Duke Energy®

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Anita M. Schafer
Sr. Paralegal

VIA OVERNIGHT DELIVERY

April 2, 2008

RECEIVED
APR 03 2008
PUBLIC SERVICE COMMISSION

Ms. Stephanie Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Case No. 2008-00122
In the Matter of the Application of Duke Energy Kentucky, Inc. for Approval of an Intercompany Asset Transfer Agreement

Dear Ms. Stumbo:

Enclosed please find an original and twelve copies of the above captioned case.

Please date-stamp the extra two copies and return to me in the enclosed envelope.

Sincerely,

Anita M. Schafer

Anita M. Schafer
Senior Paralegal

cc: Hon. Larry Cook (with enclosures)

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

In The Matter Of the Application of Duke Energy Kentucky, Inc., for Deviation from Affiliate Pricing Requirements and Approval of An Intercompany Asset Transfer Agreement	)))))	Case No. 2008-

RECEIVED
APR 0 3 2008
PUBLIC SERVICE COMMISSION

2008-122

APPLICATION OF DUKE ENRGY KENTUCKY, INC. FOR DEVIATION FROM AFFILIATE PRICING REQUIREMNTS AND TO APPROVE AN INTERCOMPANY ASSET TRANSFER AGREEMENT

Now comes Duke Energy Kentucky, Inc. ("DE-Kentucky"), pursuant to KRS §§ 278.2207(2), 278.2219, 278.218, and 807 KAR 5:080, Section 5, and respectfully requests the Kentucky Public Service Commission grant a deviation from the pricing requirements set forth in KRS§278.2207(1)(a) and (b) to the extent necessary to permit DE-Kentucky to engage in affiliate transactions under the terms of, and otherwise approve, an Intercompany Asset Transfer Agreement (attached hereto as "Attachment A") by and among DE-Kentucky, Duke Energy Carolinas LLC ("DE-Carolinas"), Duke Energy Ohio, Inc. ("DE-Ohio"), and Duke Energy Indiana, Inc., ("DE-Indiana"), ("the Agreement"). The Agreement will enhance DE-Kentucky's ability to provide reliable service to its jurisdictional customers by providing access to a wider supply of equipment and inventory assets as needed and at a reasonable price, as well as allow for the transfer of such assets, other than commodities, by and between DE-Kentucky and its affiliated operating companies at the transferring party's cost or through in-kind replacements, as more fully described in this Application.

Background

1. DE-Kentucky is a Kentucky corporation with its principal office and principal place of business at 1697A Monmouth Street, Newport Shopping Center, Newport, Kentucky 41071. Its mailing address is P.O. Box 960, Cincinnati, Ohio 45201.

2. DE-Kentucky is a utility engaged in the gas and electric business. DE-Kentucky purchases, sells, stores and transports natural gas in Boone, Campbell, Gallatin, Grant, Kenton and Pendleton Counties, Kentucky. DE-Kentucky also generates electricity, which it distributes and sells in Boone, Campbell, Grant, Kenton and Pendleton counties.

3. A copy of DE-Kentucky's Articles of Incorporation are on file with this Commission in Case Number 2006-00563 and are hereby incorporated herein by reference.

4. The proposed deviation from affiliate pricing rules pursuant to the Agreement is reasonable and in the public interest in that it will enable DE-Kentucky to transfer assets, other than commodities, with its utility affiliates for the purpose of realizing economies of scale and improved reliability. One of the benefits of being part of a large public utility holding company is the ability to leverage the relationship among affiliated utility companies to realize operational efficiencies. The proposed Agreement enables DE-Kentucky and its affiliated utility operating companies to realize such efficiencies by providing each company access to a wider supply of equipment and inventory assets while in no way harming the customers of the respective utilities. For example, the Agreement would allow DE-Kentucky to acquire an inventory item from an affiliate at the affiliate's cost and in a more expeditious manner than DE-Kentucky may be able to procure the item from third-party suppliers. Importantly, the Agreement expressly recognizes each company's right to not transfer a requested item if such transfer might jeopardize the company's ability to render utility service consistent with Good Utility Practice.

