Restated Agreement also contains several commercially-reasonable provisions that were either unnecessary or less specific in the Original Agreement. For example, the proposed Amended and Restated Agreement contains terms related to the payment of fees,¹⁴ insurance,¹⁵ confidentiality,¹⁶ force majeure,¹⁷ and termination,¹⁸ each of which were omitted from the Original Agreement. Moreover, the Amended and Restated Agreement expounds upon nearly every term of the Original Agreement, including those related to procurement,¹⁹ standards of performance,²⁰ budgeting,²¹ records management and retention,²² reimbursement of costs and expenses,²³ indemnification,²⁴ respective liabilities,²⁵ dispute resolution,²⁶ and representations and warranties.²⁷

¹⁴ See Exhibit 2, at Sections 7.5.

¹⁵ See Exhibit 2, Article IX.

¹⁶ See Exhibit 2, Article XII.

¹⁷ See Exhibit 2, Section 14.6.

¹⁸ See Exhibit 2, at Sections 8.2 through 8.6.

¹⁹ See Exhibit 2, at Section 3.3 (as compared to Exhibit 1, Section C).

²⁰ See Exhibit 2, at Section 3.4 (as compared to Exhibit 1, Section C).

²¹ See Exhibit 2, at Section 5.3 (as compared to Exhibit 1, at Section D, paragraphs 4 and 5).

²² See Exhibit 2, at Section 5.7 (as compared to Exhibit 1, at Section E, paragraph 4).

²³ See Exhibit 2, at Sections 7.2 and 7.3 (as compared to Exhibit 1, Section D).

²⁴ See Exhibit 2, Article X (as compared to Exhibit 1, at Section D, paragraph 6).

²⁵ See Exhibit 2, Article XI (as compared to Exhibit 1, Section D).

²⁶ See Exhibit 2, at Section 14.7 (as compared to Exhibit 1, at Section E, paragraph 6).

²⁷ See Exhibit 2, at Sections 14.12 and 14.13 (as compared to Exhibit 1, at Section D, paragraph 3).

IV. REQUEST FOR AUTHORIZATION TO ENTER INTO AN AFFILIATE TRANSACTION UNDER KRS 278.2207(1)(b) AND KRS 278.2213(6) OR, IN THE ALTERNATIVE, APPROVAL OF DEVIATIONS PURSUANT TO KRS 278.2207(2) AND KRS 278.2219

14. KRS 278.2207(1)(b) provides that “[s]ervices and products provided to the utility by an affiliate shall be priced at the affiliate’s fully distributed cost but in no event greater than market or in compliance with the utility’s existing USDA, SEC, or FERC approved cost allocation methodology.”

15. Pursuant to the proposed Amended and Restated Agreement, the Company will pay to Duke Energy Miami Fort (or fund, as applicable) all Reimbursable Costs and Operating Costs (as those terms are defined in the proposed Amended and Restated Agreement).²⁸

16. The Company respectfully submits that during the period under which the proposed Amended and Restated Agreement is in effect and Duke Energy Miami Fort remains an affiliate of Duke Energy Kentucky, the pricing of the services provided by Duke Energy Miami Fort pursuant to the proposed Amended and Restated Agreement satisfies and complies with the provisions of KRS 278.2207(1)(b). The price to be paid by the Company for Duke Energy Miami Fort’s services match Duke Energy Miami Fort’s fully distributed cost, and there is no reason to believe that the price to be paid will be greater than market.²⁹

17. In the event that the price to be paid by the Company pursuant to the proposed Amended and Restated Agreement is deemed noncompliant with KRS 278.2207(1)(b), the

²⁸ See Exhibit 2, Article VII. It is contemplated that upon the sale of Duke Energy Miami Fort to an unaffiliated third party, that said third party will assume responsibility for the proposed Amended and Restated Agreement and that said third party will be paid their Reimbursable Costs and Operating Costs as well as an additional fee for providing the services contemplated by the agreement.

²⁹ If and when Duke Energy Miami Fort is sold to an unaffiliated third party and the services provided under the proposed Amended and Restated Agreement are no longer between affiliates, the addition of a fee is anticipated to provide a reasonable return for the third party to provide the enumerated services, whereas under the arrangement while an affiliate, Duke Energy Miami Fort is merely recovering its costs. Duke Energy Kentucky respectfully submits that a third party would be unwilling to provide the numerated services at cost and without reasonable compensation.

Company respectfully requests a deviation from the requirements of the statutory section pursuant to KRS 278.2207(2). The proposed Amended and Restated Agreement provides that there shall be no mark-up to either Reimbursable Costs or Operation Costs (as those terms are defined in the proposed Amended and Restated Agreement),³⁰ and every aspect of the requested pricing is reasonable. Moreover, the Commission and intervening parties to the Company's future rate cases will have access to the Company's books with respect to the matters addressed by the proposed Amended and Restated Agreement, and thus the costs incurred and the capital expended on MF6 will be fully transparent. Because the proposed Amended and Restated Agreement is designed to ensure the continued preservation of Duke Energy Kentucky's valuable MF6 asset and, in turn, protect Duke Energy Kentucky's ratepayers, the reasonable requested pricing associated with the proposed Amended and Restated Agreement is in the public interest.

18. KRS 278.2213(6) provides that "[a]ll dealings between a utility and a nonregulated affiliate shall be at arm's length." Pursuant to KRS 278.010(25), "arm's length" is defined as "the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction."

19. The Company respectfully submits that the proposed Amended and Restated Agreement represents an arms-length transaction between the Company and Duke Energy Miami Fort. Although the proposed Amended and Restated Agreement did not result from a competitive-bid or other solicitation process, the terms of the agreement are commercially reasonable and are consistent with those previously approved by this Commission as it relates to the current operation of MF6.

³⁰ See Exhibit 2, Sections 7.2 and 7.3.

20. In the event that the proposed Amended and Restated Agreement is deemed noncompliant with KRS 278.2213(6), the Company respectfully requests a deviation from the requirements of the statutory section pursuant to KRS 278.2219. In order to retain uniformity and economies of scale, and in light of the interrelated nature of MF6, MF7, and MF8, it is reasonable and necessary to maintain the working relationship between the Company and Duke Energy Miami Fort with respect to MF6. Additionally, attempting to undertake a competitive bidding process for the operation and maintenance of MF6, particularly in light of the anticipated retirement of the facility and the anticipated sale of MF7 and MF8 in the foreseeable future, would be unduly complicated, costly, and likely result in no appreciable benefit for the Company or its ratepayers.

21. Because Duke Energy Kentucky's counterparty with respect to the proposed Amended and Restated Agreement may, in the foreseeable future, be an unaffiliated third party, the importance of the proposed Amended and Restated Agreement's clarity and detail with respect to the rights and obligations of the parties thereto cannot be understated. Duke Energy Kentucky respectfully submits that the requisite clarity and detail has been achieved within the proposed Amended and Restated Agreement.

22. In consideration of the forgoing, the Company respectfully requests that the Commission authorize it to enter into the proposed Amended and Restated Agreement and adjudge same a statutorily-compliant affiliate transaction or, in the alternative, approve the deviations requested herein above.

V. CONCLUSION

WHEREFORE, on the basis of the foregoing, the Company respectfully requests that the Commission issue an Order:

(1) Pursuant to KRS 278.2207(1)(b) and KRS 278.2213(6), AUTHORIZING Duke Energy Kentucky to enter into the affiliate transaction described herein or, in the alternative, GRANTING deviations pursuant to KRS 278.2207(2) and KRS 278.2219, as described herein; and

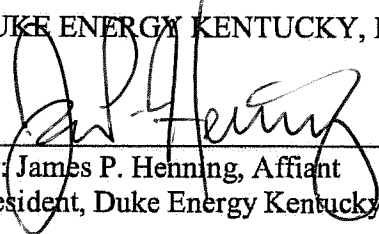
(2) AWARDING to the Company such other or additional relief to which it may appear entitled.

VERIFICATION

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The undersigned, James P. Henning, being duly sworn, deposes and states that he is the President of Duke Energy Kentucky, Inc., that he has personal knowledge of the matters set forth in the foregoing, and that the information contained therein is true and correct to the best of his knowledge, information and belief.

DUKE ENERGY KENTUCKY, INC.


By: James P. Henning, Affiant
President, Duke Energy Kentucky, Inc.

Subscribed and sworn to before me by James P. Henning, President of Duke Energy Kentucky, Inc., on this 12TH day of AUGUST, 2014.

ADELE M. FRISCH
Notary Public, State of Ohio
My Commission Expires 01-05-2019


NOTARY PUBLIC

My Commission Expires: 1/5/2019

Respectfully submitted,



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LIST OF EXHIBITS

Item	Exhibit
Miami Fort Unit 6 Operation Agreement (d. 01/25/06)	1
Proposed Amended and Restated Miami Fort Unit 6 Operation Agreement	2

MIAMI FORT UNIT 6 OPERATION AGREEMENT

Between

THE CINCINNATI GAS & ELECTRIC COMPANY

and

THE UNION LIGHT, HEAT AND POWER COMPANY

#122003v6 Miami Fort Operation Agreement

EXHIBIT

1

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MIAMI FORT UNIT 6 OPERATION AGREEMENT

Between

THE CINCINNATI GAS & ELECTRIC COMPANY

And

THE UNION LIGHT, HEAT AND POWER COMPANY

THIS MIAMI FORT UNIT 6 OPERATION AGREEMENT (the "Agreement"), made as of the 25th day of January, 2006 and effective as of January 1, 2006, between The Cincinnati Gas & Electric Company, an Ohio corporation ("Cincinnati"), and The Union Light, Heat and Power Company, a Kentucky corporation ("ULHP", and together with Cincinnati sometimes referred to hereinafter as the "Parties", and each, individually, sometimes referred to hereinafter as a "Party"), sets forth the agreement of the Parties in respect of the operation of that certain coal-fired steam electric generating unit located at the Miami Fort Station, Hamilton County, Ohio, and having a turbine nameplate rating of 168 MW, and its associated equipment and Common Facilities (as hereinafter defined) and all additions and replacements thereto (collectively, "Miami Fort Unit 6").

A. Basic Obligations

1. Cincinnati shall operate and maintain Miami Fort Unit 6 and any facilities, supplies or equipment used in connection with the operation or maintenance of Miami Fort Unit 6 that also are used in connection with any other electric generating unit located at the Miami Fort Station ("Common Facilities") and shall make additions, replacements and retirements thereto, in accordance with good utility practice. Such practice shall include the maintenance of reasonable coal and fuel oil reserves, the level of which shall be mutually agreed to by the Parties, against interruptions of normal supply.

2. Cincinnati shall use Miami Fort Unit 6 to generate three phase, 60 hertz electric service, with a nominal station bus voltage of 18 kV.

B. Capability and Output

1. The output of Miami Fort Unit 6 shall be fed into transmission lines and related facilities in the manner to be described in a Facilities Operation Agreement to be entered into by and between the Parties.

2. ULHP shall be entitled to the full capability of Miami Fort Unit 6, subject to the following:

- a. Cincinnati shall keep ULHP informed as to the maximum practical capability of Miami Fort Unit 6 as it may vary in accordance with the condition and availability of its associated equipment.
- b. ULHP shall submit to Cincinnati, with reasonable notice, a schedule of its requirements to be generated pursuant to this Agreement.
- c. Subject to necessary or unavoidable outages or reductions in capability, Miami Fort Unit 6 shall be operated so as to produce an output equal to the required scheduled generation of ULHP.
- d. Should the capability of Miami Fort Unit 6 for any reason be reduced, ULHP shall immediately take steps to reduce its required scheduled generation.

C. Operation of Miami Fort Unit 6

Cincinnati, as agent for ULHP, shall operate and maintain Miami Fort Unit 6 and perform the other obligations in connection therewith set forth in this Agreement. In carrying out such responsibilities and subject to the maintenance of fuel reserves in accordance with the provisions of Paragraph A. 1. above, Cincinnati shall provide such materials, fuels, equipment and services, from such sources, which may include its own organization, as it determines in its sole discretion to be required.

Cincinnati, as agent for ULHP, shall operate and maintain Miami Fort Unit 6 in accordance with Good Utility Practice. "Good Utility Practice", as used herein, shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the United States during the relevant time period, or any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good

Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, methods or acts generally accepted in the region.

