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May 12, 2015

VIA HAND-DELIVERY

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
PO Box 615
Frankfort, KY 40602-0615

RE: *In the Matter of the Application of Duke Energy Kentucky, Inc., for a Declaratory Order that the Construction of a New Landfill Constitutes an Ordinary Extension in the Usual Course of Business or, in the Alternative, for a Certificate of Public Convenience and Necessity, Case No. 2015-00089*

Dear Mr. Derouen,

Please find enclosed for filing with the Commission in the above-referenced matter an original and ten (10) copies of Duke Energy Kentucky, Inc.'s Supplemental Response to the Second Request for Information (specifically, Item AG-DR-02-018) propounded by the Attorney General on May 1, 2015. This filing supplements the Company's response filed May 8, 2015, to the Attorney General's Second Request for Information.

Please return a file-stamped copy to me, and please do not hesitate to contact me should you have any questions or concerns.

Very truly,

M. Evan Buckley

Enclosures

cc: Hon. Jennifer Black Hans (with enclosure)

Duke Energy Kentucky
Case No. 2015-00089
Attorney General Second Set Data Requests
Date Received: May 1, 2015

AG-DR-02-018 SUPPLEMENTAL

REQUEST:

Reference Duke response to AG 1-9. Provide the referenced contracts Duke has with W.H. Zimmer Station, Proctor and Gamble Ivorydale Station, and Miami Fort Station.

RESPONSE:

See AG-DR-02-018 Supplemental Attachments D, E and F.

PERSON RESPONSIBLE: Thomas E. Wiest/Legal

FLY ASH SALES AGREEMENT

This Fly Ash Sales Agreement (the "Agreement") is entered into effective as of 28th day of Dec, 2012 ("the Effective Date") between Duke Energy Commercial Asset Management, Inc., an Ohio corporation ("Seller") with a place of business in Cincinnati, Ohio, and Duke Energy Kentucky, Inc., a Kentucky corporation ("Buyer"). Seller and Buyer are each sometimes referred to in the Agreement as a "party" and, collectively, as the "parties".

RECITALS

WHEREAS, Seller is engaged in the generation of electrical energy and uses coal as a fuel in a portion of its generation facilities which produces fly ash as a byproduct;

WHEREAS, Buyer desires to purchase fly ash from Seller to use as a stabilizer in its land fill operations and Seller desires to sell the fly ash to Buyer pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the above parties acknowledge, the parties, intending to be legally bound, agree as follows:

1. **FLY ASH.** Unless otherwise agreed to in writing by the parties, all fly ash sold and purchased under this Agreement (the "Fly Ash") shall be produced and delivered from any of the following electric generating stations (individually and collectively, the "Source"):

a) Miami Fort Steam Station
11021 Brower Rd.
Northbend, OH 45052

b) WC Beckford Stations, Units 1-4
757 Old US Route 52
New Richmond, OH 45157

c) Zimmer Steam Station
1781 U.S. Rt. 52
Moscow, OH 45153

2. **CONTRACT PRICE.** The contract price for the Fly Ash shall be \$0/per ton; provided however, the parties will share transportation charges set forth in Section 3 below.

3. **TRANSPORTATION.** Buyer shall furnish suitable trucks for loading and delivery of the Fly Ash. Such trucks shall be compatible with Seller's loading facilities. The parties will share the transportation costs as follows:

Seller shall pay the below charges toward the shipment of the Fly Ash from the below named Sources as follows:

	<u>Source</u>	<u>Charges</u>
(a)	Miami Fort Station:	\$1.10/per ton
(b)	WC Beckjord Station:	\$1.10/per ton
(c)	Zimmer Station:	\$1.10/per ton

All remaining transportation charges will be the responsibility of Buyer.

4. **QUANTITIES.** The quantity of Fly Ash (the "Quantity") to be sold and purchased under this Agreement shall be as mutually agreed by the parties from time to time. Notwithstanding any provision to the contrary stated herein, the parties acknowledge and agree that neither Seller nor Buyer shall be obligated to sell, offer to sell or purchase any minimum quantity of Fly Ash under this Agreement.

5. **TERM.** This Agreement shall commence on the Effective Date and shall continue until December 31, 2014 (the "Term"), unless terminated earlier pursuant to the terms of this Agreement. Notwithstanding the foregoing, either party may terminate this Agreement at any point in time by providing the other party with at least 180 days written notice. Unless either party has elected to terminate this Agreement in accordance with the previous sentence, the parties shall meet not later than June 30, 2014 to discuss the renewal or replacement of this Agreement. If the parties fail to reach agreement on the renewal or replacement of this Agreement at least 30 days prior to the expiration of the Term, this Agreement will terminate on December 31, 2014.

