**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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| **JOINT APPLICATION OF LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF A COMBINED CYCLE COMBUSTION TURBINE AT THE GREEN RIVER GENERATING STATION AND A SOLAR PHOTOVOLTAIC FACILITY AT THE E.W. BROWN GENERATING STATION** | **)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)** | **CASE NO. 2014-00002** |

**LOUISVILLE GAS AND ELECTRIC COMPANY'S AND KENTUCKY UTILITIES COMPANY'S RESPONSE TO KHANJEE INFRASTRUCTURE DEVELOPMENT, LLC'S MOTION TO INTERVENE**

Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (collectively, the "Companies") respectfully request that the Commission deny Khanjee Infrastructure Development, LLC's ("Khanjee") February 20, 2014 Motion to Intervene.[1] Under firmly established Kentucky case law and Commission precedent, "unsuccessful bidders" do not meet the standards for intervention. Indeed, the Commission denied intervention on an almost identical state of facts just seven months ago. The Commission should follow its own precedent and Kentucky case law and deny Khanjee's Motion.

## I. Khanjee Has No Special Interest In This Proceeding That Is Not Otherwise Adequately Represented.

To the best of the Companies' knowledge, Khanjee is not a customer of the Companies. Instead, Khanjee is a bidder who responded to the Companies' Request for Proposals ("RFP") for additional power. Khanjee's proposals were fully evaluated and were not a least reasonable

[1] It is not clear whether the individual who signed Khanjee's Motion to Intervene, Akhtar Ali Khan, is an attorney licensed to practice in Kentucky. If he is not, the Motion to Intervene should be rejected. *In the Matter of: The Application of Holly Creek Production Corporation to Increase Its Rates and Charges for Providing Farm Tap Service Pursuant to KRS 278.485*, Case No. 2007-00007, Order of January 9, 2007.

cost solution to meet the long-term needs of the Companies' customers. Thus, Khanjee is one of the "unsuccessful bidders" to whom intervention has been denied repeatedly. Thus, there is no "special interest" that would support Khanjee's intervention.

As explained in David Sinclair's Direct Testimony, the Companies issued the RFP in September 2012 as part of the process for identifying the best available alternatives to meet its customers' future energy needs.[2] Twenty-nine companies responded to the RFP with 72 different proposals.[3] The Companies' December 2013 "Resource Assessment" provides, among other things, an exhaustive description and analysis of the various proposals submitted in response to the RFP.[4] Khanjee responded to the RFP with several different proposals to provide power.[5] After careful analysis, the Companies concluded that the best solution for meeting their customers' needs is the construction of the facilities proposed in this proceeding. Thus, Khanjee's proposals or "bids," along with nearly 70 other proposals received in response to the RFP, were rejected.

The Commission has previously addressed the question of whether an unsuccessful bidder such as Khanjee may intervene in a subsequent case seeking a certificate of public convenience and necessity ("CPCN"). Both the Commission and the Kentucky courts have said such intervention should not be allowed.

In *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 Ky. App. Unpub. LEXIS 121 (Ky. App. February 2, 2007), the Court of Appeals affirmed the Commission's refusal to allow intervention to an unsuccessful bidder. EnviroPower was an unsuccessful bidder in an RFP process conducted by East Kentucky Power Cooperative, Inc. ("EKPC"). After

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[2] Sinclair Direct Testimony, p. 20.
[3] *Id.*
[4] The Resource Assessment is attached to the Sinclair Direct Testimony as Exhibit DSS-1. Sections 3 and 4 of the Resource Assessment describe the RFP process and the analysis of the responses.
[5] See Resource Assessment, Appendix A.

EKPC's RFP process concluded, EKPC filed a CPCN case at the Commission. EnviroPower sought intervention in the CPCN case twice. The Commission denied both motions on the grounds that EnviroPower was not a customer of EKPC, and, thus, had no interest in the rates or service of the utility. On appeal, the Franklin Circuit Court held that EnviroPower lacked a "legally protected interest which would entitle it to intervene in the CON case, and the PSC did not abuse its discretion in denying intervention." *Id.* at 7.