Cincinnati shall keep ULHP reasonably informed of present and anticipated operational issues that may reasonably be expected to be material to its obligations to ULHP hereunder. In that connection, it shall endeavor from time to time, as reasonably possible, to obtain advance approval of ULHP of its proposed course of action with respect to Miami Fort Unit 6 and ULHP shall not unreasonably withhold, condition or delay such approval. However, in the event of emergencies or inability to obtain such approval, Cincinnati shall take such action as Cincinnati, in its sole discretion, deems necessary under the circumstances.

D. Reimbursement of Cincinnati by ULHP

ULHP shall make Cincinnati whole for any and all expenses and costs, including applicable overheads, incurred on its behalf by Cincinnati under this Agreement. For the purposes of this Agreement, the following principles shall apply:

1. All expenses, including overheads, directly or indirectly applicable to the operation and maintenance of Miami Fort Unit 6 shall be classified as operation and maintenance expenses and taxes, as appropriate, and shall be the sole responsibility of ULHP. Of these, fuel and fuel handling expenses and associated overheads, exclusive of no-load and start-up fuel and associated fuel handling expenses, shall be classified as energy expenses. Overhead expenses applicable to operation and maintenance shall include expenses related to payroll, such as Social Security taxes, unemployment insurance, group life insurance, group hospitalization and medical insurance, pension plan contributions, thrift or stock purchase plan expenses, expense to Cincinnati of other fringe expenses related to employees and other applied overheads, including administrative and general expenses.

2. Expenses directly assignable to Miami Fort Unit 6 shall be so assigned. Expenses not directly assignable to Miami Fort Unit 6 shall be allocated on the basis of cost responsibility, as mutually agreed upon by the authorized representatives of the Parties.

3. Each Party hereby represents and warrants to the other that the representative identified by it to the other Party as the appropriate representative with respect to the supervision of this Agreement is duly authorized to develop procedures for the implementation and carrying out of the principles of and actions and obligations contemplated by this Agreement.

4. ULHP shall be solely responsible for all costs and expenses related to the maintenance of inventories of fuel and plant material and operating supplies. ULHP shall pay advances to Cincinnati, adjusted as required from time to time, as payment for the estimated requirements for operation and maintenance expenses, related overheads and taxes.

5. All costs and expenses related to additions, replacements and retirements relating to construction accounts and directly assignable to Miami Fort Unit 6 shall be the sole responsibility of ULHP. Funds for such purposes shall be supplied by ULHP to Cincinnati as needed on the basis of estimated costs and shall be adjusted to actual costs after completion of work. Costs and expenses of the nature described in this paragraph 5 not directly assignable to Miami Fort Unit 6 shall be allocated on the basis of cost responsibility, as mutually agreed upon by the authorized representatives of the Parties.

ULHP shall supply the necessary funds notwithstanding the pendency of arbitration or legal proceedings, or both, concerning the extent or propriety of the same, subject to adjustment upon the conclusions of such proceedings.

6. Cincinnati shall continue to apply for, administer and maintain all environmental permits necessary for operation of the Miami Fort Station, including Miami Fort Unit 6 and any Common Facilities. To the extent that Cincinnati's operation of Miami Fort Unit 6 contributes to or results in violation of an environmental permit or any applicable environmental law or regulation, ULHP shall be liable for any and all associated costs, including civil penalties, remedial measures and injunctive relief; *provided, however*, that, notwithstanding the foregoing, in the event that any such violation results from Cincinnati's failure to operate Unit 6 in accordance with Good Utility Practice, Cincinnati shall be solely liable for any and all such associated costs.

7. Cincinnati shall submit statements, in such detail as is reasonably satisfactory to ULHP, for the operation and maintenance expenses, related overheads and taxes.

Refusal on the part of ULHP to make payments as herein provided for, after final determination of the same by arbitration or legal proceedings, or both, if any, as provided for in Section E(6) hereof, shall entitle Cincinnati to deny ULHP any output of Miami Fort Unit 6. This remedy shall be in addition to any other remedies permitted under this Agreement.

E. General

1. The term of this Agreement shall be from the date hereof and shall extend until the twentieth annual anniversary hereof (the "Term"). The Term may be thereafter extended for additional two-year periods upon the mutual written consent of the Parties.

2. Except as to the treatment of liberalized tax depreciation, investment tax credit and other such issues as may arise from time to time in the future, each party in its accounting relating to Miami Fort Unit 6 shall follow the accounting provisions of the Uniform System of Accounts prescribed by the Federal Power Commission for Public Utilities and Licensees, as such provisions may be in effect from time to time, provided that either Cincinnati or ULHP may, in its use of the same, substitute its own, or appropriate Public Utilities Commission of Ohio account numbers for the F.P.C. account numbers.

3. Each Party shall use its best efforts to agree upon and employ from time to time uniform rates for determining the annual provision for depreciation of Miami Fort Unit 6.

4. Cincinnati shall keep accurate books of account containing in detail the items of cost applicable to the operation, maintenance, taxes, depreciation, additions, replacements and retirements for Miami Fort Unit 6. Cincinnati shall permit said books of account to be examined from time to time by ULHP, or on its behalf by its independent public accountant, at the reasonable request of ULHP, to the extent necessary to verify the assignment of costs to ULHP pursuant to the provisions of this Agreement.

5. Neither Cincinnati nor ULHP may assign this Agreement except to an affiliated entity. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

6. Any controversy, claim, counterclaim, dispute, difference or misunderstanding arising out of, or relating to this Agreement or the breach thereof, shall be submitted to arbitration upon the request of either of the Parties in the manner hereinafter provided.

The party hereto submitting such request shall serve notice in writing (the "Notice") upon the other party hereto, setting forth in detail the subject or subjects to be arbitrated, and the Parties thereupon shall endeavor to agree upon and appoint one person to act as sole arbitrator. If the parties fail to agree upon such an arbitrator within fifteen days from the receipt of the Notice, any one or more of the parties may apply within five days thereafter to the Chief Judge of the United States Court of Appeals for the Sixth Circuit for the appointment of the sole

arbitrator. In the event that the Chief Judge does not within 30 days make such appointment, either party hereto or both Parties may request the American Arbitration Association ("AAA") to appoint the sole arbitrator pursuant to its rules then obtaining.

The arbitration shall be conducted in accordance with the rules of the AAA then in effect. The findings and award of the sole arbitrator shall be binding and conclusive with respect to the matter or matters submitted to arbitration, except as such findings and award may be modified, corrected or vacated as provided in Sections 2711.10 and 2711.11 of the Revised Code of Ohio, or the successors to such Sections, in effect at the time under consideration. The costs of arbitration shall be divided equally between the Parties.

Performance of this provision shall be a condition precedent to the institution of any proceeding in any court concerning any controversy, claim, counterclaim, dispute, difference or misunderstanding, arising out of, or relating to this Agreement or the breach thereof.

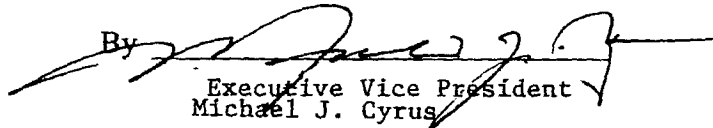
7. Cincinnati and ULHP hereby acknowledge that future operating conditions may materially change from those now contemplated. In that event, they will use their best efforts to agree upon modifications to this Agreement that are fair and reasonable.

8. The performance of each provision of this Agreement is conditioned upon the due receipt of all regulatory approvals, in the form and substance satisfactory to the Parties, necessary to permit the performance thereof, and each party hereto shall use its best effort, to obtain any such necessary regulatory approval.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the 25th day of January, 2006.

THE CINCINNATI GAS & ELECTRIC COMPANY

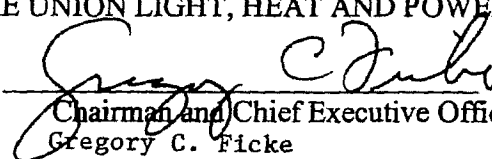
By



Executive Vice President
Michael J. Cyrus

THE UNION LIGHT, HEAT AND POWER COMPANY

By



Chairman and Chief Executive Officer
Gregory C. Ficke

**FORM OF
AMENDED AND RESTATED
MIAMI FORT UNIT 6 OPERATION AGREEMENT**

between

DUKE ENERGY MIAMI FORT, LLC

and

DUKE ENERGY KENTUCKY, INC.

Dated as of

[_____], 2014

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**FORM OF
AMENDED AND RESTATED
MIAMI FORT UNIT 6 OPERATION AGREEMENT**

This AMENDED AND RESTATED MIAMI FORT UNIT 6 OPERATION AGREEMENT, dated as of [_____], 2014 (the “Effective Date”) is entered by and between DUKE ENERGY MIAMI FORT, LLC, a Delaware limited liability company (“Operator”) and DUKE ENERGY KENTUCKY, INC., a Kentucky corporation (“Owner”).

RECITALS

1. Owner owns the Facility (this and other capitalized terms are defined in Article II).
2. On January 25, 2006, Operator (as successor by assignment to The Cincinnati Gas & Electric Company) and Owner (f/k/a The Union Light, Heat and Power Company) entered into that certain Miami Fort Unit 6 Operation Agreement (the “Original Agreement”) pursuant to which Operator was retained to provide certain services relating to the Facility.
3. Operator and Owner desire to amend and restate the Original Agreement to reflect the terms and conditions herein.

NOW, THEREFORE, in consideration of the foregoing premises, and of the mutual covenants, undertakings and conditions set forth below, the Parties agree to amend and restate the Original Agreement in its entirety as follows:

ARTICLE I - AGREEMENT

1.1. Agreement. This Agreement consists of the recitals, and the terms and conditions set forth in this Agreement, as well as the appendices that are referenced in the table of contents and attached to this Agreement. The recitals, appendices and terms and conditions must be read together to obtain a full understanding of the intent of the Parties.

1.2. Relationship of the Parties. Owner is retaining Operator as an independent contractor to provide the Services set forth in this Agreement at the Facility in support of Owner’s operation of the Facility. Subject to any limitations expressly set forth in this Agreement, as between Owner and Operator, Owner delegates to Operator, and Operator accepts from Owner, the responsibility of providing those Services at the Facility. Owner and Operator agree that the scope of delegation is strictly limited to the matters set forth in this Agreement. Without limiting the generality of the foregoing, Owner retains the ultimate authority and obligation to determine whether and to what extent the Facility operates, and Operator shall never cause the Facility to generate power except as expressly directed to do so by Owner or any dispatching authority specified by Owner.

1.3. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to Operator’s provision of Services at the Facility and supersedes all prior negotiations, undertakings and agreements, including the Original Agreement. Neither Party will

be bound by or deemed to have made any representations, warranties, commitments or undertakings, except as expressly stated in this Agreement.

ARTICLE II - DEFINITIONS

For all purposes of this Agreement (including the preceding sections and recitals), unless otherwise required by the context in which any defined term appears, capitalized terms have the meanings specified in this Article II. The singular includes the plural, as the context requires. The terms “includes” and “including” mean “including, but not limited to.” The terms “ensure” and “reasonable efforts” will not be construed as a guarantee, but will imply only a duty to use reasonable effort and care, consistent with Prudent Operation and Maintenance Practices, and will include reasonable expenditures of money and at least such efforts as Operator would undertake for its own assets, services or maintenance, or for services provided to an Affiliate. “Gross negligence” will not be construed as simple or ordinary negligence, it being the intent of the Parties to preserve a distinction between errors made inadvertently while attempting to perform with due care and actions taken with a knowing disregard for a foreseeable risk. “Day” (regardless of capitalization) shall mean a calendar day, unless specifically designated as a Business Day. “Month” (regardless of capitalization) shall mean a calendar month. References to articles, sections and appendices mean the articles and sections of, and appendices to, this Agreement, except where expressly stated otherwise.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person. The term “control” (including related terms such as “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this Amended and Restated Miami Fort Unit 6 Operation Agreement, as the same may be modified or amended from time to time in accordance with its provisions.

“Applicable Law” means any United States federal, state or local laws, regulations, codes, judgments, orders, Permits or other Government Approvals as may be applicable to the Facility, Owner or Operator.

“Bankruptcy” means a situation in which (i) a Person files a voluntary petition in bankruptcy or is adjudicated as bankrupt or insolvent, or files any petition or answer or consent seeking any reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or future applicable United States federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, conservator or liquidator of such Person or of all or any substantial part of its properties (the term “acquiesce,” as used in this definition, includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree within fifteen (15) days after entry of such order, judgment or decree); (ii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against any Person seeking a reorganization, arrangement, moratorium, composition,

readjustment, liquidation, dissolution or similar relief under the present or any future United States federal bankruptcy act, or any other present or future Applicable Law relating to bankruptcy, insolvency or other relief for debtors, and such Person acquiesces and such decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or a trustee, receiver, conservator or liquidator of such Person is appointed with the consent or acquiescence of such Person and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; (iii) a Person admits in writing its inability to pay its debts as they mature; (iv) a Person gives notice, to any Governmental Authority of insolvency or pending insolvency, or suspension or pending suspension of operations; or (v) a Person makes a general assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors (other than in the ordinary course of such party's business).