6. **DELIVERY POINT.** The Fly Ash shall be delivered to Buyer at Seller's loading facilities at the applicable Source of origin (the "Delivery Point").

7. **SCHEDULING.** The parties agree to reasonably coordinate with each other on the scheduling and shipments of Fly Ash from the Sources. Duke Energy's Byproducts, Fuels & Materials Handling Department contacts at Miami Fort and at Zimmer Stations shall be responsible for: a) scheduling the necessary daily shipments of Fly Ash with Buyer, b) scheduling supporting trucks needed, c) loading the trucks, d) verifying that the Fly Ash meets the Specifications required by Buyer, and e) handling and approving the supporting payment invoices.

8. **SPECIFICATIONS.** The quality of Fly Ash to be supplied under this Agreement shall conform to the specifications listed on Exhibit A attached hereto (the "Specifications").

9. **WEIGHTS.** The weight for each Shipment shall be determined by scales at the Delivery Point. The cost of weighing shall be for Seller's account and such weights shall be final and binding and govern for allocation of transportation charges. Seller shall cause the scales to be maintained in accordance with NIST Handbook 44 and certified annually, and upon request, a copy of the annual certified scale report shall be provided to Buyer. A "Shipment" shall mean one truck load.

TLM

10. **TITLE AND RISK OF LOSS.** Title to and risk of loss shall pass from Seller to Buyer as the Fly Ash is loaded into Buyer supplied trucks at the Delivery Point.

11. **INVOICES.** For this agreement, invoices will be paid and approved by Duke Energy Corporation's Byproducts, Fuels and Materials Handling Section ("B,F&MH Section"). Transportation charges will be allocated as specified in Section 3 above. Volumes sold will be tracked by the B,F&MH Section and both the "Seller" and the "Buyer" will be updated at least quarterly of volumes sold.

All invoices under this Agreement shall be delivered to:

Originals to: Duke Energy Accounts Payable Dept: P.O. Box 5385 Cincinnati, Ohio 45201
Copies to: Duke Energy, PO Box 1006, Charlotte, NC 28201-1006; Mail Code: EC10A

12. **MSDS.** Seller shall provide a material safety data sheet (MSDS) to Buyer for all Fly Ash supplied under this Agreement. The parties agree to reasonably coordinate with each other on the scheduling and shipments of Fly Ash from each of the Sources.

13. **NO WARRANTIES.** THE FLY ASH SOLD AND PURCHASED UNDER THIS AGREEMENT IS SOLD "AS IS" AND "AS PRODUCED" WITH ALL FAULTS. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS OF THE FLY ASH SOLD FOR ANY PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE TO BUYER UNDER ANY CLAIM OR CIRCUMSTANCES (INCLUDING, BUT NOT LIMITED TO, ANY CIRCUMSTANCES INVOLVING A FINDING THAT A WARRANTY OR REMEDY UNDER THIS AGREEMENT HAS FAILED OF ITS ESSENTIAL PURPOSE), WHETHER THE CLAIM SOUNDS IN CONTRACT, TORT, OR OTHER LEGAL THEORY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS OR REVENUE, LOST SALES OR LOST GOODWILL.

14. **Governing Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without reference to its conflict of laws principles.

15. **Assignment.** The terms, conditions and covenants of this Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors or assigns. This Agreement may not be assigned by either party without the written consent of the non-assigning party, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either party may assign this Agreement without the consent of the other party to an assignee that has agreed to assume the obligations under this Agreement in writing and provided that such assignee or its credit support provider has an Investment Grade credit rating. "Investment Grade" shall mean a credit rating of (i) BBB- or above as assigned by Standard and Poor's, a division of The McGraw-Hill Companies, Inc. or Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., as applicable, or any successor company thereto ("S&P") and (ii) Baa3 or above as assigned by Moody's Investors Service, Inc. ("Moody's") or its successor.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. Notices. All notices permitted or required under this Agreement shall be deemed given if hand delivered, sent by certified mail, return receipt requested, sent by Federal Express or another recognized overnight delivery service, or sent by facsimile (with transmission confirmed) and confirmed by first class mail, to the addresses listed below or the subsequent addresses of which the parties give each other notice:

To Seller: Duke Energy Commercial Asset Management, Inc.
Attn: David Jackson, Managing Dir Coal Trading
139 East Fourth Street
Mail Code: EX396A
Cincinnati, OH 45202

To Buyer: Duke Energy Kentucky, Inc.
Attn: Tony Mathis, Director of B,F&MH
526 South Church Street or PO Box 1006
Mail Code EC02F
Charlotte, NC 28203-1006
Facsimile: 704 382-4122

IN WITNESS WHEREOF, both parties have caused this Agreement to be executed in duplicate originals by their duly authorized persons as of the Effective Date hereinabove.