EnviroPower appealed the matter to the Kentucky Court of Appeals which agreed with the Commission that a party seeking intervention must have an interest in rates or service. Here, Khanjee has no special interest in the rates or service of the Companies not already represented by the Attorney General. The essence of Khanjee's Motion is that it should be allowed to intervene because it "made proposals . . . in response to the Request for Proposals" and that its "purpose for seeking to participate in this matter is its interest in helping the Commission to ascertain that available alternatives to the proposals of the joint applicants have been adequately and thoroughly studied."[6] Khanjee claims this to be a "special interest," but the truth is that its interest is to sell power – just like the other entities that responded to the RFP. That interest is not special at all in that there were 28 other entities that, like Khanjee, were unsuccessful bidders.

Khanjee's goal is to have its unsuccessful bids reconsidered here, in the context of this CPCN case. Wisely, the Commission and the Kentucky Court of Appeals have not allowed that to happen previously and should not allow an entity to use the Commission's process to have its unsuccessful bid reconsidered.

[6] Khanjee Motion, p. 1

As recently as July 2013, the Commission continued to follow *EnviroPower*. In Case No. 2012-00578,[7] the Commission denied intervention to an unsuccessful bidder in a Kentucky Power CPCN case. In that case, EnerNOC, like EnviroPower, was an unsuccessful bidder in a Kentucky Power RFP process. In the subsequent CPCN case, EnerNOC sought intervention, but the Commission denied it.[8] The Commission held:

> Based on a review of EnerNOC's motion and being otherwise sufficiently advised, the Commission finds that the facts and legal issues presented here are almost identical to those before the Court in the EnviroPower case. There, EnviroPower was an unsuccessful bidder in an RFP for power that had been issued by East Kentucky Power Cooperative, Inc. ("EKPC"). EnviroPower subsequently requested to intervene in EKPC's application for authority to construct a new generating facility which EKPC had proposed to construct in lieu of accepting the bid that EnviroPower had submitted in response to the RFP. The Commission denied EnviroPower's intervention and the Court of Appeals affirmed the denial of intervention, also holding that as a mere bidder in response to an RFP, EnviroPower had no vested interest that would entitle it to intervene in the Commission's proceeding.
>
> We find that EnerNOC has made no claim that it had any role in developing the KPCO RFP or in evaluating the bids that KPCO received. As a mere bidder on an issue that is tangential at best to this proceeding, EnerNOC has no vested or special interest in any issue before the Commission in this proceeding, and it is not likely to present issues or develop facts that would assist the Commission in this proceeding. For these reasons, we deny EnerNOC's motion to intervene.[9]

Khanjee's Motion to Intervene discloses that it participated in the Companies' RFP process. By virtue of that participation, Khanjee's proposals *have* been presented and studied by the Companies in the RFP process. In that process, Khanjee had an opportunity to present its

[7] *In the Matter of: Application of Kentucky Power Company for (1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief*, Case No. 2013-00578.
[8] Case No. 2013-00578, July 5, 2013 Order.
[9] *Id.* at 5.

very best "bids" to meet the Companies' needs. Those bids, along with nearly 70 others, were inferior to the solutions the Companies have proposed in this case.

Allowing Khanjee to intervene would not only the reverse the Commission's "unsuccessful bidder" precedent, it would place the Commission in the shoes of the Companies in making their business decisions. Khanjee is not needed in this case for a proper analysis of the Companies' RFP process. The Companies fully expect the Attorney General, who is the statutory representative of the Companies' customers, to dissect the Companies' RFP process. Additionally, the Commission will do exactly what it has done in CPCN cases over the years. It will examine the Companies' RFP process to confirm that the Companies have, as a result of that process, presented the least reasonable cost solution. All of that legitimate scrutiny will confirm that the Companies' proposals in this case should be either approved or denied. Either way, the presence of any of the unsuccessful bidders in this case, including Khanjee, is unnecessary and runs afoul of sensible and long-standing precedent.

