



**EAST KENTUCKY POWER COOPERATIVE  
FUEL DEPARTMENT**

**PURCHASE ORDER  
NO. 43682**

This number must appear on all  
invoices, shipping documents,  
and correspondence

<b>TO:</b> Valor LLC ("Valor" or "Seller") 1200 Alsop Lane Owensboro, KY 42303  <b>Vendor No. <u>22555</u> Must Appear On All Correspondence</b>		<b>INVOICE TO:</b> East Kentucky Power Cooperative, Inc. ("EKPC" or "Buyer") 4775 Lexington Road P. O. Box 707 Winchester, Kentucky 40392-0707 <b>Attention: Julia Hurst</b>	
<b>SHIP TO:</b> East Kentucky Power Cooperative, Inc. Spurlock Power Station 1301 W. 2 <sup>nd</sup> Street Charleston Bottoms, KY 41056-9716, <b>OR</b>  Cooper Power Station 670 Cooper Power Plant Road Somerset, KY 42501 <b>OR</b>  Smith Power Station 12145 Irvine Road Winchester, KY 40391 <b>OR</b>  Bluegrass Generating Station 3095 Commerce Parkway LaGrange, KY 40031 (collectively the "Station")		<b>DELIVERY:</b> Truck	
Purchase Order Date July 15, 2024		Terms See Below	F. O. B. Applicable Power Station

This purchase order (the "Purchase Order") binds Seller to sell and ship the following unbranded dyed ultra-low sulfur No. 2 Fuel Oil to Spurlock Power Station, Charleston Bottoms, Kentucky; and/or Cooper Power Station, Somerset, Kentucky; and/or Smith Power Station, Winchester, Kentucky; and/or Bluegrass Generating Station, LaGrange, Kentucky, under the following terms and conditions:

**Term:** Deliveries shall commence on January 1, 2025, and continue through December 31, 2025, SUBJECT HOWEVER, to NOTE A hereinafter stated.

**Quantity:** Total of 504,000 gallons, approximately 67 truck loads, as directed by the Buyer for either Spurlock Power Station, Cooper Power Station, Smith Power Station, Bluegrass Generating Station or any combination of the stations at a rate of approximately 42,000 gallons per month through the term. Total gallons shall be utilized by the Buyer within the term of this purchase order.

**Not Subject to Kentucky Sales or Use Tax.**

"The Equal Employment Opportunity Clause at 41 CFR 60-1.4 (a) and the Affirmative Action Clauses at 41 CFR 60-250.5 and 60-741.5 are hereby incorporated by reference and made a part of this purchase order as though fully set forth herein."

**Quality:** All of said Unbranded dyed ultra-low sulfur No. 2 fuel oil shall be hydrocarbon oils, free from inorganic acid, and free from excessive amounts of solid or fibrous matter likely to make frequent cleaning of suitable strainers necessary. All of said No. 2 fuel oil SHALL NOT CONTAIN MORE than Five Hundredths (.05) percent water and sediment by volume or 15 part per million sulfur content. All said fuel oil shall meet No. 2 fuel oil specifications as stated in ASTM D396, provided upon request. Biodiesel shall not be added to or blended with said fuel oil.

**Delivery:** All deliveries are to be made by truck f.o.b. fuel tank located at the applicable destination at a rate of approximately 7,500 gallons per load during the following hours:

Spurlock Power Station	Twenty-four hours a day, seven days per week
Cooper Power Station	7 a.m. to 2 p.m. Monday through Friday
Smith Power Station	7 a.m. to 3:30 p.m. Monday through Friday
Bluegrass Generating Station	7 a.m. to 3:30 p.m. Monday through Friday

Driver will observe unloading to minimize accidental spills. Buyer will inform Seller as product is needed and deliveries will be made as soon as possible with Buyer attempting to give notice twenty-four (24) hours prior to delivery.

**Volume:** Volume will be determined by Seller by adjusting gross gallons for temperature to arrive at net gallons. This volume, net gallons, will be supplied to station personnel upon arrival at the Station.

**Acceptance:** Buyer reserves the right, in its sole discretion, to reject any fuel oil shipment or any portion on a truckload basis if a fuel oil shipment fails on-site analysis or, upon visual inspection, it is apparent that a truck contains any foreign material not normally contained in a fuel oil shipment. Any shipments that are rejected shall be removed from Buyer's premises at Seller's expense.