5. Historically, DE-Kentucky transferred equipment and inventory items between itself and its parent company, DE-Ohio, at the transferring company's fully distributed cost pursuant to permission granted by the U. S. Securities and Exchange Commission ("SEC") under powers granted to the SEC under the Public Utilities Holding Company Act of 1935, as amended (PUHCA). Additionally, until April 2007, DE-Kentucky and DE-Ohio contracted with a third party provider to maintain an inventory of transmission and distribution parts and equipment, effectively limiting the number of transfers required between DE-Kentucky and DE-Ohio. Due to the repeal of PUHCA effective in February of 2006, and the termination of the third party contract in April of 2007, DE-Kentucky has determined that it must seek Commission approval to continue its practice of transferring equipment with DE-Ohio at cost, formalizing the inventory and equipment transfer process historically used, and to commence the transfer of assets with other affiliates, including DE-Carolinas and DE-Indiana.

6. In order to transact with its affiliates at cost as provided in the Agreement, pursuant to KRS 278.2207(2) DE-Kentucky must obtain Commission approval for a deviation from the affiliate transaction pricing requirements set forth in KRS 278.2207(1)(a) –(b).

7. Kentucky's affiliate pricing rules discourage DE-Kentucky's affiliates from transferring equipment to DE-Kentucky. Where, for example, a utility affiliate could only charge the lesser of cost or market in transferring equipment to DE-Kentucky, it would have to pay the greater of cost of market if it were receiving equipment from DE-Kentucky.[1] The affiliate will not be inclined to transact with DE-Kentucky where it is at such a disadvantage.

8. DE-Kentucky believes that this Agreement is in the public interest. To illustrate how a pre-approved affiliate asset transfer agreement would benefit DE-Kentucky and its

[1] KRS 278.2207(1)(a)-(b) (2008); Providing in relevant part the utility providing products or services to the affiliate is to be compensated at cost, but *no less than market*. The products or services provided by the affiliate to the utility are to be priced at cost *but no greater than market*.

customers, DE-Kentucky offers the following example. If DE-Kentucky were to experience increased transformer replacement rates due to a surge in demand for electricity caused by hot weather conditions, it would need to obtain replacement transformers on an expedited basis to prevent outages. Currently, DE-Kentucky's option for obtaining transformers on an expedited basis is from the manufacturer because in several jurisdictions, regulatory approval would be needed before DE-Kentucky could obtain the transformer from an affiliate. However, manufacturers often have low inventories of equipment that is in high demand, such as transformers during a hot summer. This may cause DE-Kentucky to suffer costly delays in obtaining needed replacement equipment or expose DE-Kentucky to higher replacement costs due to a heightened demand for the equipment. Thus in order to maintain reliable, cost effective service to its customers, DE-Kentucky believes having in place an approved affiliate asset transfer agreement will provide DE-Kentucky with additional equipment replacement options. This would allow DE-Kentucky to obtain needed equipment from an affiliate on an expedited basis if the manufacturer was unable to deliver the equipment in the timeframe needed or at a competitive price.

9. DE-Kentucky believes having an approved affiliate asset transfer agreement is reasonable and within the public interest. The Agreement will provide DE-Kentucky with additional replacement equipment options. A pre-approved affiliate asset transfer agreement eliminates the need for DE-Kentucky or its affiliates to ask multiple state commissions for review of individual asset transfers.

10. In furtherance of the public interest, DE-Kentucky is not asking this Commission to waive or cede any of its authority over transactions involving an asset with an original book value of one million dollars or more. DE-Kentucky agrees to continue to abide by KRS 278.218

for any transactions involving assets having an original book value of one million dollars or more and DE-Kentucky would first seek Commission approval before engaging in such a transfer.[2]

11. DE-Kentucky will maintain a list of all transactions occurring under the Agreement in its Cost Allocation Manual for Commission inspection pursuant to KRS 278.2205(2)(e).

12. The parties to the Agreements will maintain their own records and inventories and will document any such transactions to ensure compliance with KRS 278.2213, including, but not limited to requirements for separate accounting, avoidance of cross subsidies, and to ensure that no utility assets are used to finance a non-regulated activity or a utility affiliate.