“Budget” means a budget adopted or amended pursuant to Section 5.3.

“Business Day” means any day other than (i) a Saturday or Sunday or (ii) a day on which banks in New York, New York or Cincinnati, Ohio are required or permitted to be closed.

“Claims” means any and all claims, assertions, demands, suits, investigations, inquiries, and proceedings, including those that are judicial, administrative or third-party.

“Confidential Information” has the meaning set forth in Section 12.1.

“Due Date” means, with respect to any Operator invoice, the date that is forty-five (45) days following the date on which Operator submits the invoice to Owner. If such date does not fall on a Business Day, then the Due Date shall be the first Business Day after such date.

“Effective Date” means the date set forth in the preamble to this Agreement.

“Emergency” has the meaning set forth in Section 3.9.

“Environmental Law” means any United States federal, state or local statute, rule, regulation, order, code, Permit, directive or ordinance and any binding judicial or administrative interpretation or requirement pertaining to (i) the regulation or protection of employee health or safety, public health or safety, or the indoor or outdoor environment; (ii) the conservation, management, development, control or use of land, natural resources, or wildlife; (iii) the protection or use of surface water or ground water; (iv) the management, manufacture, possession, presence, use, generation, treatment, storage, disposal, transportation, or handling of, or exposure to any Hazardous Material; or (v) pollution (including release of any hazardous substance to air, land, surface water and ground water), including the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Clean Water Act (33 U.S.C. §§ 7401 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the Uranium Mill Tailings Radiation Control Act (42 U.S.C. §§ 7901 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), all as now or hereafter

amended or supplemented, and any regulations promulgated thereunder, and any other similar federal, state, or local statutes, rules and regulations.

“Environmental Liability” has the meaning set forth in Section 10.3.1.

“Escalation Factor” has the meaning set forth in Appendix B.

“Executive Settlement” has the meaning set forth in Section 14.7.3.

“Extraordinary Item” means any purchase order issued by Operator on behalf of Owner in an amount greater than two hundred fifty thousand dollars (\$250,000) or, if an annual blanket purchase order, that Operator reasonably anticipates will exceed five hundred thousand dollars (\$500,000) during a Year.

“Facility” means the approximately 168 MW coal-fired steam electric generating unit known as Unit 6 located in Miami Fort Station, Hamilton County, Ohio, and includes all electrical or thermal devices, and related structures and connections that are located at the Site and used for the production of power for the benefit of Owner, including common facilities used in connection with any other electric generating unit located at the Miami Fort Station.

“Facility Agreements” means this Agreement, all applicable interconnection agreements, transmission service agreements, fuel supply agreements and power sales agreements, coal ash and other combustion byproduct disposal or sales agreements, all applicable equipment maintenance agreements in effect or entered into from time to time by Owner or its Affiliates relating to the Facility, all equipment contracts with regard to warranties and equipment design and specifications, all portions of the Financing Agreements relevant to this Agreement, and any other agreement reasonably designated by Owner as a “Facility Agreement.”

“Facility Equipment” has the meaning set forth in Section 13.1.

“Facility Personnel” means those individuals who are employed by Operator at the Site or the Miami Fort Station in the performance of its obligations under this Agreement.

“Fee” means, as applicable, the sum of (i) Two Hundred Fifty Thousand Dollars (\$250,000) per Year during the Operational Services Period or (ii) One Hundred Thousand Dollars (\$100,000) per Year during the Retirement Period.

“Financing Agreements” means any and all loan agreements, notes, bonds, indentures, security agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, participation agreements and other documents relating to the interim or long-term financing for the ownership, operation and maintenance of the Facility and any refinancing thereof (including a lease pursuant to which Owner or one of its Affiliates is the lessee of the Facility) provided by the Lenders, including any and all modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

“Force Majeure Event” has the meaning set forth in Section 14.6.1.

“General Manager” has the meaning set forth in Section 5.2.

“Governmental Approval” means any consent, license, approval, exemption, Permit, “no objection certificate” or other authorization of whatever nature that is required to be granted by any Governmental Authority or any third party with respect to the siting, construction, operation, service, and maintenance of the Facility in accordance with this Agreement, or otherwise necessary to enable Owner or Operator to exercise its rights, or observe or perform its obligations, under this Agreement.

“Governmental Authority” means any United States federal, state, local or foreign governmental department, commission, board, bureau, authority, agency, court, instrumentality or judicial or regulatory body or entity.

“Hazardous Materials” means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyl’s (“PCBs”); (b) any chemicals, materials or substances that are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under Applicable Law; or (c) any other chemical, material, substance or waste declared to be hazardous, toxic or polluting material by any Governmental Authority, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority.

“Initial Negotiation Period” has the meaning set forth in Section 14.7.2.

“Initial Term End Date” has the meaning set forth in Section 8.1.

“KPSC” has the meaning set forth in Section 5.7.

“Late Payment Rate” means a rate of interest per annum equal to the lesser of (i) one percent (1.0%) above the “prime” reference rate of interest quoted to substantial commercial borrowers on ninety (90) day loans by Wells Fargo Bank or (ii) the maximum rate of interest permitted by Applicable Law.

“Lender” means any entity or entities providing financing or refinancing under the Financing Agreements in connection with construction or permanent financing for the Facility, and their permitted successors and assigns.

“Liabilities” means, collectively, any and all Claims, damages, judgments, losses, obligations, liabilities, actions and causes of action, fees (including reasonable attorneys fees and disbursements), costs (including court costs), expenses, penalties, fines and sanctions.

“Manuals” means Facility equipment manuals, system descriptions, system operating instructions, equipment maintenance instructions and pertinent design documentation created by the Persons that constructed the Facility or manufactured its equipment, and the operation and maintenance procedures and Facility systems descriptions, training, safety, chemistry and environmental manuals, together with the documents and schedules described in such manuals.

“NERC” means the North American Electric Reliability Corporation.

“Operator” means Duke Energy Miami Fort, LLC and includes Operator’s successors and permitted assigns hereunder.

“Operator Indemnitees” has the meaning set forth in Section 10.2.

“Operator Proprietary Information” has the meaning set forth in Section 13.3.

“Operator’s Executive” has the meaning set forth in Section 14.7.2.

“Operating Costs” has the meaning set forth in Section 7.3.1.

“Operational Period” means the period during the Term starting on the Effective Date and ending with the Retirement Date.

“Operational Period Services” means those Services to be performed by Operator during the Operational Period, including those set forth on Appendix A as “Operational Period Services.”

“Original Agreement” has the meaning set forth in the recitals to this Agreement.

“Owner” means Duke Energy Kentucky, Inc. and includes Owner’s successors and permitted assigns hereunder.

“Owner Indemnitees” has the meaning set forth in Section 10.1.

“Owner’s Executive” has the meaning set forth in Section 14.7.2.

“Party” means a party to this Agreement and “Parties” means, collectively, both parties to this Agreement, unless the context clearly requires a different construction.

“Permit” means any permit, license, consent, approval or certificate that is required for the operation or maintenance of the Facility or the performance of any Service and includes Permits required under Environmental Laws.

“Person” means any Party, individual, partnership, corporation, association, limited liability company, business trust, government or political subdivision thereof, governmental agency or other entity.

“Plan” means a plan adopted or amended pursuant to Section 5.3.

“Plant Manager” means the production/plant manager for the Facility selected in accordance with Section 3.7.

“Preliminary Settlement” has the meaning set forth in Section 14.7.2.

“Project Manager” means the individual appointed in accordance with Section 5.1.

“Prudent Operation and Maintenance Practices” means those practices, methods and acts generally employed in the power generation industry that at the particular time in question, in the

exercise of reasonable judgment in light of the facts known at the time the decision in question was being made, would have been expected to accomplish the desired result of such decision consistent with the goals established in a Budget and Plan, and the requirements of Applicable Law, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy and expedition. With respect to Operator, Prudent Operation and Maintenance Practices are not limited to the optimum practices, methods or acts to the exclusion of all others, but rather include a spectrum of possible practices, methods or acts commonly employed in the power generation industry, including taking reasonable actions to provide a sufficient number of Persons who are available and adequately trained to provide Services at the Facility, and timely perform preventive, routine, and non-routine maintenance and repairs, as exemplified and generally described in Appendix A, subject, in all cases, to the limitations on Operator's authority and duties as set forth in this Agreement.

"Reimbursable Costs" has the meaning set forth in Section 7.2.

"Retirement Date" has the meaning set forth in Section 3.2.

"Retirement Period" means the period during the Term starting on the Retirement Date and ending with the termination of this Agreement.

"Retirement Period Services" means those Services to be performed by Operator during the Retirement Period, including those set forth on Appendix A as "Retirement Period Services."

"Second Negotiation Period" has the meaning set forth in Section 14.7.3.

"Services" has the meaning set forth in Section 3.1.

"Site" means the land on which the Facility is situated.

"Standards of Performance" means the standards for Operator's performance of the Services set forth in Section 3.4.

"System Operator" means any Person supervising the collective transmission facilities of the power region in which the Facility is located that is charged with coordination of market transactions, system-wide transmission planning, and network reliability.

"Term" means the initial term together with any extensions.

"Termination Payment" has the meaning set forth in Section 8.4.

"Termination Transition Period" has the meaning set forth in Section 8.6.

"U.S. Dollars" or "Dollars" means United States Dollars, the lawful currency of the United States of America.

"Unit 7 & 8 Plant Manager" means, as of the date of determination, the individual that acts as the plant manager (or equivalent role) of the Unit 7 and Unit 8 electric generating units located at the Miami Fort Station.

“Year” means the calendar year. With respect to the Year in which the Effective Date occurs, a Year will be deemed to begin on the Effective Date and end on December 31st of such Year. If the Agreement terminates, the final Year will be deemed to end on the date that termination occurs.

ARTICLE III - RESPONSIBILITIES OF OPERATOR

3.1 Provision of Services. Operator shall operate and maintain the Facility and perform other duties as set forth in this Agreement (collectively, the “Services”). Without limiting the generality of the foregoing, the Services shall include the Operational Period Services and the Retirement Period Services.

3.2 Division of Services into Operational Period and Retirement Period. The Operational Period shall commence on the Effective Date and shall terminate upon the commencement of the Retirement Period. The Retirement Period shall commence upon the date of the permanent shutdown or retirement of the Facility which is anticipated to be May 31, 2015 and shall be communicated to Operator by at least 30 days’ prior written notice (the “Retirement Date”). Upon and after the Retirement Date, Operator shall perform the Retirement Period Services.

3.3 Procurement.

3.3.1 General. Operator shall sign purchase orders for goods and services to be delivered to the Facility in the name of Owner. Operator acknowledges that such purchase orders are for the exclusive benefit of Owner and the Facility. Operator shall endeavor to negotiate with vendors from standard terms and conditions, including reasonable warranties in favor of Owner.

3.3.2 Non-Budgeted Items. Unless approved by Owner in writing, Operator shall manage purchasing within the overall total spending approved in a Budget or as otherwise permitted under Section 5.3.2. Operator may make non-budgeted purchases that are not otherwise permitted under Section 5.3.2 without first receiving Owner approval only if, in Operator’s reasonable judgment, such purchases are required to address an Emergency.

3.3.3 Extraordinary Items. Notwithstanding that a purchase is contemplated by a Budget, Operator shall obtain Owner’s written approval prior to procurement of any Extraordinary Item. Owner may elect to directly procure Extraordinary Items.

3.3.4 Affiliate Contracts. If Operator intends to issue a purchase order to an Affiliate or specialty service division of Operator, Operator shall first disclose such relationship to Owner. Operator may issue such purchase orders only following Operator’s receipt of written approval from Owner.