**Sampling and Analysis:** All of said oil shall be sampled immediately upon delivery to the power station. All deliveries shall be made by trucks in which access to oil can be made so that samples can be easily taken. No deliveries will be accepted where this access is obstructed. Sampling, preparation, and analysis shall be as per East Kentucky Power Cooperative, Inc.'s ("EKPC") oil sampling and analysis procedures on file at EKPC's office. The sampling procedure is based on ASTM D2709. Samples for sulfur content may be analyzed using X-ray fluorescence in compliance with various ASTM procedures.

**Price:** The price of all said Unbranded dyed ultra-low sulfur No.2 Fuel Oil, f.o.b. Spurlock Power Station, shall be fixed pricing throughout the term. Fixed pricing for Spurlock Power Station shall be \$2.6357 per gallon, which includes all transportation, margin, and applicable taxes and fees. Price excludes sales tax. If the Buyer elects to divert deliveries to either Cooper Power Station or Smith Power Station or Bluegrass Generating Station, the price of all said Unbranded dyed ultra-low sulfur No. 2 Fuel Oil, f.o.b. unloading facility at applicable plant, shall be a fixed price throughout the term of \$2.7182 per gallon for Cooper Power Station, and \$2.6732 per gallon for Smith Power Station and \$2.6532 per gallon for Bluegrass Generating Station.

**Payment:** EKPC will make payment in full within ten (10) days upon receipt of a correct invoice. Invoice must state applicable power station and purchase order number of delivered fuel.

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**Payment to be made by Automated Clearing House ("ACH") to:**



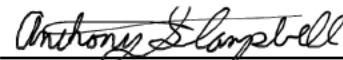
**Additional Terms and Conditions:** The attached Terms and Conditions are hereby incorporated by reference into this Purchase Order.

**NOTE A:** Notwithstanding anything else herein contained, due to the necessity of maintaining a consistent supply of high quality fuel oil, Buyer reserves the absolute right to immediately "cover" any failure by Seller to (a) deliver fuel oil as scheduled or (b) deliver fuel oil meeting the quality specifications of this Purchase Order.

The parties acknowledge that EKPC is currently exempt from Kentucky sales and use tax on the fuel oil being sold pursuant to this Purchase Order. In the event EKPC's tax status changes during the term of this Agreement, EKPC agrees it will be responsible for any and all applicable taxes owed on the fuel oil sold hereunder.

**East Kentucky Power Cooperative, Inc.**

**By:**

  
\_\_\_\_\_  
**Anthony S. Campbell, President and CEO**

**Valor LLC**

**Accepted By:**

  
\_\_\_\_\_  
**Charles LaHugh, VP of Sales and Operations**

**TERMS AND CONDITIONS**  
**TO**  
**PURCHASE ORDER NO. 43682**

The following terms and conditions are incorporated by reference into Purchase Order #43682 (the "Purchase Order").

**Force Majeure:** It is specifically understood and agreed that the obligations of both parties under this Purchase Order are subject to events of Force Majeure, as defined below. If a valid event of Force Majeure occurs, affected party shall be excused from performance of its obligations to the extent made necessary by and during the continuance of such Force Majeure, subject to prompt delivery of written notice of such event of Force Majeure (including a detailed description of the Force Majeure, expected time period of the Force Majeure, and impact of the Force Majeure) to the other party, provided, however, that the disabling effects of such force majeure shall be eliminated by such claiming party as soon as, and to the extent practicable, by use of its best efforts. The suspension of obligations caused by a valid event of Force Majeure shall exist only for such time as said occurrence is in effect, and after said occurrence has ended or been resolved, both parties shall be fully bound to perform under the terms of this Purchase Order for the duration of this Purchase Order, except that any deficiencies in the sale or receipt of fuel oil hereunder caused by Force Majeure will only be made up at the discretion of the non-declaring party and the term of this Purchase Order shall not be extended by Force Majeure unless the non-declaring party agrees. No other acts or events shall excuse either party from full performance of this Purchase Order except as may be stated under the other terms of this Purchase Order.

"Force Majeure" as used herein shall mean a cause beyond the reasonable control of Seller or Buyer, as the case may be, whether foreseen or unforeseen, which wholly or materially prevents the transportation, sale, or delivery of fuel oil meeting the specifications under this Purchase Order, or the receipt, storing, or use of fuel oil by Buyer at its destination and which the party claiming Force Majeure could not have prevented with the exercise of reasonable prudence. Examples (without limitation) of Force Majeure, but only if beyond the control of Seller or Buyer, as the case may be, are the following:

Acts of God; acts of the public enemy; insurrections; riots, strikes; labor disputes; shortage of supplies; fires, explosions; floods; breakdowns of or damage to plants, equipment or facilities; interruptions to or contingencies of transportation; embargoes; orders or acts of civil or military authority; or acts of terrorism.