The Agreement:

12. In addition, obtaining up-front approval for asset transfers will facilitate affiliate transaction audits and eliminate individual regulatory filings, thereby reducing the burden on the respective regulatory commission staffs. Specifically, the Agreement would allow:

(a) Assets other than commodities to be transferred upon request provided that the transferring company believes that such transfer will not jeopardize the transferring company's ability to render utility service to its customers consistent with Good Utility Practice;

(b) Transfer pricing as follows: (i) for inventory items, at average unit cost plus stores, freight and handling costs; (ii) for non-inventory items, at net book value; (iii) parties can agree to a replacement in kind, in which the recipient will replace the transferred asset in an agreed-upon timeframe.

[2] In fact, the Agreements specifically recognize the limitations placed on DE-Kentucky by KRS 278.218. *See* Section 1.1 (iii) of the Agreements.

Note that for transfers of generation equipment between DE-Ohio and the regulated utilities, such as DE-Kentucky, the pricing must comply with FERC-approved affiliate transfer pricing rules and orders.

(c) Assets delivered FOB transportation equipment at transferor's location where assets reside, title and risk of loss pass to recipient at said shipping point;

(d) Recipient to be responsible for all transportation costs from the shipping point; and

(e) Parties to record transactions in their shared and/or respective accounting systems.

12. The transfers under the Agreement are expected to be relatively symmetrical, so that no one utility affiliate is expected to benefit disproportionately from this arrangement.

13. The Intercompany Asset Transfer Agreement is also being submitted by DE-Kentucky's utility affiliates to the state utility commissions in North Carolina, South Carolina, and Indiana.[3]

14. Good cause exists for the requested deviation in this petition. The Commission's grant of the relief requested herein will enable DE-Kentucky to improve both the cost and reliability of providing electric and gas service to its customers in that DE-Kentucky would have access to spare parts and inventory items which may be difficult or unreasonable to obtain from third party suppliers in the market under certain circumstances.

Requested Relief

15. DE-Kentucky respectfully requests that the Commission grant to DE-Kentucky a deviation from the affiliate pricing standards of KRS 278.2207 to the extent necessary to permit

[3] No regulatory approval of the Agreement is required in Ohio.

DE-Kentucky to engage in transactions with its affiliates under the terms of, and otherwise approve, the Agreement.

16. DE-Kentucky also respectfully request that the Commission grant the relief requested herein expeditiously.

WHEREFORE, DE-Kentucky respectfully request that the Commission expeditiously issue an order granting a deviation from the pricing requirements of KRS 278.2207 to the extent necessary to allow DE-Kentucky to transact under the terms of the Intercompany Asset Transfer Agreement and grant such other and further relief as necessary to authorize the Agreement.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

Michael J. Pahutski (88630)
Assistant General Counsel
Duke Energy Kentucky, Inc.
139 East Fourth Street, Rm 25 ATII
Cincinnati, Ohio 45201-0960
Phone: (513) 419-1803 /Fax: (513) 419-1846
e-mail:michael.pahutski@duke-energy.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Application of Duke Energy Kentucky, Inc. has been served via overnight mail to the following party on this _____ day of April, 2008:

Michael J. Pahutski

Hon. Larry Cook
Office of the Attorney General
Utility Intervention and Rate Division
1024 Capital Center Drive
Frankfort, Kentucky 40601

INTERCOMPANY ASSET TRANSFER AGREEMENT

This **Intercompany Asset Transfer Agreement** (this "Agreement") is made and entered into as of [date], 2007 (the "Effective Date") by and among Duke Energy Carolinas, LLC, a North Carolina limited liability company ("DE Carolinas"), Duke Energy Ohio, Inc., an Ohio corporation ("DE-Ohio"), Duke Energy Indiana, Inc., an Indiana corporation ("DE-Indiana"), and Duke Energy Kentucky, Inc., a Kentucky corporation ("DE Kentucky") (collectively the "Operating Companies" and, individually, an "Operating Company").