3.4 Standards for Performance of the Services. Operator shall perform the Services in accordance with (i) the Manuals, (ii) the applicable Budget and Plan, (iii) Applicable Laws, (iv) Prudent Operation and Maintenance Practices, (v) insurer requirements delivered to Operator by

Owner in writing, (vi) the requirements in the Facility Agreements and any Financing Agreements and (vii) this Agreement. Subject to the other provisions of this Agreement, Operator will perform the Services and other obligations under this Agreement in a manner consistent with Owner's directions. The Parties acknowledge and agree that actions taken (or not taken) by Operator pursuant to Owner's direction shall be deemed to comply with the Standards of Performance, and Operator shall have no liability for acting or refraining to act in accordance with Owner's directions. The Parties further acknowledge that reference to the Facility Agreements is not intended to and does not make Operator a party to the Facility Agreements or to impose any obligations on Operator under the Facility Agreements. Operator will use all reasonable and practical efforts to maximize net profit, energy production and Facility efficiency, to optimize the useful life of the Facility, to utilize Operator's personnel in the performance of the Services and to minimize Facility downtime, Operating Costs and Reimbursable Costs.

3.5 Dispatch. Operator shall comply with any applicable dispatch instructions of the System Operator or Owner (or other Person identified by Owner in writing to Operator as being authorized to provide dispatch instructions). Operator will give Owner prompt notice of any inability to make deliveries of energy, capacity or ancillary services required and of Operator's plan to restore operation of the Facility and of any plan by the counterparty (where a Facility Agreement is involved) to do so (if Operator has been notified thereof). In case of any interruption, curtailment or reduction in (i) supplies of fuel or (ii) acceptance of energy, capacity or ancillary services by System Operator or in case of any other dispatch constraint imposed on the Facility, Operator shall promptly notify Owner and await further instructions from Owner. Upon removal of the constraint, Operator shall use its reasonable efforts to restore the availability of the Facility for dispatch.

3.6 Licenses and Permits. Operator shall review all Applicable Laws containing or establishing compliance requirements in connection with the operation and maintenance of the Facility and shall (i) assist Owner, at Owner's request, in securing and complying with, as appropriate, all necessary Permits (and renewals of the same), including without limitation those relating to air emissions, NERC reliability standards, boiler operation, water usage, septic system operation, wastewater discharge, chemical and other waste (including Hazardous Materials) storage and disposal, emissions testing, and safety, and (ii) initiate and maintain precautions and procedures necessary to comply with Applicable Laws, including without limitation those related to prevention of injury to persons or damage to property at the Facility. Operator shall obtain and maintain all Permits required by Applicable Law for its performances of the Services.

3.7 Personnel Matters. Except as set forth in this Agreement, Operator shall be solely responsible for determining the working hours, rates of compensation and all other matters relating to the employment of Operator's Facility Personnel and shall retain sole authority, control and responsibility with respect to its employment policy. Operator shall submit for Owner's approval the staffing requirements for the Facility. Without the consent of Owner, Operator may appoint the Unit 7 & 8 Plant Manager as the Plant Manager from time to time. If Operator intends to select an individual other than the Unit 7 & 8 Plant Manager as the Plant Manager, or if the Plant Manager ceases to be the Unit 7 & 8 Plant Manager, Operator shall promptly schedule an opportunity for Owner to meet with the proposed (or continuing) Plant Manager prior to that individual being appointed (or confirmed) as Plant Manager, and obtain

Owner's written approval, which approval shall not be unreasonably delayed or denied and shall be provided within fifteen (15) Business Days after Owner has met with such proposed (or continuing) Plant Manager or has waived its right in writing to so meet with such proposed (or continuing) Plant Manager or will provide written notification of why such Person should not be approved (or confirmed). If Owner does not respond within such period, Operator's selection for Plant Manager shall be deemed to have been automatically approved. If a continuing Plant Manager is not confirmed, or deemed to be confirmed, as required by this Section 3.7, Operator shall promptly remove such individual as Plant Manager and select a different individual to act as Plant Manager in accordance with this Section 3.7.

3.8 No Liens or Encumbrances. Operator will keep and maintain the Facility free and clear of all liens and encumbrances resulting from the personal debts and obligations of Operator or the failure by Operator to perform the Services.

3.9 Emergency Action. In the event of an emergency affecting the safety, health or protection of, or otherwise endangering, any persons or property located at or about the Facility (an "Emergency"), Operator shall take immediate action to prevent or mitigate any damage, injury or loss threatened by such Emergency, and shall notify Owner of such Emergency and Operator's response as soon as practical under the circumstances. To the extent Operator deems reasonable in response to an Emergency, Operator may procure goods and services as necessary to respond to an Emergency, the costs of which shall be Operating Costs.

ARTICLE IV - OBLIGATIONS, RIGHTS AND REPRESENTATIVES OF OWNER

4.1 General. Owner expressly reserves the exclusive authority to make, and shall make, such business and strategic decisions as it deems appropriate from time to time in reference to the operation and maintenance of the Facility. Upon request from Operator, Owner shall promptly furnish or cause to be furnished to Operator, at Owner's expense, the information, access, materials, instructions and other items described in this Article IV. All such items will be made available at such times and in such manner as may be reasonably required for the expeditious and orderly performance of the Services by Operator.

4.2 Information. Owner shall provide to Operator or make available at the Site all technical, operational and other Facility information in Owner's possession that supports Operator's performance of the Services, and Operator shall review all such materials and information. Subject to the Standards of Performance, Operator will be entitled to rely upon any information provided by Owner or any other party to the Facility Agreements in the performance of the Services, and Operator will be deemed to have knowledge of all such information provided by Owner.

4.3 Access to Facility. Owner shall provide Operator access to the Site, and to Owner's records and data at the Facility.

4.4 Instructions, Approvals. Owner shall provide or cause to be provided to Operator all instructions Operator is required to obtain in accordance with this Agreement. Owner shall not unreasonably withhold approvals required by this Agreement. Owner shall not direct

Operator to take any action inconsistent with Applicable Law or otherwise adversely affecting the safety, health or protection of any persons or property located at or about the Facility.

ARTICLE V - REPRESENTATIVES, BUDGETS AND REPORTS

5.1 Representatives of Operator. Promptly after the Effective Date, Operator shall appoint a Project Manager who shall be authorized to represent Operator with Owner concerning Operator's performance of the Services. The Project Manager may be the same individual as the Plant Manager. Operator is bound by the written communications, directions, requests and decisions made by its Project Manager on its behalf. Operator shall notify Owner in writing upon the appointment of its Project Manager, and of any successors. The Project Manager has no authority to modify, amend or terminate this Agreement or, absent written notice by Operator to the contrary, to enter into any other agreement on behalf of Operator other than as provided herein. Owner shall have the right to request that Operator replace the Project Manager, and Operator will make commercially reasonable efforts to effect such replacement.

5.2 Representatives of Owner. Owner shall appoint an individual (the "General Manager") who shall be authorized and empowered to act for and on behalf of Owner on all matters concerning the operation of the Facility, the day-to-day administration of this Agreement and Owner's obligations hereunder. Owner shall notify Operator in writing upon the appointment of the General Manager, and of any successors. The General Manager has no authority to modify, amend or terminate this Agreement or, absent written notice by Owner to the contrary, to enter into any other agreement on behalf of Owner other than as provided herein.

5.3 Plans and Budgets.

5.3.1 Adoption.

5.3.1.2 Budgets. The initial Budget and Plan for the first Year following the Effective Date is attached as Appendix C hereto. One hundred fifty (150) days prior to the beginning of each subsequent Year, Owner and Operator shall use reasonable efforts to agree on the key assumptions for such Year that Operator shall use to construct the proposed Budget and Plan with respect to the Services. The key assumptions are Operating Costs, an inflation factor for Operating Costs and, during the Operational Period, fuel costs and the Facility operating profile (Facility capacity factor and production schedule). Operator shall structure each Budget on a monthly basis and shall project, in detail reasonably acceptable to Owner, all Operating Costs and Reimbursable Costs to be expended in the performance of the Services. Each Plan shall state the key assumptions upon which the related Budget is based as well as the implementation plans for the Services, including: (i) anticipated maintenance and repairs, (ii) routine maintenance and overhaul schedules (including planned major maintenance), (iii) plant retirement costs and activities, (iv) procurement, (v) staffing, personnel and labor activities, (vi) administrative activities, (vii) capital improvements, and (viii) other work proposed to be undertaken by Operator. Operator shall deliver to Owner the proposed Budget and Plan ninety (90) days prior to each Year. Owner shall review each proposed Budget and Plan within thirty (30) days of submission by Operator (or as soon as possible with respect to the Budget for the initial Year and may, by written request, require changes, additions, deletions and modifications thereto. Owner and Operator shall then use reasonable efforts to agree upon a

final Budget and Plan prior to the commencement of the applicable Year. Each final Budget and Plan shall remain in effect throughout the applicable Year, subject to updating, revision and amendment proposed by either Party and consented to in writing by the other Party.

5.3.1.3 Amendments. If either Party becomes aware of facts or circumstances that it believes necessitate a change to a Budget or Plan, that Party shall immediately notify the other Party, specifying the impact upon the Budget and the reasons for the change. The Project Manager shall then discuss appropriate amendments to the Budget with the General Manager.

5.3.1.4 Failure to Agree. The Parties acknowledge that it is necessary that Owner retain ultimate authority with respect to expenses incurred for the Facility. Accordingly, Operator shall accept each Budget as finally determined by Owner. To the extent that Owner limits funds for Operating Costs and Reimbursable Costs, Operator is relieved from performance that would incur such costs. Operator shall deliver a written report to Owner that describes Operator's reasons for believing that each disputed expense is prudent.

5.3.2 Limitations on Variation from Budget. Except as otherwise permitted in response to an Emergency in accordance with Section 3.9, Operator will obtain Owner's approval (a) for any expenditures that exceed an approved budgeted line item expense or capital project by the greater of ten percent (10%) or one hundred thousand dollars (\$100,000), (b) for any unbudgeted expense or capital project greater than two hundred fifty thousand dollars (\$250,000), or (c) in the event that there is an opportunity to re-allocate approved budgeted line item expenses to a comparable unbudgeted or under-budgeted expense. In the event that cumulative budget overruns exceed five hundred thousand dollars (\$500,000) in any Operating Year, Operator will thereafter obtain Owner's approval for any expenditure greater than one hundred thousand dollars (\$100,000).

5.4 Availability of Operating Data and Records. Operator shall deliver Facility data recorded, prepared or maintained by Operator to Owner: (i) to assist Owner in complying with requirements of Governmental Authorities, Permits and Facility Agreements; or (ii) upon any request by Owner, in each case as soon as reasonably practicable but in any event within five (5) Business Days following such request.

5.5 Litigation and Permit Lapses. Upon obtaining actual knowledge, either Party shall submit prompt written notice to the other Party of the following, to the extent relating to the Facility or the Services: (i) any litigation, claims or actions filed by or with any Governmental Authority; (ii) any actual refusal to grant, renew or extend, or any action filed with respect to the granting, renewal or extension of, any Permit; (iii) all penalties or notices of violation issued by any Governmental Authority; (iv) any dispute with any Governmental Authority that may affect the Facility; and (v) with respect to the matters identified in items (i), (ii), (iii) or (iv), any threats of such matters, which matters may affect the Facility.

5.6 Other Information. Operator shall promptly submit to Owner any material information concerning new or significant aspects of the Facility operations and, upon Owner's request, shall promptly submit any other information concerning the Facility or the Services.

Such information may include any information and certifications required by Lender with respect to the Services.

5.7 Records Maintenance and Retention. Operator shall maintain all records, reports, documents and data, including all data retrievable from an electronic data storage source, for the Facility in accordance with Kentucky Public Service Commission (“KPSC”) regulation and Applicable Law and shall retain and preserve all such records, reports, documents and data created in connection with the operation and maintenance of the Facility, for a period of five (5) years (unless a longer period is required by KPSC regulation, Applicable Law or as otherwise directed by Owner) from the date of the creation of such record, report, document or data, provided that Operator shall notify Owner in writing at least thirty (30) days prior to the destruction or other disposition of any record, report, document or data. If Owner gives written notice to Operator prior to the expiration of the 30-day period, Operator will maintain custody of such material until such time as Owner notifies Operator to dispose of such material, provided that Owner shall make storage space available at the Facility for storage of all such materials. If Owner does not provide written notice to Operator prior to the expiration of the 30-day period, Operator may destroy or dispose of such material and shall provide Owner with a certificate confirming such destruction or disposition.

5.8 Reliability Standards. Operator shall maintain a record retention and document management system in accordance with regulations issued by NERC or its regional entities.