Notwithstanding the foregoing, Force Majeure, for purposes of this Contract, shall not include (i) the development or existence of economic conditions that may adversely affect Buyer's utilization of fuel oil or Seller's delivery or sale of fuel oil, (ii) acts or omissions of Seller or Buyer constituting negligence, or mismanagement on the part of Seller or Buyer, or (iii) causes or events affecting the performance of third-party sellers of goods or services except to the extent caused by an event that otherwise is a Force Majeure event.

**Amendment; Waiver:** No amendment to this Purchase Order shall be enforceable unless in writing and signed by the party against whom enforcement is sought. No waiver or failure to insist upon strict compliance with any obligation, covenant, agreement or condition of this Purchase Order shall operate as a waiver of, or an estoppel with respect to, any subsequent or other failure, regardless of any provision of the Uniform Commercial Code, as enacted, to the contrary. It is further understood and agreed that Buyer does not waive its rights under this Purchase Order by receiving any shipments of fuel oil, and acceptance thereof shall not be implied unless Buyer fails to give Seller prompt notice of any breaches or defaults within a reasonable time after each sampling period has ended and the fuel oil analysis has been completed.

**Compliance with Laws:** An explicit obligation of Seller under this Purchase Order is that Seller shall perform its obligations hereunder in accordance with all applicable Federal, state, county and municipal laws, regulations codes and ordinances, including, but not limited to, those applicable to sale and transportation of fuel oil. Transportation of fuel oil by Seller or by any third party transporting fuel oil on Seller's behalf shall comply with applicable highway laws and regulations governing the weight of vehicles and all other highway laws promoting public safety, health and welfare, including all laws governing the operation of vehicles on any road or highway.

**Damage to Equipment:** If Buyer determines, in good faith, that any foreign matter in the fuel oil delivered by Seller causes damage to electrical production, operating, receiving or handling equipment, the parties shall meet to mutually investigate the extent of the damage and to attempt in good faith to resolve the matter. Buyer shall document the damage due to the foreign matter. If it is determined that foreign matter in the fuel oil is responsible for any of the damage, then the costs and expenses arising out of such damage shall be paid by Seller to Buyer.

**Indemnity and Insurance:** Seller agrees to defend, indemnify, and hold harmless Buyer, its directors, officers, employees, and agents, from any and all damage, loss, claim, demand, suit, liability, penalty, or forfeiture of every kind and nature—including, but not limited to, costs and expenses of defending against the same and payment of any

settlement or judgment, therefore, by reason of (a) injuries or deaths to persons, (b) damages to or destructions of properties, (c) pollutions, contaminations of, or other adverse effects on the environment, or (d) violations of governmental laws, regulations, or orders or breaches of this Purchase Order—whether suffered directly by Buyer itself or indirectly by reason of claims, demands, or suits against it by third parties, resulting or alleged to have resulted from acts or omissions of Seller, its employees, agents, subcontractors, or other representatives or from their presence on the premises of Buyer or otherwise from performance of this Purchase Order.

Seller shall provide and maintain, and shall require any and all subcontractors to provide and maintain, with an insurance company authorized to do business in the Commonwealth of Kentucky and otherwise acceptable to Buyer the following insurance with proof of such coverage to be provided to Buyer within two (2) days of the date first set forth above:

**Workers Compensation and Employer's Liability Policy:** Seller shall submit evidence of Seller's Workers' Compensation and Employer's Liability Insurance Policy, and each such policy shall include:

1. Workers' Compensation (statutory benefits coverage) Insurance accordance with the laws of the Commonwealth of Kentucky.
2. Employer's Liability with a minimum limit of One Million Dollars (\$1,000,000) with respect to Bodily Injury Each Accident/(\$1,000,000), Bodily Injury by Disease Each Employee/(\$1,000,000), and Bodily Injury by Disease Policy Limit.

**Commercial General Liability Policy:** Seller shall provide evidence of Seller's policy providing Commercial General Liability Insurance, with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) General Aggregate, and the following coverage:

1. Coverage for premises and operations, including work let or sublet.
2. No exclusion of coverage for Blanket Contractual Liability to the extent covered by the policy against liability assumed by Seller under this Contract.
3. No exclusion for Broad Form Property Damage hazard.
4. Said policy shall name Buyer as an Additional Insured, with Seller's policy deemed to be primary.
5. Said policy shall be endorsed to provide that the underwriter(s) have waived their Rights of Recovery Against Others (subrogation) against Buyer and Buyer's insurance carrier(s).
6. Should policy contain a deductible clause for bodily injury or property damage liability, said deductible shall be shown on a Certificate of Insurance delivered to Buyer, and Seller's carrier shall agree to pay any such claims "first dollar" and then recover the deductible amount from Seller.