Duke Energy Commercial
Asset Management, Inc.

Duke Energy Kentucky, Inc.

By: [Signature]
Name: DAVID JACKSON
Title: MANAGING DIRECTOR
COAL TRADING

By: [Signature]
Name: TONY R. MATHIS
Title: DIRECTOR REPRODUCTIVE REAGENTS

**EXHIBIT A
SPECIFICATIONS**

Fly Ash shall be at least "Grade F" fly ash. If Fly Ash quality does become "Grade C" the Seller shall provide written notification to the "Buyer" at least 1 month in advance so that the "Buyer" can evaluate if it can continue to utilize the Fly Ash. Seller shall inform Buyer of any other "major" (SO3 mitigation agent, etc.) changes to the Fly.

AMENDMENT TO FLY ASH SALES AGREEMENT

THIS AMENDMENT TO FLY ASH SALES AGREEMENT (the "Amendment") effective as of September 8, 2014 (the "Amendment Effective Date") is entered into by and between **Duke Energy Kentucky, Inc.**, a Kentucky corporation ("Buyer") and **Duke Energy Commercial Asset Management, LLC.**, an Ohio limited liability company, ("Seller").

WHEREAS, the Buyer and the Seller entered into that certain Fly Ash Sales Agreement dated as of December 28, 2012 (the "Agreement"); and

WHEREAS, the Buyer and the Seller desire to amend the Agreement pursuant to the terms stated herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 1 of the Agreement is hereby replaced in its entirety with the following:

"FLY ASH. Unless otherwise agreed to in writing by the parties, all fly ash sold and purchased under this Agreement (the "Fly Ash") shall be produced and delivered from either of the following electric generating stations (individually and collectively, the "Source"):

a) Miami Fort Steam Station
11021 Brower Rd.
North Bend, OH 45052

Or,

b) Zimmer Steam Station
1781 U.S. Rt. 52
Moscow, OH 45153"

2. Section 3 of the Agreement is hereby replaced with the following:

"TRANSPORTATION. Buyer shall furnish suitable trucks for loading and delivery of the Fly Ash. Such trucks shall be compatible with Seller's loading facilities. The parties will share the transportation costs as follows:

Seller shall pay the below charges toward the shipment of the Fly Ash from the below named Sources as follows:

	Source	Charges
(a)	Miami Fort Station:	\$1.10/per ton
(b)	Zimmer Station:	\$1.10/per ton

All remaining transportation charges will be the responsibility of the Buyer."

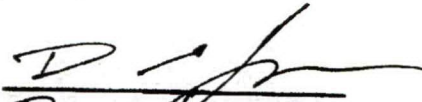
3. Section 5 of the Agreement is hereby replaced in its entirety with the following:

"TERM. This Agreement will commence on the Effective Date and shall continue until December 31, 2015 (the "Term"), unless terminated earlier pursuant to the terms of this Agreement. Notwithstanding the foregoing, either party may terminate this Agreement by providing the other party with at least 180 days written notice."

4. Except as herein amended, all terms and conditions of the Agreement are hereby reaffirmed and shall remain in full force and effect as previously written and shall be construed as one document with this Amendment.
5. All capitalized terms not defined herein shall have the same meaning ascribed to such term in the Agreement.
6. This Amendment may be executed in one or more counterparts, each of which shall be an original, and all of which shall be deemed to constitute but one and the same instrument.

IN WITNESS WHEREOF, the Buyer and the Seller have executed this Amendment to Fly Ash Sales Agreement effective as of the Amendment Effective Date.

**Duke Energy Commercial Asset
Management, LLC**

By: 
Name: DAVID JACKSON
Title: DIRECTOR COAL TRADING
Date: 9/8/2014

Duke Energy Kentucky, Inc.