ARTICLE VI - LIMITATIONS ON AUTHORITY

6.1 Limitations on Authority. Operator has no authority to make policies or decisions with respect to the overall operation or maintenance of the Facility as a commercial enterprise. Owner shall determine all such matters. Notwithstanding any provision in this Agreement to the contrary, unless previously approved in a Budget and Plan or otherwise approved in writing by Owner, in connection with Operator’s provision of Services hereunder, Operator is prohibited from doing any of the following:

6.1.1 Dispose of Assets. Selling, leasing, pledging, mortgaging, encumbering, conveying, or making any license, exchange or other transfer or disposition of the Facility, the Site or any other property or assets of Owner, including any property or assets purchased by Operator, the cost of which is an Operating Cost or a Reimbursable Cost;

6.1.2 Make Expenditures. Making any expenditure or acquiring on an Operating Cost or a Reimbursable Cost basis any goods or services from third parties, except in conformity with a Budget or as otherwise permitted under Section 5.3.2 or as authorized by Owner’s General Manager; provided, however, that in the event of an Emergency, Operator, without approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.9;

6.1.3 Contract. Making, entering into, executing, amending, modifying, supplementing or giving or accepting any waivers under, any contract or agreement (including any labor or collective bargaining agreement) on behalf of or in the name of Owner or hold itself

out as having the authority to do so or entering into or initiating any dispute resolution under any Facility Agreement, other than pursuant to Section 3.3;

6.1.4 Take Other Actions. Taking or agreeing to take any other action or actions that, individually or in the aggregate, materially varies from the applicable Budget (as modified by Section 5.3.2) and Plan; provided, however, that in the event of an Emergency, Operator, without approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.9;

6.1.5 Act Regarding Lawsuits and Settlements. Settling, compromising, assigning, pledging, transferring, releasing or consenting to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by Owner or Operator, the cost of which, in the case of Operator, would be an Operating Cost or a Reimbursable Cost hereunder, or submitting any such claim, dispute or controversy to arbitration or judicial process, or stipulating in respect thereof to a judgment, or consent to the same; provided, however, that such prohibition shall not apply to, nor shall it be construed as a release or waiver of, any of Operator's rights or obligations pursuant to this Agreement or any other agreement between the Parties; or

6.1.6 Pursue Transactions. Engaging in any other transaction on behalf of Owner not permitted under this Agreement.

ARTICLE VII - COMPENSATION AND PAYMENT

7.1 General. Owner shall pay Operator, or fund, as applicable, in the manner and at the times specified in this Article 7, all Reimbursable Costs, Operating Costs and the Fee, all as further described below.

7.2 Reimbursable Costs. Subject to the applicable Budget and the limitations set forth elsewhere in this Agreement, Owner shall reimburse Operator for the following costs (the "Reimbursable Costs") incurred by Operator in performing the Services: (i) costs incurred in response to an Emergency; (ii) a reasonably allocable portion of the cost of the insurance maintained by Operator in accordance with Section 9.1; (iii) costs of third party advisors, consultants, attorneys, accountants and contractors retained and managed by Operator in support of, and reasonable allocable to, the Services; and (vi) any other cost designated by the Parties as a Reimbursable Cost pursuant to the terms of this Agreement. In no event shall Operator add any mark-up to the Reimbursable Costs.

7.3 Operating Costs.

7.3.1 Definition. Subject to the limitations on expenditures set forth elsewhere in this Agreement (including Section 5.3) and except for any Reimbursable Costs, Operator will be responsible for procuring and administering the payment by Owner pursuant to the procedure set forth in Section 7.3.2, without duplication, for Owner's actual costs (or allocated portion thereof as such costs may be ratably allocated among the owners of other generating units located at Miami Fort Station) incurred for the following items (the "Operating Costs"): (i) equipment, material, supplies and other consumables, spare parts, replacement components, tools, office equipment and supplies acquired for use at the Facility; (ii) third-party costs

associated with special training of Facility Personnel and associated travel and living expenses; (iii) subject to the provisions of this Agreement, contractors providing work in support of the Services that cannot reasonably be performed by Facility Personnel; (iv) permit fees for Permits required to be held by Operator; (v) community relations and labor relations activities; and (vi) Operator's actual cost of Facility Personnel wages, salaries, overtime, employee bonus, customary or required severance payments, unemployment insurance, long term disability insurance, short term disability payments, sick leave, payroll taxes imposed on wages and benefits, worker's compensation costs and holidays, vacations, group medical, dental and life insurance, defined contribution retirement plans and other employee benefits; (vii) costs incurred in response to an Emergency; and (viii) any other activity that Operator is required to perform under this Agreement for the benefit of the Facility or that is approved in a Budget pursuant to the terms of this Agreement. In no event shall Operator add any mark-up to the Operating Costs.

7.3.2 Funding and Payment Process. No later than the tenth (10th) Business Day of each calendar month (but in all cases consistent with any timing requirements under the Financing Agreements), Operator will deliver to Owner an invoice for estimated Operating Costs to be incurred under Section 7.3.1(vi) in the upcoming month; and (ii) a true up against actual Section 7.3.1(vi) Operating Costs incurred in the prior month. On a monthly basis, Operator shall forward to Owner third party invoices for all other Operating Costs, together with supporting documentation in form satisfactory to Owner; provided, that all such invoices shall have been reviewed and approved in accordance with Owner's disbursement policies and procedures as in effect from time to time and that such request and invoice are consistent with the Budget and Operator's responsibility for managing the Budget. Owner shall make payment to Operator for the invoice specified above prior to the end of the month in which such invoice is received.

7.4 Cost Audit. No payment made pursuant to the foregoing provisions shall be considered as approval or acceptance of Services performed under this Agreement, and Owner shall be entitled to conduct an audit and review of Operator's records with respect to all Reimbursable Costs and Operating Costs together with any supporting documentation for a period of three (3) years from and after the date of the audited payment. If, pursuant to such audit and review, it is agreed that any amount previously paid by Operator was not properly incurred as a Reimbursable Cost or Operating Cost, Operator shall credit such amount to Owner in a subsequent invoice.

7.5 Fee. Owner shall pay to Operator the Fee during the Term. The Fee shall be paid in monthly installments of one-twelfth (1/12) of such Fee. If the Term commences on a day other than the first day of a calendar month or the termination of the Agreement occurs on a day other than the last day of a calendar month, Operator shall prorate the Fee for such month to reflect the actual number of days in such month that Operator provided Services. Notwithstanding the foregoing, no Fee shall be due so long as Operator is an Affiliate of Owner.

7.6 Invoicing. On or before the tenth (10th) Business Day of each calendar month during the Term, Operator will submit invoices to Owner for (i) monthly installments of the Fee and (ii) Reimbursable Costs incurred during the preceding calendar month, supported by receipts and other appropriate documentation. Owner will make payment to Operator of the invoiced

amount no later than the Due Date. Invoicing with respect to Operating Costs shall be as set forth in Section 7.3.2.

7.7 Late Payment. To the extent Owner or Operator fails to pay any amount required to be paid under this Agreement by the Due Date, the unpaid amount shall accrue interest each day at the Late Payment Rate from the Due Date until such amount (plus accrued interest) is paid in full.

7.9 Escalation. The Fee will be escalated annually beginning on January 1 of the Year following the Effective Date by applying the Escalation Factor to each amount pursuant to the method set forth in Appendix B.

ARTICLE VIII - TERM

8.1 Term. The initial Term of this Agreement is from and including the Effective Date to and including December 31, 2024 (the "Initial Term End Date"). This Term shall extend in increments of one additional Year following the Initial Term End Date until a Party notifies the other Party of its intent not to extend the Term by written notice delivered at least ninety (90) days prior to the Initial Term End Date or the end of any subsequent Year during the extended Term. Notwithstanding the foregoing, this Agreement and the Term is subject to earlier termination pursuant to Sections 8.2 and 8.3.

8.2 Termination by Owner.

8.2.1 Termination for Convenience. Owner may terminate this Agreement without cause and for Owner's convenience at any time by giving thirty (30) days prior written notice of such termination to Operator.

8.2.2 Termination for Cause. Owner is permitted to terminate this Agreement if any of the following events occur: (i) Bankruptcy of Operator; (ii) payment default by Operator (other than a disputed payment) that Operator fails to cure within ten (10) days after Operator has received written notice of such default; (iii) default by Operator in performance of its obligations under this Agreement that has a material effect on the functioning of the Facility and that Operator has failed to cure or make substantial progress in the reasonable opinion of Owner towards curing within ninety (90) days of written notice of such failure; or (iv) for two (2) consecutive Years Operator incurs the maximum liability under Section 11.2.

8.3 Termination by Operator. Operator is permitted to terminate this Agreement if any of the following events occur: (i) payment default by Owner (other than a disputed payment) that is not cured within ten (10) days after the Due Date for any invoice; (ii) Bankruptcy of Owner; or (iii) default by Owner of any other obligation under this Agreement that has a material effect on Operator's ability to perform the Services and that Owner has failed to cure or make substantial progress in the reasonable opinion of Operator towards curing within ninety (90) days of written notice of such failure. In lieu of termination, Operator may suspend the Services or take such other action as it deems reasonable to mitigate its risks pending cure by Owner.

8.4 Termination Payment. As soon as practicable after all cost information is gathered following termination, Operator shall invoice Owner for Services rendered by Operator

through the termination date, including all Reimbursable Costs and the Fee earned through the date of termination but not paid (collectively, the “Termination Payment”). Owner shall pay the invoice for the Termination Payment no later than the Due Date.

8.5 Transfer of Facility Custody. Upon expiration or termination of this Agreement, Operator shall leave at the Facility all documents and records, tools, supplies, spare parts, safety equipment, Manuals, and any other items furnished on an Operating Cost or a Reimbursable Cost basis, all of which shall remain the property of Owner without additional charge. Operator shall execute all documents and take all other reasonable steps as may be reasonably requested by Owner to assign to and vest in Owner all rights, benefits, interests and title in connection with any subcontracts Operator executed in its own name for the benefit of the Facility. Owner assumes all liabilities arising under such contracts once assigned.

8.6 Services Upon Termination. Upon notice of termination of this Agreement by either Operator or Owner, unless Owner has defaulted on any payment obligations under this Agreement, Owner has the right to specify a period of transition of no longer than ninety (90) days (the “Termination Transition Period”) during which Operator shall: (i) continue to provide Services at the Facility in accordance with this Agreement; (ii) cooperate with Owner in planning and implementing a transition to any replacement provider of Services; and (iii) use its reasonable efforts to minimize disruption of Facility operations in connection with such activities. Owner shall use commercially reasonable efforts to consult with Operator in its selection of any replacement provider of Services to the extent Operator’s other activities at the Miami Fort Station would be impacted by such selection. In addition, Owner shall compensate Operator in accordance with this Agreement during the Termination Transition Period. Operator shall permit the new service provider to hire or to contract with the Facility Personnel that the new service provider desires to retain at the Facility to extent such Facility Personnel are not required for Operator’s other activities at the Miami Fort Station. To facilitate employee transfer, Operator will permit the new service provider to interview such Facility Personnel in a manner and at times that do not interfere with Operator’s responsibility to perform the Services. If Operator or one of its Affiliates continues to own or operate the Miami Fort Station upon which the Facility resides, Operator shall, or shall cause its Affiliates to, reasonably cooperate to allow Owner or a successor operator to operate the Facility after the termination of this Agreement, including by granting access rights and executing other instruments as may be reasonably requested by Owner.

ARTICLE IX - INSURANCE

9.1 Operator Insurance Requirements. Commencing with the performance of the Services hereunder, and continuing until the termination of this Agreement, Operator (and any tier subcontractors) shall maintain or cause to be maintained occurrence form (if written on a claims made policy form, be maintained with a retroactive date that is prior to this Agreement effective date for a period of at least three (3) years following the last year in which such policy provides coverage under the terms of this Agreement) insurance policies as follows: (i) Workers’ Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer’s Liability Insurance of not less than \$1,000,000 each accident/employee/disease; (ii) Commercial General Liability Insurance having a limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury,

bodily injury to or death of persons, and/or loss of use or damage to property, including but not limited to products and completed operations liability (which shall continue for at least three (3) years after completion), premises and operations liability and explosion, collapse, and underground hazard coverage; (iii) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least \$1,000,000 each accident for bodily injury, death, property damage and contractual liability and no fellow employee exclusion; (iv) Umbrella/Excess Liability insurance with limits of at least \$24,000,000 per occurrence and follow form of the underlying Employer's Commercial General and Auto Liability insurance, and provide at least the same scope of coverages thereunder; and (v) if Operator will be handling environmentally regulated or hazardous materials, Pollution Legal Liability, including coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with a minimum of \$1,000,000 per occurrence.