**Commercial Automobile Liability Insurance Policy:** Seller shall provide evidence of Seller's Commercial Automobile Liability Insurance covering the use of all owned, non owned, and hired vehicles, with a minimum combined single limit for bodily injury and property damage of Two Million Dollars (\$2,000,000) each accident with respect to Seller's vehicles assigned to or used in performance of work under this Purchase Order. Said policy shall name Buyer as an Additional Insured with said policy designated to be primary. Said policy shall include an endorsement providing that the underwriter(s) have waived their Rights of Recovery Against Others (subrogation) against Buyer and Buyer's insurance carrier(s). Should policy contain a deductible clause for bodily injury or property damage liability, said deductible shall be shown on the Certificate of Insurance, and Seller's carrier shall agree to pay any such claims "first dollar" and then recover the deductible amount from Seller.

**Umbrella/Excess Liability Insurance:** Employer Liability, Commercial General Liability, and Commercial Automobile Liability, and if applicable, Environmental Impairment ("Pollution") Liability Insurance. Seller shall provide a minimum Three Million Dollars (\$3,000,000) Each Occurrence and, Three Million Dollars (\$3,000,000) in aggregate umbrella/excess liability insurance. Said policy shall be "follow-form" to the extent of coverage in provisions in the primary forms Employer Liability, Commercial General Liability, and Commercial Automobile Liability, with regards to coverage terms and policy provisions. Said coverage must continue in force for a minimum of two (2) years from the date of expiration or termination of this Purchase Order.

The above policies to be provided by Seller shall be written by companies satisfactory to Buyer or having a Best Rating of not less than A—("Excellent"). These policies shall not be materially changed or cancelled except with a thirty (30) day written notice to Buyer from the Seller and the Insurance Carrier. Evidence of coverage, notification of cancellation, or other changes shall be mailed to:

East Kentucky Power Cooperative, Inc.  
ATTN: Fuel and Emissions Department  
P. O. Box 707  
Winchester, KY 40392-0707

Minimum limits and coverage required under this Section should not be construed to necessarily be adequate for Seller's own insurance and risk management needs. Buyer reserves the right to request and receive a summary of coverage of any of the above policies or endorsements. Seller's failure to provide the insurance required above shall permit Buyer to suspend shipments under this Purchase Order until such breach is remedied and to pursue all other remedies permitted by the Uniform Commercial Code.

**Breach:** (a) An event of default ("Event of Default") with respect to a party (the "Defaulting Party") shall mean any of the following:

- (i) the failure of Defaulting Party to pay when due any required payment where such failure is not remedied within five (5) days after written notice thereof, provided the payment is not subject to a good faith dispute;
- (ii) repeated failure of the Defaulting Party to deliver or to accept delivery of the quantity of fuel oil to be delivered as scheduled and meeting the quality specifications of this Purchase Order unless excused by Force Majeure, other express contractual provisions hereof, or the other party's failure to perform; or
- (iii) the insolvency, bankruptcy, or assignment for the benefit of creditors of either party.

(b) Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other party may:

- (i) withhold any payments due to the Defaulting Party until such Event of Default is cured;
- (ii) suspend performance of its obligations under this Agreement until such Event of Default is cured;
- (iii) pursue all remedies and recover all damages set forth for buyers or sellers, as applicable, under the Uniform Commercial Code, as enacted (including but not limited to the right to "cover" pursuant to KRS 355.2-712); or
- (iv) terminate by written notice this Purchase Order as of any date specified by the non-Defaulting Party within thirty (30) Days after such notice is given, however, such notice shall not be required where Defaulting Party files for a voluntary bankruptcy proceeding or similar proceeding.

Such rights and remedies shall be in addition to any other right or remedy the non-Defaulting Party may have at law, including under the Uniform Commercial Code, or in equity.

**Non-Assignability; Choice of Law; Venue:** This Purchase Order is personal as between Buyer and Seller and is non-assignable, except that, after prior written notice to the other party, Buyer may assign its rights under this Purchase Order only to the Rural Utilities Service or other lenders to Buyer. Otherwise, rights or obligations under this Purchase Order, and this Purchase Order itself, are neither assignable nor otherwise transferable and may not be subcontracted except by the written consent of said parties, which consent shall not be unreasonably withheld. This Purchase Order is governed by the laws of the Commonwealth of Kentucky, without regard to its choice of law principles. The parties hereto agree that any disputes that may arise under this Purchase Order that culminates in litigation shall be instituted and tried in the Circuit Court of Clark County, Kentucky, with such court having sole and exclusive jurisdiction.