W I T N E S S E T H:

WHEREAS, Duke Energy Corporation ("Duke Energy") is a Delaware corporation;

WHEREAS, each Operating Company is a subsidiary of Duke Energy and a public utility company;

WHEREAS, in the ordinary course of their businesses, the Operating Companies maintain inventory and other assets for the operation and maintenance of their respective electric utility, and with respect to DE Ohio and DE Kentucky, gas utility, businesses; and

WHEREAS, subject to the terms and conditions herein set forth, and taking into consideration the Operating Companies' utility responsibilities, each Operating Company is willing, upon request from time to time, to transfer Assets, as defined herein, to each other Operating Company, as each shall request from each other.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

ARTICLE 1. TRANSFER OF ASSETS

Section 1.1 Transfer. Upon request from one party ("Recipient"), the other party ("Transferor") shall transfer (the "Transfer") to the Recipient those Assets requested by Recipient, provided that (i) Transferor believes, in its reasonable judgment, that such Transfer will not jeopardize Transferor's ability to render electric utility service to its customers consistent with Good Utility Practice; (ii) the Cost of any shipment of transmission- or generation-related item(s) does not exceed $10,000,000; (iii) DE Carolinas shall not transfer any Asset hereunder in contravention of S.C. Code Ann. § 58-27-1300; and (iii) DE Kentucky shall not transfer any Asset hereunder in contravention of KRS 278.218. "Assets" means parts inventory, capital spares, equipment and other goods except for the following: coal; natural gas; fuel oil used for electric power generation; emission allowances; and environmental control reagents. "Good Utility Practice" means 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 which, 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, method, or acts generally accepted in the region

Section 1.2 Compensation. Except to the extent otherwise required by Section 482 of the Internal Revenue Code or analogous state tax law, Recipient shall compensate Transferor for any Assets Transferred hereunder at Cost; provided however that any Transfers of electric generation-related Assets between DE Ohio, on the one hand, and DE Carolinas, DE Indiana, or DE Kentucky on the other hand, will be priced in accordance with Federal Energy Regulatory Commission's ("FERC") affiliate transaction pricing requirements. Accordingly, generation-related Assets Transferred from DE Carolinas, DE Indiana, or DE Kentucky to DE Ohio shall be priced at the greater of Cost or market, and generation-related Assets Transferred from DE Ohio to DE Carolinas, DE Indiana, or DE Kentucky shall be priced at no more than market. "Cost" means (i) for items of inventory accounted for in the FERC Uniform System of Accounts account 154 ("Inventory Items"), the average unit price of such Inventory Items as recorded on the books of the Transferor, plus stores, freight, handling, and other applicable costs, and (ii) for assets other than Inventory Items, net book value.

Alternatively, the Transferor and Recipient may agree that the Asset Transferred to the Recipient be replaced in kind. In this event, Transferor and Recipient shall agree to the timing of such replacement, and other necessary terms and conditions, and such in-kind replacement shall be deemed a Transferred Asset for all purposes hereunder.

Section 1.3 Payment. Each Operating Company shall reasonably cooperate with each other Operating Company to record billings and payments required hereunder in their common accounting systems.

Section 1.4 Delivery; Title and Risk of Loss. The parties shall cooperate in providing transportation equipment necessary to deliver the Assets to the Recipient. Assets will be delivered FOB transportation equipment at the Transferor's location where such Assets reside ("Shipping Point"). All costs of transportation, including the cost of transporting in-kind replacement Assets to Transferor, shall be borne by the Recipient. Title to and risk of loss of the transferred Assets shall pass from the Transferor to the Recipient at the Shipping Point.

ARTICLE 2. WARRANTIES

Section 2.1 Warranties. Each Operating Company, as Transferor, warrants that it will have good and marketable title to the Assets transferred hereunder. Further, each Operating Company, as Transferor, warrants that it shall obtain release of any liens or other encumbrances on the Transferred Assets within a reasonable time. ALL ASSETS TRANSFERRED HEREUNDER ARE BEING SOLD "AS IS, WHERE IS" AND WITHOUT ANY WARRANTY AS TO ITS CONDITION, INCLUDING WITHOUT ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 2.2 Disclaimer. WITH RESPECT TO ANY ASSETS TRANSFERRED HEREUNDER, EACH OPERATING COMPANY AS TRANSFEROR MAKES NO

WARRANTY OR REPRESENTATION OTHER THAN AS SET FORTH IN SECTION 2.1, AND THE PARTIES HERETO HEREBY AGREE THAT NO OTHER WARRANTY, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), SHALL BE APPLICABLE TO SUCH ASSETS. THE PARTIES FURTHER AGREE THAT THE REMEDIES STATED HEREIN ARE EXCLUSIVE AND SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY OF ANY PARTY HERETO FOR A FAILURE BY ANY OTHER PARTY HERETO TO COMPLY WITH ITS WARRANTY OBLIGATIONS.