9.2 Form and Content. All insurance policies provided and maintained by Operator and each subcontractor shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) specifically include Owner and its directors, officers, employees, affiliates, subcontractors, and joint owners of any facilities as additional insureds, including for completed operations, with respect to Operator's acts, omissions, services, products or operations, whether in whole or in part, excluding, however, for Worker's Compensation/Employer's and Pollution Legal Liability insurance; (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Owner and its directors, officers, employees, affiliates and subcontractors, and joint owners of any facilities; (iv) provide that such policies and additional insured provisions are primary with respect to the acts, omissions, services, products or operations of Operator or its subcontractors, whether in whole or in part, and without right of contribution from any other insurance, self-insurance or coverage available to Owner and its affiliates; (v) contain standard separation of insured and severability of interest provisions except with respect to the limits of the insurer's liability, (vi) not contain any provision that limits will not stack, pyramid or be in addition to any other limits provided by the insurer; and (vii) not have any cross liability exclusion, or any similar exclusion that excludes coverage for claims brought by additional insureds under the policy against another insured under the policy. Any deductibles or retentions shall be the sole responsibility of Operator and its subcontractors. Evidence of such coverage shall be provided via Operator's certificate of insurance furnished to Owner prior to the start of Services, upon any policy replacement or renewal and upon Owner's request. If there is a claim naming the Owner for any Services related to this Agreement, Operator or its subcontractors will provide a copy of any or all of its required insurance policies, including endorsements in which Owner is included as an additional insured. All insurance policies shall provide that the insurer will provide at least thirty (30) days' written notice to Operator, who in turn shall provide at least thirty (30) days' written notice to Owner prior to cancellation of any policy (or ten (10) days' notice in the case of non-payment of premium).

9.3 Non-Compliance. Any failure to comply with all of these provisions shall permit Owner to suspend all Services until compliance is achieved. The failure by Operator to provide any or accurate certificates of insurance, or Owner to insist upon any or accurate certificates of insurance, shall not be deemed a waiver of any rights of Owner under this Agreement or with respect to any insurance coverage required hereunder.

ARTICLE X - INDEMNIFICATION

10.1 Operator Indemnification. Subject to the limitations of liability in Sections 11.1 and 11.2, Operator shall indemnify and hold harmless Owner and its Affiliates, and their respective officers, directors, employees, managers, members, agents and representatives (collectively, the “Owner Indemnitees”), from and against, and no Owner Indemnitee shall be responsible for:

(a) any and all Liabilities sustained or suffered by any Owner Indemnitee in connection with injury or death to third parties or loss of or damage to the property of third parties, to the extent caused by Operator’s negligence, willful misconduct, fraud, willful violation of any Applicable Law or willful breach of any representation, warranty or covenant in this Agreement; and

(b) any other Liabilities sustained or suffered by any Owner Indemnitee to the extent caused by Operator’s gross negligence, willful misconduct, fraud, willful violation of any Applicable Law or willful breach of any representation, warranty or covenant in this Agreement.

Any Liabilities paid by Operator pursuant to its indemnity obligation under this Section 10.1 are not Reimbursable Costs.

10.2 Owner Indemnification. Subject to the limitations of liability in Sections 11.1 and 11.2, Owner shall indemnify and hold harmless Operator and its Affiliates, and their respective officers, directors, employees, agents and representatives (collectively, the “Operator Indemnitees”), from and against, and no Operator Indemnitee shall have responsibility for, any and all Liabilities sustained or suffered by any Operator Indemnitee in connection with injury or death to third parties or loss of or damage to property of third parties, to the extent caused by Owner’s negligence, willful misconduct, fraud, willful violation of any Applicable Law or willful breach of any representation, warranty or covenant in this Agreement.

10.3 Environmental Indemnification.

10.3.1 Owner Indemnity for Environmental Liabilities. Subject to the limitations of liability in Sections 11.1 and 11.2, and without in any way limiting the provisions of Section 10.3.2, Owner shall indemnify and hold harmless the Operator Indemnitees from and against, and no Operator Indemnitees shall be responsible hereunder for, any Liabilities, including all civil and criminal fines or penalties and other costs and expenses incurred, assessed or sustained by or against any Person as a result of or in connection with any matters governed by Environmental Laws directly or indirectly related to or arising out of (i) the design, permitting or construction of the Facility or the condition of the Site, and any adjacent parcels, (ii) the operation, maintenance, ownership, control or use of the Facility or otherwise related to the Facility, and (iii) the offsite transportation, treatment or disposal of all wastes generated at the Facility and any properties included within or adjacent to the Site, whether occurring before or after the Effective Date (collectively, “Environmental Liabilities”), including any Environmental Liabilities arising out of (x) any non-compliance by Owner with any condition, reporting requirement or other environmental requirement under any Permit or Environmental Law or other Applicable Law, whether related to air, opacity, water, solid waste or Hazardous Materials,

or (y) the actual or alleged existence, generation, use, emission, collection, treatment, storage, transportation, disposal, recovery, removal, release, discharge or dispersal of Hazardous Materials, provided, however, that the Environmental Liabilities for which Owner is obligated to indemnify Operator under this Section 10.3.1 shall not in any event include any Operator Environmental Liabilities for which Operator is liable under Section 10.3.2.

10.3.2 Operator Indemnity for Environmental Liabilities. Subject to the provisions of Section 10.1 and the limitations of liability in Sections 11.1 and 11.2, Operator shall indemnify and hold harmless the Owner Indemnitees from and against, and no Owner Indemnitee shall be responsible hereunder for any Liabilities, including any civil and criminal fines or penalties and other costs and expenses incurred, assessed or sustained by or against any Person as a result of or in connection with any breach or violation of or any other matters governed by Environmental Laws to the extent caused by (i) any failure by Operator to perform the Services in accordance with the provisions of this Agreement or (ii) any negligence or willful misconduct of Operator (collectively, the “Operator Environmental Liabilities”). Operator understands and agrees that any Operator Environmental Liabilities paid by Operator pursuant to this Section 10.3.2 shall not be Reimbursable Costs hereunder.

10.3.3 Governmental Actions. During the Term of this Agreement, Operator shall cooperate and assist Owner with Owner’s acquisition of data and information, and preparation and filing with appropriate Governmental Authorities of any notices, plans, submissions, or other materials and information necessary for compliance with applicable Environmental Laws and the requirements of any Permits related to the Facility. All such environmental reports shall be submitted by, and in the name of, Owner and not Operator. All costs associated therewith, including the costs of any outside consultants, legal services, Governmental Authority charges, sampling and remedial work, shall be paid by Owner as an Operating Cost or reimbursed to Operator as a Reimbursable Cost, unless such costs are incurred arising out of or associated with Operator Environmental Liabilities that are subject to Operator’s indemnity obligation pursuant to Section 10.3.2 hereof. Any action taken by Operator pursuant to any such applicable Environmental Law, including proceedings and filings made in connection therewith, shall be undertaken, and any Reimbursable Costs associated with any such compliance action shall only be incurred, by Operator with Owner’s prior consent, unless a Governmental Authority or Applicable Law requires Operator to incur such costs and expenses prior to obtaining such consent. Nothing contained herein shall be construed as requiring Operator to take any corrective action with respect to the operation, maintenance, use or condition of the Facility unless (x) affirmatively and expressly directed in writing to so do by Owner and appropriate funding is made available by Owner, or (y) affirmatively and expressly directed to do so by a Governmental Authority, in order to comply with any Environmental Law, in which case the cost of any corrective actions so undertaken shall be deemed an Environmental Liability subject to Owner’s indemnity obligation pursuant to Section 10.3.1 hereof (if not otherwise reimbursed as a Reimbursable Cost hereunder), unless such Environmental Liability arises out of or is associated with Operator Environmental Liabilities subject to Operator’s indemnity obligation pursuant to Section 10.3.2 hereof.

ARTICLE XI - LIABILITIES OF THE PARTIES

11.1 Limitations of Liability. Notwithstanding any provision in this Agreement that may be susceptible to contrary interpretation, neither the Parties nor any Owner Indemnitees or Operator Indemnitees shall be liable for consequential or indirect loss or damage, including loss of profit, cost of capital, loss of goodwill, increased Operating Costs or any special or incidental damages; provided, however, that notwithstanding the foregoing, in no event will the foregoing limitations of liability be applied to limit the extent of the liability of either Party to the other for or with respect to any Claims relating to injury or death to third parties or loss of or damage to property of third parties. The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability and limitations of liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply in all circumstances, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the Party indemnified, released or whose liabilities are limited, and shall extend to the Owner Indemnitees and Operator Indemnitees.

11.2 Operator's Total Aggregate Liability. The total aggregate liability of Operator to Owner for all Liabilities arising out of any events occurring or claims made in connection with this Agreement in any Year shall be:

(a) with respect to any Operator Environmental Liabilities under Section 10.3.2, an amount equal to the following: (i) twice the Fee applicable to such Year, plus (ii) with respect to any Operator Environmental Liabilities incurred at any time, any insurance proceeds received or receivable by Operator or paid on Operator's behalf with respect to the relevant loss or damages under the insurance policies Operator is required to maintain pursuant to Section 9.1; and

(b) with respect to any other Liabilities under this Agreement, an amount equal to the following: (i) the Fee applicable to such Year, plus (ii) with respect to any such Liabilities, any insurance proceeds received or receivable by Operator or paid on Operator's behalf with respect to the relevant loss or damages under the insurance policies Operator is required to maintain pursuant to Section 9.1;

provided that excluded from the foregoing limitations of liability are any third party indemnity obligation of Operator arising under Section 10.1(a) and any indemnity obligation of Operator arising from or in connection with fraud, gross negligence, or willful misconduct, all of which shall be unlimited. The aggregate liability limitation expressed in this Section 11.2 is separate from, and is not to be construed as limiting, the insurance coverage described in Article IX. Any deductible amounts paid in any Year by Operator under Section 9.6 shall count toward computing Operator's total aggregate liability for such Year.

11.3 No Warranties or Guarantees. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OR GUARANTEES TO THE OTHER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND BOTH PARTIES DISCLAIM AND WAIVE ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11.4 Non-Recourse. There shall be no personal liability on the part of any owners, partners or members of Owner or their respective officers, directors, employees, managers, members, agents or representatives for the payment of amounts due hereunder or the performance of any obligations hereunder and Operator shall look solely to Owner and the assets of Owner therefor.

11.5 Exclusive Remedies. Each Party understands, acknowledges and agrees the indemnification provided to the Owner Indemnitees and the Operator Indemnitees pursuant to, and subject to the terms and conditions of, Article X will be the sole and exclusive remedy of the Owner Indemnitees and the Operator Indemnitees against the other Party or any other Owner Indemnitee or Operator Indemnitee with respect to the matters that are the subject of indemnification under Article X, and that the Owner Indemnitees and Operator Indemnitees will have no other remedy or recourse against each other with respect to any of the foregoing other than pursuant to, and subject to the terms and conditions of, Article X.

ARTICLE XII - CONFIDENTIALITY

12.1 General. During the Term, and for the later of three (3) years after the termination of this Agreement or five (5) years after receipt of the applicable Confidential Information, each Party shall hold in confidence any Confidential Information supplied by or on behalf of the other Party. "Confidential Information" means with respect to each Party, all written or oral information of a proprietary, intellectual or similar nature, relating to the business, projects, operations, activities or affairs of a Party and its Affiliates, whether of a technical or financial nature or otherwise (including environmental assessment reports, financial information, business plans and proposals, ideas, concepts, trade secrets, know-how, processes, pricing of services or products, and other technical or business information, whether concerning this Agreement, each Party's respective businesses or otherwise) that has not been publicly disclosed and that the receiving Party acquires directly or indirectly from the disclosing Party. Each receiving Party further agrees to require its contractors, vendors, suppliers and employees, agents or prospective purchasers to preserve the confidentiality of Confidential Information. The receiving Party may make necessary disclosures to third parties directly engaged in the operation, ownership or financing of the Facility if such third parties are under an obligation to receive and hold such Confidential Information in confidence.

12.2 Exceptions. The provisions of this Article XII do not apply to information within one or more of the following categories:

12.2.1 Public Domain. Information that was in the public domain prior to the receiving Party's receipt or that subsequently becomes part of the public domain by publication or otherwise, except by the receiving Party's wrongful act, or

12.2.2 Prior Receipt. Information that the receiving Party can demonstrate was in its possession prior to receipt thereof from the disclosing Party so long as such possession did not result from a violation of a confidentiality obligation, or

12.2.3 Third Party Delivery. Information received from a third party having no obligation of secrecy with respect thereto.