**Entire Agreement:** This instrument contains the entire contract between the parties, and there are no representations, understandings, or agreements, oral or written, which are not included or expressly referred to herein.

**Severability:** If any provision of this Purchase Order or its application are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other applications of that provision, and of all other provisions and applications hereof, will not in any way be affected or impaired. If any court of competent jurisdiction shall determine that any provision of this Purchase Order is in any way unenforceable, such provision shall be reduced to whatever extent is necessary to make such provision enforceable.

**Fair Competitive Bidding:** This purchase order has been awarded to Seller pursuant to a fair and confidential competitive bidding process. By entering this purchase order, Seller represents and warrants that it did not promise or deliver anything of significant value to, or solicit or receive any confidential competitive bidding information regarding this purchase order from, any officer, director, agent or employee of Buyer, or any member of their families. Buyer shall have the right to terminate this Purchase Order should it determine that this representation of Seller is false.

#### **COMPLIANCE WITH APPLICABLE LAWS; SAFETY; DRUG AND ALCOHOL TESTING**

**Applicable Laws and Safety:** Seller (which, for purposes of this Article, also includes its subcontractors/carriers) agrees to follow applicable laws and reasonable safety protocols and be responsible for the final delivery to, and on, Buyer's Plant Site (hereinafter, "Deliveries") and to protect Buyer's facilities, property, employees, and third parties from damage or injury to the extent such damages or injury is a direct result of SELLER'S negligence or willful misconduct. Seller shall at all times comply with all Applicable Laws and facility rules, including without limitation those relating to health and safety, in connection with the Deliveries and has all applicable permits and approvals necessary to perform the Deliveries. Without limiting the foregoing, Seller shall strictly abide by and observe all standards of the Occupational Safety & Health Administration (OSHA) which are applicable to the Deliveries being performed by Seller now or in the future, all of which are incorporated herein by reference. While performing Deliveries, Seller shall keep the Deliveries site free from debris caused by Seller and not impair the safe and orderly condition of said site.. Buyer shall have the right but not the obligation to review Seller's compliance with safety and cleanup measures.

BUYER is both owner and operator of all of the storage tanks, pipes, pumps and other related equipment (collectively the "Storage Tanks") in which SELLER is to place/deliver the fuel product acquired by BUYER pursuant to this Agreement. BUYER represents that its Storage Tanks are in such condition that are in compliance with all applicable rules and regulations applicable to such Storage Tanks. BUYER must notify SELLER prior to a delivery if the Storage Tank is prohibited from receiving fuel product for any reason, including if prohibited by applicable governmental authorities.

**Hazards and Training:** Seller shall furnish adequate numbers of trained and qualified personnel and appropriate safety and other equipment reasonably suitable for performance of the Deliveries. Such personnel shall be skilled and properly trained to perform the Deliveries. Without limiting the foregoing, Seller shall participate in any safety orientation or other of Buyer's safety initiatives and shall strictly comply with any monitoring initiatives as determined by Buyer.

**Drug and Alcohol:** No person will perform any of the Deliveries while under the influence of drugs or alcohol. All persons who will perform any of the Deliveries may be subject to drug and alcohol testing under either of the following circumstances: (i) where the person's performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident which involves off-site medical treatment of any person; and (ii) where Buyer determines in good faith that there is reasonable cause to believe such person is using drugs or alcohol or may otherwise be unfit for duty. Such persons will not be permitted to perform any Deliveries until the test results are established. Seller shall use commercially reasonable efforts to administer and conduct drug and alcohol testing at its sole expense as well as on all of its employees and/or subcontractors performing the Deliveries and shall so certify in writing if so requested. As applicable and in addition to any other requirements and/or this Agreement, Seller shall develop and strictly comply with any and all drug testing requirements as required by Applicable Laws.

Should Seller have actual knowledge of violations of any of the herein stated policies of conduct in this Agreement, whether by its own employees, agents, representatives or its subcontractors, Seller has an affirmative obligation to immediately report any such known, perceived and/or anticipated violations to the Buyer in care of Buyer's Safety Manager at Headquarter Location or safety coordinator at the applicable facility.

**Notice to Owners:** Seller shall promptly report in writing to Buyer all accidents or incidents, including property damage, arising out of or in connection with the Deliveries, and after conducting an investigation, provide Buyer with details of the accident/incident, if any. Notice shall be given to Buyer's Safety Manager at Headquarters or to the onsite Safety Coordinator for the applicable facility.