By: 
Name: Brett S. Phipps
Title: Director Fuel Procurement
Date: 9/13/2014

AMENDMENT TO FLY ASH SALES AGREEMENT

THIS AMENDMENT TO FLY ASH SALES AGREEMENT (the "**Amendment**") dated as of November 19, 2014 is entered into by and between **Duke Energy Commercial Asset Management, LLC** (f/k/a Duke Energy Commercial Asset Management, Inc.), an Ohio limited liability company ("**Seller**") and **Duke Energy Kentucky, Inc.**, a Kentucky corporation, ("**Buyer**").

WHEREAS, the Buyer and the Seller entered into that certain Fly Ash Sales Agreement dated as of December 31, 2013 (the "**Agreement**"); and

WHEREAS, the Buyer and the Seller desire to amend the Agreement pursuant to the terms stated herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 5 of the Agreement is hereby replaced in its entirety as follows:
"This Agreement shall commence on the Effective Date and shall continue until December 31, 2015 (the "Term"), unless terminated earlier pursuant to the terms of this Agreement."
2. The following new Section 18 is hereby added to the Agreement as follows:
18. GENERATING STATION GUIDELINES. Seller shall conform to the Generating Station Guidelines set forth in Exhibit B which are incorporated herein by reference.
3. The following new Section 19 is hereby added to the Agreement as follows:
"19. TERMINATION RIGHT. Buyer shall have the right to terminate this Agreement immediately upon written notice (including fax and electronic mail) to Seller upon any change in law or regulations (or interpretation thereof) which classifies Fly Ash as a hazardous material and/or otherwise restricts conditions or limits the rights or ability of Buyer or its affiliate to utilize the Fly Ash as a stabilizer in its land fill operations as intended under this Agreement."
4. Except as herein amended, all terms and conditions of the Agreement are hereby reaffirmed and shall remain in full force and effect as originally written and shall be construed as one document with this Amendment.
5. All capitalized terms not defined herein shall have the same meaning ascribed to such term in the Agreement.

6. This Amendment may be executed in one or more counterparts, each of which shall be an original, and all of which shall be deemed to constitute but one and the same instrument.

IN WITNESS WHEREOF, the Buyer and the Seller have executed this Amendment to Fly Ash Sales Agreement effective as of the day and year first above written.

Duke Energy Kentucky, Inc.

Duke Energy Commercial Asset
Management, LLC


By:
Name:
Title:



By:

Name:

Title:


Name: DAVID JACKSON
Title: DIRECTOR COMM RISK MANAGEMENT

**EXHIBIT B
GENERATING STATION GUIDELINES**

- A. Seller or its supplier shall be solely responsible for loading the Fly Ash at the Source and delivering the Fly Ash to DECAM at the Delivery Point which shall not unreasonably interfere with the operations at the Station.
- B. Without limiting Seller's other obligations hereunder, Seller shall ensure that the hauling of the Fly Ash over public roadways or private roads will be conducted in a safe manner and in accordance with all applicable laws including highway weight or load limitations, EPA fugitive dust guidelines and all other applicable safety regulatory requirements. Seller shall ensure that all hauling shall be conducted in such a manner as required to prevent any Fly Ash from being blown or falling off trucks during transportation or becoming an environmental nuisance or source of complaint. Seller shall ensure that a copy of the Material Safety Data Sheet (MSDS) for the Fly Ash being transported shall be available in each truck or tanker in the event of an accident or spill and such information is requested by local or state authorities.
- C. All trucks must pass D.O.T. testing requirements, and all drivers must conform to requirements for Commercial Drivers License.
- D. Seller shall ensure that additional caution is exercised where haul roads pass through parking areas. Pedestrians shall be given the right-of-way. Seller shall ensure that all haulers of Fly Ash understand the speed limit is 10 mph at the Station.
- E. Seller shall be responsible for personnel, equipment, services, permits, and all other expenses associated with the sale and transportation of Fly Ash.
- F. Seller shall not create, or permit any of its agents or contractors to create, any condition that may constitute a nuisance, hazard, or otherwise interfere with the operations or, cleanliness of the Station. Any neighbor complaints will be handled by Seller in a quick and expeditious manner.
- G. Seller shall use, or cause to be used, tarps on all open top trucks while they are in motion. This includes both loaded and empty trucks. If Seller fails to comply herewith, Buyer in its absolute discretion may stop all acceptance of Fly Ash supplied under this Agreement until conditions are acceptable to Buyer.