12.2.4 Permitted Disclosures. Information disclosed by Owner to lenders or prospective lenders, equity investors or prospective equity investors, prospective purchasers, consultants, attorneys, accounts and other designated agents in each case on a confidential, need-to-know-basis.

12.2.5 Regulatory Filings. Information disclosed by Owner in connection with any required regulatory or administrative filings.

12.3 Required Disclosure. Notwithstanding the forgoing, any receiving Party required by law, rule, regulation, subpoena or order, or in the course of administrative or judicial proceedings, to disclose Confidential Information that is otherwise required to be maintained in confidence pursuant to this Article XII, may make disclosure notwithstanding the provisions of this Article XII. Prior to doing so, the receiving Party, immediately upon learning of the requirement, shall notify the disclosing Party of the requirement and cooperate to the maximum extent practicable to minimize the disclosure of Confidential Information. Any receiving Party disclosing Confidential Information pursuant to this Section 12.3 shall use reasonable efforts, at the disclosing Party's cost, to obtain proprietary or confidential treatment of Confidential Information by the third party to whom the information will be disclosed, and to the extent such remedies are available, shall use reasonable efforts to seek protective orders limiting the dissemination and use of Confidential Information. Nothing in this Agreement is intended to prevent the disclosing Party from appearing in any proceedings and objecting to the disclosure.

ARTICLE XIII - TITLE, DOCUMENTS AND DATA

13.1 Materials and Equipment. Operator shall ensure that title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by Operator on an Operating Cost or Reimbursable Cost basis ("Facility Equipment") immediately passes directly from the vendor or supplier to, and vests in, Owner. Operator has no title or other claim to such items. Owner shall retain title to all wastes (including Hazardous Materials) generated by Operator's performance of the Services.

13.2 Documents. All Manuals, operational data, Facility drawings, Operator reports and records and other materials and documents (both paper and electronic) created by Operator, its Affiliates or their respective employees, representatives or contractors in connection with performance of the Services are the property of Owner. All such materials and documents, together with any materials and documents furnished by Owner to Operator, and all copies thereof, shall be returned to Owner not less than thirty (30) days following the termination or expiration of this Agreement. In addition, all such materials and documents shall be available for review by Owner at all reasonable times during development and promptly upon completion. All such materials and documents required to be submitted for the approval of Owner shall be prepared and processed in accordance with the requirements and specifications set forth herein. However, Owner's approval of materials and documents submitted by Operator shall not relieve Operator of its responsibility to perform its obligations under this Agreement. Subject to Article XII and the provisions of this Section 13.2, Operator may retain for its records copies of

documents prepared by Operator upon Owner's written consent. Notwithstanding anything to the contrary in this Article XIII, Owner shall be permitted to provide all such materials and documents to any and all replacement contractors in anticipation of any expiration or termination of this Agreement.

13.3 Proprietary Information. Where materials or documents prepared or developed by Operator or its Affiliates, or their respective employees, representatives or contractors, contain proprietary or technical information, systems, techniques or know-how previously developed by them or acquired by them from third parties (the "Operator Proprietary Information"), Operator retains the unrestricted and irrevocable right to use or dispose of such Operator Proprietary Information as Operator deems fit. Notwithstanding the foregoing, Owner has an irrevocable license to use such Operator Proprietary Information to the extent necessary for Owner's operation or maintenance of the Facility at no additional cost to Owner.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.1 Assignment. This Agreement is not assignable by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that this Agreement may be (i) collaterally assigned by Owner without such consent to Lender in connection with Lender's financing of the Facility, (ii) assigned by Owner without such consent in connection with the direct or indirect sale or transfer of the Facility or a change in control of Owner, whether by merger, sale of equity interest, or otherwise, and (iii) assigned by any Party without such consent to any of such Party's Affiliates, provided that any such assignment by Operator to any of its Affiliates shall not, in any manner or to any extent, release Operator from its obligations hereunder and Operator shall provide a guaranty of performance of such Affiliate satisfactory to Owner. Assignment pursuant to this Section 14.1 shall not relieve the assigning Party of any of its obligations under this Agreement that arose prior to the date of such assignment. Operator shall negotiate in good faith and execute any consent to assignment and such other reasonable documents in connection with an assignment to Lender as Lender may request that does not result in a diminution of Operator's rights or obligations hereunder. All of Operator's costs incurred in connection therewith shall be Reimbursable Costs hereunder (including the fees and disbursements of Operator's attorneys). This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

14.2 Effect of Bankruptcy. The Parties intend that, in the event of a Bankruptcy, payments required under this Agreement shall be deemed to be administrative expenses as defined in 11 USC §503.

14.3 Access. Owner and Lenders and their agents and representatives shall have access to the Facility, all Facility operations and any documents, materials and records and accounts relating to the Facility operations for purposes of inspection and review. Upon the request of Owner and its agents and representatives, Operator shall provide such Persons with access to all data and logs Operator maintains regarding the Facility. During any inspection or review of the Facility, Owner and Lenders and their agents and representatives shall comply with all of Operator's safety and security procedures, and shall conduct inspections and reviews in such a manner as to cause minimum interference with Operator's activities. Operator also shall cooperate with Owner in allowing other visitors access to the Facility. In addition, Operator

shall enter into any access agreements on customary terms reasonably requested by Duke Energy Ohio, Inc. (“DEO”), in its capacity as transmission owner, to permit DEO to access the Facility in connection with the operation, maintenance and regulatory compliance of the transmission assets located at the facility.

14.4 Subcontractors. Subcontracting of the Services shall not relieve Operator of its duties, liabilities or obligations to Owner and, notwithstanding Owner’s consent, Operator shall be responsible for the actions of all subcontractors to whom it subcontracts the Services.

14.5 Not for Benefit of Third Parties. Except where a contrary intention is expressly stated, this Agreement and each and every provision hereof are for the exclusive benefit of the Parties that executed this Agreement and not for the benefit of any third party.

14.6 Force Majeure.

14.6.1 Events Constituting Force Majeure. A “Force Majeure Event” is any event that (i) restricts or prevents performance under this Agreement, (ii) is not reasonably within the control of the Party affected or caused by the fault or negligence of the affected Party and (iii) cannot be overcome or avoided by the exercise of due care. Force Majeure Events include, so long as in each case the requirements of the foregoing clauses (i), (ii) and (iii) are satisfied, failure of a Party to perform due to drought, flood, earthquake, storm, fire, lightning, epidemic, war, terrorism, acts of Governmental Authorities, civil disturbances, sabotage (but not including any sabotage involving personnel of Operator), work stoppages (i.e., strikes) (but not including any work stoppages or strikes involving any personnel of Operator, whether on-site or off-site), accident or curtailment of supply, unavailability of construction materials or replacement equipment beyond the affected Party’s control, inability to obtain and maintain Permits from any Governmental Authority for the Facility, restraint by court order, and changes in Applicable Law that affect performance under this Agreement. Except for the obligation of each Party to make payments of amounts owed to the other Party, each Party is excused from performance and will not be considered to be in default in respect to any obligation if and to the extent that performance of such obligation is prevented by a Force Majeure Event. Neither Party shall be relieved of its obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations.

14.6.2 Notice. If a Party’s ability to perform its obligations under this Agreement is affected by a Force Majeure Event, the Party claiming such inability shall (i) promptly notify the other Party of the Force Majeure Event, its cause, its anticipated duration and any action being taken to avoid or minimize its effect and confirm the same in writing within two (2) days of its discovery, (ii) promptly supply such available information about the Force Majeure Event and its cause as reasonably may be requested by the other Party and (iii) work diligently to remove the cause of the Force Majeure Event or to lessen its effect.

14.6.3 Scope. The suspension of performance arising from a Force Majeure Event shall be of no greater scope and no longer duration than necessary. The excused Party shall use its reasonable efforts to remedy its inability to perform.

14.7 Dispute Resolution.

14.7.1 Notice of Dispute. A Party asserting the existence of a dispute shall deliver a written dispute notice to the other Party, describing the nature and substance of the dispute and proposing a resolution of the dispute. In the case of a dispute asserted by Owner, the dispute notice shall be delivered to the Project Manager. In the case of a dispute asserted by Operator, the dispute notice shall be delivered to the General Manager.

14.7.2 Initial Negotiation. The Parties shall first attempt in good faith to resolve the dispute through negotiations between (i) the Project Manager and (ii) the General Manager during the ten (10) Business Days following delivery of the dispute notice (including any agreed extension, the “Initial Negotiation Period”). Upon the written agreement of Project Manager and the General Manager, the Initial Negotiation Period may be extended up to an additional ten (10) Business Days. If such negotiations result in an agreement in principle among the negotiators to settle the dispute, they shall cause a written settlement agreement to be prepared (a “Preliminary Settlement”). Within the Initial Negotiation Period, such Preliminary Settlement shall be signed, dated and submitted for review and approval by an authorized executive officer of Operator (“Operator’s Executive”) and an executive officer of Owner (“Owner’s Executive”), who shall, in agreement with the Preliminary Settlement, endorse their signatures within ten (10) Business Days after the end of the Initial Negotiation Period, whereupon the dispute shall be deemed settled, and not subject to further dispute resolution.

14.7.3 Executive Negotiation. If a Preliminary Settlement is not achieved at the conclusion of the Initial Negotiation Period, or the Preliminary Settlement is unacceptable to Operator’s Executive or Owner’s Executive, the Parties shall then attempt in good faith to resolve the dispute through negotiations between Operator’s Executive and Owner’s Executive during the ten (10) Business Days (the “Second Negotiation Period”) following the earlier of (x) the date of the Preliminary Settlement or (y) the end of the Initial Negotiation Period, as the case may be, before pursuing any further means of dispute resolution. Upon the written agreement of Operator’s Executive and Owner’s Executive, the Second Negotiation Period may be extended up to an additional ten (10) Business Days. If such negotiations result in an agreement in principle among the negotiators to settle the dispute, they shall cause a written settlement agreement to be prepared, signed and dated within the Second Negotiation Period (the “Executive Settlement”), whereupon the dispute shall be deemed settled, and not subject to further dispute resolution.

14.7.4 Forum. If an Executive Settlement is not achieved at the conclusion of the Second Negotiation Period, any dispute arising out of or relating to this Agreement, or the breach hereof, either Party may bring an action in a court of competent jurisdiction. **EACH OF THE PARTIES IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY OR ON BEHALF OF ANY PARTY RELATED TO OR ARISING OUT OF THIS AGREEMENT.**

14.7.5 Confidential Settlement Context. All negotiations, discussions, offers, counteroffers, data exchanges, proposed agreements and other communications between the Parties in connection with negotiations or other dispute resolution procedures shall be Confidential Information. Without limiting the preceding sentence, all such communications

shall be deemed to be in the context of attempting to settle a disputed claim and shall not be construed as an admission or agreement as to the liability of any Party, nor be admitted in evidence in any related arbitration, litigation or other adversary proceeding.

14.7.6 Limitations on Disputes. To the extent allowed by Applicable Law, the delivery of a dispute notice suspends the running of any statute of limitations applicable to the dispute until fourteen (14) Business Days after the conclusion of the Second Negotiation Period. Except as suspended by the preceding sentence, the time period during which a Party may assert a dispute shall run for 365 consecutive days following the termination of this Agreement, and the Parties shall be barred from asserting a dispute thereafter.

14.7.7 Exception for Injunctive Relief. Notwithstanding the provisions set forth above in this Section 14.7, the requirement to submit disputes to negotiation shall not apply if, and to the extent, that there exists an imminent threat of irreparable injury to a Party and that Party seeks and obtains a temporary restraining order or preliminary injunction in an expedited court proceeding in response to such threat. If the court rejects the application for injunctive relief, then the Party that initiated such action shall reimburse the defending Party for its reasonable and documented attorneys fees and related costs directly related to such court proceedings.

14.8 Amendments. No amendments or modifications of this Agreement are valid unless in writing and signed by duly authorized representatives of the Parties.

14.9 Survival. Notwithstanding any provisions to the contrary, the obligations set forth in Article VII and Article VIII (with respect to payments), Article X and Article XII, Section 14.7 and the limitations on liabilities set forth in Article XI will survive, in full force, the expiration or termination of this Agreement.

14.10 No Waiver. No delay, waiver or omission by Owner or Operator to exercise any right or power arising from any breach or default by Owner or Operator with respect to any of the terms, provisions or covenants of this Agreement shall be construed to be a waiver by Owner or Operator of any subsequent breach or default of the same or other terms, provisions or covenants on the part of Owner or Operator.