ARTICLE 3. INDEMNIFICATION

Section 3.1 Indemnification; Limitation of Liability.

(a) Subject to subparagraph (b) of this Section 3.1, each party (the "Indemnifying Party") shall release, defend, indemnify and hold harmless the other party (the "Indemnified Party"), including any officer, director, employee or agent thereof, from and against, and shall pay the full amount of, any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees), whether or not involving a third-party claim, incurred or sustained by or against any such Indemnified Party arising, directly or indirectly, from or in connection with Indemnifying Party's negligence or willful misconduct in the performance of its obligations hereunder.

(b) Notwithstanding any other provision hereof, each party's total liability hereunder with respect to any Assets shall be limited to the amount actually paid to Transferor for such Assets for which the liability arises, and under no circumstances shall Transferor be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise (it being the intent of the parties that the indemnification obligations in this Agreement shall cover only actual damages and accordingly, without limitation of the foregoing, shall be net of any insurance proceeds actually received in respect of any such damages).

Section 3.2 Procedure for Indemnification. Within 15 business days after receipt by an Indemnified Party of notice of any claim or the commencement of any action, suit, litigation or other proceeding against it (a "Proceeding") with respect to which it is eligible for indemnification hereunder, the Indemnified Party shall notify the Indemnifying Party thereof in writing (it being understood that failure so to notify the Indemnifying Party shall not relieve the latter of its indemnification obligation, unless the Indemnifying Party establishes that defense thereof has been prejudiced by such failure). Thereafter, the Indemnifying Party shall be entitled to participate in such Proceeding and, at its election upon notice to such Indemnified Party and at its expense, to assume the defense of such Proceeding. Without the prior written consent of such Indemnified Party, Indemnifying Party shall not enter into any settlement of any third-party claim that would lead to liability or create any financial or other obligation on the part of such Indemnified Party for which such Indemnified Party is not entitled to indemnification hereunder. If such Indemnified Party has given timely notice to Indemnifying Party of the commencement of such Proceeding, but Indemnifying Party has not, within 15 business days after receipt of such notice, given notice to

Indemnified Party of its election to assume the defense thereof, Indemnifying Party shall be bound by any determination made in such Proceeding or any compromise or settlement made by Indemnified Party. A claim for indemnification for any matter not involving a third-party claim may be asserted by notice from the applicable Indemnified Party to Indemnifying Party.

ARTICLE 4. MISCELLANEOUS

Section 4.1 Amendments. Any amendments to this Agreement shall be in writing executed by each of the parties hereto. To the extent that applicable state law or regulation or other binding obligation requires that any such amendment be filed with any affected state public utility commission for its review or otherwise, each Operating Company shall comply in all respects with any such requirements.

Section 4.2 Effective Date; Term. This Agreement shall become effective on the Effective Date and shall continue in full force and effect until terminated by either party upon not less than 30 days prior written notice to the other party. This Agreement may be terminated and thereafter be of no further force and effect upon the mutual consent of the parties hereto.

Section 4.3 Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any prior or contemporaneous contracts, agreements, understandings or arrangements, whether written or oral, with respect thereto. Any oral or written statements, representations, promises, negotiations or agreements, whether prior hereto or concurrently herewith, are superseded by and merged into this Agreement.

Section 4.4 Severability. If any provision of this Agreement or any application thereof shall be determined to be invalid or unenforceable, the remainder of this Agreement and any other application thereof shall not be affected thereby.

Section 4.5 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of law or otherwise by any party hereto without the prior written consent of the other party. Any attempted or purported assignment in violation of the preceding sentence shall be null and void and of no effect whatsoever. Subject to the preceding two sentences, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 4.6 Governing Law. This Agreement shall be construed and enforced under and in accordance with the laws of the State of New York, without regard to conflicts of laws principles.