14.11 Notices. Any written notice required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be either delivered personally to the Party to whom notice is given, or mailed to the Party to whom notice is to be given, by facsimile, courier service or first class registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address indicated below, or at the most recent address specified by written notice given in the manner provided in this Section 14.11:

If to Operator:

[

_____]

If to Owner:

[

_____]

14.12 Representations and Warranties. Each Party represents and warrants to the other Party that, as of the date hereof:

14.12.1 Existence. It is duly organized and validly existing under the laws of the state of its organization and has all requisite power and authority to own its property and assets and conduct its business as presently conducted or proposed to be conducted under this Agreement.

14.12.2 Authority. It has the power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

14.12.3 Validity. It has taken all necessary action to authorize its execution, delivery and performance of this Agreement, and this Agreement constitutes the valid, legal and binding obligation of such Party enforceable against it in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors or by general equitable principles (whether considered in a proceeding in equity or at law).

14.12.4 No Conflict. Neither the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, nor the fulfillment of the terms and conditions hereof, conflicts with or violates any provision of its constituting documents.

14.12.5 No Consent. No consent or approval (including any Permit that such warranting Party is required to obtain) is required from any third party (including any Governmental Authority) for either the valid execution and delivery of this Agreement, or the performance by such Party of its obligations under this Agreement, except such as have been duly obtained or will be obtained in the ordinary course of business.

14.12.6 No Breach. None of the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof either conflicts with, violates or results in a breach of, any Applicable Law currently in effect, or conflicts with, violates or results in a breach of, or constitutes a default under or results in the imposition or creation of, any lien or encumbrance under any agreement or instrument to which it is a party or by which it or any of its properties or assets are bound.

14.12.7 No Material Claims. It is not a party to any legal, administrative, arbitral or other proceeding, investigation or controversy pending or threatened that would adversely affect such Party's ability to perform its obligations under this Agreement.

14.13 Additional Representation and Warranty by Operator. Operator further represents and warrants to Owner that it has, or has obtained through the retention of a qualified operations

and maintenance service provider, substantial expertise and experience in the operation and maintenance of comparable power generation facilities and it, or its applicable subcontractor, is fully qualified to provide such services at the Facility in accordance with the terms of this Agreement.

14.14 Counterparts. The Parties may execute this Agreement in counterparts that, when signed by each of the Parties, constitute one and the same instrument. Thereafter, each counterpart shall be deemed an original instrument as against any Party who has signed it. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

14.15 Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of New York, exclusive of the conflicts of law provisions thereof (other than Section 5-1401 of the New York General Obligations Laws).

14.16 Interpretation. Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof. All exhibits and appendices attached hereto are considered a part hereof as though fully set forth herein. This Agreement was jointly drafted and negotiated by the Parties. In the event of a dispute, the Agreement shall not be construed against either Party based upon its drafting.

14.17 Severability. If any provision of this Agreement, or the application of any such provision to any Person or circumstance, is held invalid by any court or other forum of competent jurisdiction, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner materially adverse to a Party. Upon any such determination of invalidity, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that this Agreement is consummated as originally contemplated to the greatest extent possible.

14.18 Cooperation in Financing, Sale, or Change of Control. Operator shall cooperate with Owner in the negotiation and execution of any reasonable amendment or addition to this Agreement required by Lender, and shall execute and deliver to Lender a consent to assignment or direct agreement in form and substance reasonably satisfactory to Lender. Operator shall promptly respond to requests by Owner and prospective Lenders for information regarding the qualification, experience, past performance and financial condition of Operator. Operator shall cooperate with Lender in connection with the resolution of any claim for indemnification asserted by Lender pursuant to Article X. Operator shall cooperate with Owner's reasonable requests in the event of a direct or indirect sale or transfer of the Facility or a change of control of Owner, whether by merger, sale of equity interests, or otherwise and shall promptly respond to requests by Owner for information regarding the qualification, experience, past performance and financial condition of Operator with respect to transfer or change in control.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

DUKE ENERGY KENTUCKY, INC.

By: _____
Name:
Title:

DUKE ENERGY MIAMI FORT, LLC

By: _____
Name:
Title:

APPENDIX A – SCOPE OF SERVICES

OPERATIONAL PERIOD SERVICES

Task Name	Description
Routine Services	Provide continuous Facility Services 24 hours/day, 7 days/week, to optimize electrical power generation.
Detailed Programs	Implement Operator human resources program. Implement Operator-drafted, Owner-approved programs in safety, administration, maintenance, and training. Implement Facility's existing programs in operating, maintenance, chemistry, NERC and environmental compliance (or, at Owner's request, develop or enhance such programs at actual cost and implement).
Routine Maintenance	<p>Perform routine and preventive maintenance actions on all Facility systems and equipment in accordance with vendor instructions and the maintenance plan for the Facility. This program includes:</p> <p>Service Checks – Conduct frequent visual equipment inspections and log significant parameters such as pressures, temperatures, and flow rates. Trend and analyze this information as appropriate.</p> <p>Routine and Fixed Interval Maintenance – Based on the CMMS database, identify all preventive maintenance requirements. Schedule and assign routine maintenance during Facility operation, planned outages, and forced or unscheduled outages.</p>
Predictive Maintenance Program	As appropriate, conduct/oversee predictive maintenance within the cost-effective capability of the Facility Personnel. For those maintenance requirements that are not cost-effective for the Facility Personnel, oversee predictive maintenance services provided by vendors.
Major Maintenance and Repairs	In coordination with and support of the Facility Agreements and generation plan, arrange for scheduled inspections and overhauls on major equipment. Retain vendors on behalf of Owner for unscheduled major repairs as required and manage and oversee all repairs and modifications.
Facility Outages	<p>Manage all Facility outages (planned, unscheduled, forced) to minimize outage duration and impact on production:</p> <p>Task Assignment – Within the CMMS, identify all maintenance that requires a Facility outage or equipment to be taken out of service.</p>

Task Name	Description
	<p>Work Schedule – Develop and implement a detailed schedule to track all outage preparations, work and testing, including corrective maintenance actions, contractor work and scheduled preventive maintenance. Obtain Owner approval of the schedule. Conduct preparations to support this plan, including ordering and receiving all required spare parts.</p>
<p>Assistance to Owner</p>	<p>Provide assistance to Owner, as reasonably requested with the execution of Owner’s duties relative to operation of the Facility.</p>
<p>Facility Administration</p>	<p>Conduct administration to meet Operator requirements and Owner’s goals, including:</p> <p>Budgets – Prepare annual Budgets and submit them for Owner approval. Following approval, manage operations to comply with each Budget. Generate budget variance reports, as required.</p> <p>Payroll – Oversee the preparation and distribution of payroll and related tax payments. Ensure compliance with all United States federal and state labor and tax requirements.</p> <p>Procurement – Establish and implement an effective purchasing system. Procure, to the account of Owner, all materials, equipment, chemicals, supplies, services, parts, and other miscellaneous items required for the provision of the Services. Pay all invoices not directly paid by Owner in a timely manner. Minimize Owner costs as much as feasible.</p> <p>Inventory Control – Implement a cost-effective inventory control system designed to ensure that spare parts, materials, and supplies are properly stored and accounted for and that adequate supplies are available at all times to support the provision of the Services.</p> <p>Personnel Matters –In compliance with Operator programs and policies, manage all payroll and employee-relations issues. These tasks include: employment; compensation and benefits; initial training; and employee relations. Provide support to recruit, hire, transfer, or otherwise acquire and retain qualified Facility Personnel to maintain the staffing levels and skill mix required for successful long-term provision of the Services.</p> <p>Community Relations – In coordination with and with the approval of Owner, conduct a community relations program to establish the Facility and its employees as “good citizens” in the local community.</p>
<p>Work Assignment</p>	<p>Assign work to either Facility Personnel or vendors as cost-effective and appropriate based on guidance from Owner. Normally, Facility</p>

Task Name	Description
	Personnel conduct preventive maintenance and actions requiring a high degree of Facility knowledge and vendors perform tasks needing equipment or expertise that are not cost-effective to maintain at the Facility. Vendors also perform tasks that make sense to minimize outage time and costs.
Buildings and Grounds	Arrange for janitorial, garbage pickup and landscape services and maintain all access roads, office buildings, and other structures in good repair at all times.
Reports	Prepare and submit operation and maintenance service reports as requested relative to performance, including environmental compliance records, maintenance and repair status, Facility operating data, and any other information reasonably requested by Owner.
Security	Implement or arrange for implementation of security measures in accordance with the Owner-approved Facility security plan.
Information Systems	Manage the Facility's information technology infrastructure, including phone systems, internet connectivity, hardware and software.
Training Program	Implement a continuing program of training designed to orient new Facility Personnel, refresh/cross-train existing Facility Personnel, qualify/re-qualify Facility Personnel, and keep all Facility Personnel aware of Owner-approved Facility safety requirements and emergency procedures. This program includes specialty skills training.
Drawing/Manual Maintenance	Maintain the Facility library and update the Manuals and vendor service manuals. Update (or arrange for updating) Facility drawings to reflect changes to the as-built configuration. In addition to document management, maintain physical Facility configuration control.

Task Name	Description
Fuel Handling	<ul style="list-style-type: none"> • Receive coal and provide fuel handling • Administer and reconcile volumes of all fuel with suppliers • Administer and comply with the requirements set forth in the Facility's fuel agreements, including quality testing and invoice review and approval • Administer and comply with the requirements set forth in the Facility's coal ash and combustion byproduct disposal and sales agreements, including invoice review and approval

RETIREMENT PERIOD SERVICES

Task Name	Description
Facility Retirement	Manage and contract with vendors to implement a Facility and/or Site retirement plan as may be approved by Owner.
Assistance to Owner	Provide assistance to Owner, as reasonably requested with the execution of Owner's duties relative to operation and retirement of the Facility.
Facility Administration	<p>Conduct administration to meet Operator requirements and Owner's goals, including:</p> <p>Budgets – Prepare annual Budgets and submit them for Owner approval. Following approval, manage operations to comply with each Budget. Generate budget variance reports, as required.</p> <p>Payroll – Oversee the preparation and distribution of payroll and related tax payments. Ensure compliance with all United States federal and state labor and tax requirements.</p> <p>Procurement – Establish and implement an effective purchasing system. Procure, to the account of Owner, all materials, equipment, chemicals, supplies, services, parts, and other miscellaneous items required for the provision of the Services. Pay all invoices not directly paid by Owner in a timely manner. Minimize Owner costs as much as feasible.</p> <p>Inventory Control – Implement a cost-effective inventory control system designed to ensure that spare parts, materials, and supplies are properly stored and accounted for and that adequate supplies are available at all times to support the provision of the Services.</p>

Task Name	Description
	<p>Personnel Matters –In compliance with Operator programs and policies, manage all payroll and employee-relations issues. These tasks include: employment; compensation and benefits; initial training; and employee relations. Provide support to recruit, hire, transfer, or otherwise acquire and retain qualified Facility Personnel to maintain the staffing levels and skill mix required for successful long-term provision of the Services.</p> <p>Community Relations – In coordination with and with the approval of Owner, conduct a community relations program to establish the Facility and its employees as “good citizens” in the local community.</p>
Work Assignment	Assign work to either Facility Personnel or vendors as cost-effective and appropriate based on guidance from Owner.
Buildings and Grounds	Arrange for janitorial, garbage pickup and landscape services and maintain all access roads, office buildings, and other structures in good repair at all times.
Information Systems	Manage the Facility’s information technology infrastructure, including phone systems, internet connectivity, hardware and software.
Reports	Prepare and submit service reports as requested relative to performance, including environmental compliance records, maintenance and repair status, Facility operating data, and any other information reasonably requested by Owner.
Security	Implement or arrange for implementation of security measures in accordance with the Owner-approved Facility security plan.

APPENDIX B – FEE ESCALATION METHODOLOGY

Beginning on January 1 of the Year following the Effective Date, and on each succeeding January 1st throughout the Term of this Agreement, the Fee will be escalated by the Escalation Factor, if positive, as of such date of determination.

“Escalation Factor” shall mean the percentage change in the Consumer Price Index Series, Midwest Region, All Items, published by the Bureau of Labor Statistics, US Department of Labor for the 12-month period ending in September of the previous Year. CPI data is available at the U.S. Department of Labor, Bureau of Labor Statistics website: <http://www.bls.gov>. In the event the CPI is discontinued or superseded, a reasonable substitute or replacement datum will be proposed by Operator and agreed to in good faith by Owner.

APPENDIX C – INITIAL BUDGET AND PLAN

[To be attached]