Section 4.7 Captions, etc. The captions and headings used in this Agreement are for convenience of reference only and shall not affect the construction to be accorded any of the provisions hereof. As used in this Agreement, "hereof," "hereunder," "herein," "hereto," and words of like import refer to this Agreement as a whole and not to any particular section or other paragraph or subparagraph thereof.

Section 4.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed a duplicate original hereof, but all of which shall be deemed one and the same Agreement.

Section 4.9 DE Carolinas Conditions. In addition to the terms and conditions set forth herein, with respect to DE Carolinas, the provisions set out in Appendix A are hereby incorporated herein by reference. In addition, except with respect to the pricing of Asset Transfers as set forth herein, DE Carolinas' participation in this Agreement is explicitly subject to the Regulatory Conditions and Code of Conduct approved by the NCUC in its Order Approving Merger Subject to Regulatory Conditions and Code of Conduct issued March 24, 2006, in Docket No. E-7, Sub 795, as such Regulatory Conditions and Code of Conduct may be amended from time to time.

Section 4.10 DE Indiana Conditions. DE Indiana agrees and acknowledges that in accordance with its Affiliate Standards, Section II O (i) it will make Assets available to non-affiliated wholesale power marketers under the same terms, conditions and prices, and at the same time, as it makes Assets available to a DE Ohio's wholesale power marketing function, and (ii) it will process all requests for Assets from DE Ohio's wholesale power marketing function and non-affiliated wholesale power marketers on a non-discriminatory basis.

Section 4.11 Regulatory Approvals. This Agreement is expressly contingent on the receipt of all regulatory approvals or waivers deemed necessary by the parties.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by an appropriate officer thereunto duly authorized.

Duke Energy Carolinas, LLC.

By: _____
Richard G. Beach
Assistant Secretary

Duke Energy Indiana, Inc.

By: _____
Richard G. Beach
Assistant Secretary

Duke Energy Ohio, Inc.

By: _____
Richard G. Beach
Assistant Secretary

Duke Energy Kentucky, Inc.

By: _____
Richard G. Beach
Assistant Secretary

EXHIBIT A

DE CAROLINAS CONDITIONS

1. In connection with the North Carolina Utilities Commission ("NCUC") approval of the Merger in NCUC Docket No. E-7, Sub 795, the NCUC adopted certain Regulatory Conditions ("Regulatory Conditions") and a revised Code of Conduct governing transactions between DE Carolinas and its affiliates ("Code of Conduct"). Pursuant to the Regulatory Conditions and Code of Conduct, the following provisions are applicable to DE Carolinas:

(a) DE Carolinas' participation in this Agreement is voluntary. DE Carolinas is not obligated to take or provide services or make any purchases or sales pursuant to this Agreement, and DE Carolinas may elect to discontinue its participation in this Agreement at its election after giving notice under Section 4.2 of the Agreement.

(b) DE Carolinas may not make or incur a charge under this Agreement except in accordance with North Carolina law and the rules, regulations and orders of the NCUC promulgated thereunder.

(c) DE Carolinas may not seek to reflect in rates any (i) costs incurred under this Agreement exceeding the amount allowed by the NCUC or (ii) revenue level earned under this Agreement less than the amount imputed by the NCUC; and

(d) Except to the extent that requesting FERC review and authorization pursuant to 1275(b) of Subtitle F in Title XII of PUHCA 2005, as provided in Regulatory Condition 21, may be determined to have preemptive effect under the law, DE Carolinas will not assert in any forum that the NCUC's authority to assign, allocate, make pro-forma adjustments to or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is preempted and will bear the full risk of any preemptive effects of federal law with respect to this Agreement.

2. Transfers by DE Carolinas. With respect to the transfer by DE Carolinas under this Agreement of the control of, operational responsibility for, or ownership of any DE Carolinas assets used for the generation, transmission or distribution of electric power to its North Carolina retail customers with a gross book value in excess of ten million dollars, the following shall apply: (a) DE Carolinas may not commit to or carry out the transfer except in accordance with all applicable law, and the rules, regulations and orders of the NCUC promulgated thereunder; and (b) DE Carolinas may not include in its North Carolina cost of service or rates the value of the transfer, whether or not subject to federal law, except as allowed by the NCUC in accordance with North Carolina law.