Presumably, all of the unsuccessful bidders want to help the Companies meet their need for additional power or else they would not have gone to the trouble of preparing and submitting a bid. But the Commission has wisely held that such parties do not have a "special interest" in CPCN proceedings. Any decision to the contrary would render the Companies' RFP process meaningless and lead to exactly what the Commission's intervention regulation forbids – an undue complication or disruption of this proceeding.[10]

Finally, Khanjee may accomplish its stated goal of assisting the Commission by filing written comments in this case. The Commission's intervention regulation specifically allows such comments to be filed in the case record.[11] In fact, in *EnerNOC*, the Commission stated:

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[10] 807 KAR 5:001, Section 4(11)(b).
[11] 807 KAR 5:001, Section 4(11)(e).

> EnerNOC will have ample opportunity to participate in this proceeding even though it is not granted intervenor status. It can review all documents filed in this case and monitor the proceedings via the Commission's website …. EnerNOC may also file comments as frequently as it chooses, and those comments will be entered into the record of this case.[12]

Given the "ample opportunity" to participate in the case as noted by the Commission in *EnerNOC* and as set forth in the Commission's intervention regulation, Khanjee will have ample opportunity to do what it states it wants to do in its Motion to Intervene in the way of assisting the Commission. And it can do that without intervening which, as stated, would lead to an unwise reversal of the Commission's own precedent, thereby opening the door to disruption of CPCN proceedings by unsuccessful bidders and diminishment of the Companies' competitive bid solicitation process.

## II. Khanjee Will Not Present Issues Or Develop Facts That Will Assist The Commission.

Khanjee is not likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceeding.[13] The Companies' RFP process was completed and the analyses submitted for consideration by the Commission in this case. The Companies properly expected any bidder, including Khanjee, to submit the best bid(s) possible. As part of the RFP process, the Companies had the sole discretion to determine whether further discussions with bidders would be warranted and to select or reject any or all bids. The RFP[14] states:

> This inquiry is not a commitment to purchase and shall not bind the Companies or any subsidiaries of LG&E and KU Energy LLC in any manner. The Companies in their sole discretion will

[12] Case No. 2013-00578, July 5, 2013 Order at 5-6.
[13] 807 KAR 5:001, Section 4(11)(b).
[14] A copy of the Companies' September 7, 2012 RFP is attached.

> determine which Respondent(s), if any, it wishes to engage in negotiations that may lead to a binding contract.[15]
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> * * * * *
>
> The Companies reserve the right, without qualification, to select or reject any or all proposals and to waive any formality, technicality, requirement, or irregularity in the proposals received.[16]

This language exists to achieve the critical goal of having an end to the RFP process. Without that finality, bidders would be encouraged to pursue "appeals" and/or fail to submit the most attractive bid initially. The same Khanjee argument that it can assist the Commission in considering alternatives was soundly rejected in *EnviroPower*:

> The PSC properly found that since "EnviroPower had no role in either the development of EKPC's bidding procedures or the evaluation of the bids received," … its intervention was not likely to present issues or develop facts to assist the PSC in fully considering the CON case.[17]

The Commission will determine whether the Companies properly analyzed the bids and made the correct decisions. Existing intervenors Kentucky Industrial Utility Consumers and the Attorney General are expected to assist in that effort. It would be unfair to the other unsuccessful bidders to allow Khanjee to intervene so that Khanjee can place more emphasis on its unsuccessful bids in this proceeding. The issue before the Commission is whether the Companies chose the least reasonable cost solution to meet need from the dozens of proposals made. The Commission can and should decide that issue without allowing unsuccessful bidders to intervene, especially since unsuccessful bidders can submit any information they want into the record by filing written comments.

[15] RFP at 1.
[16] RFP at 7.
[17] *EnviroPower* at *10.

## III. Conclusion.

Khanjee's Motion to Intervene neither sets forth a special interest in this proceeding nor demonstrates that it will present issues or develop facts that will assist the Commission in the resolution of this proceeding. In fact, intervention by an unsuccessful bidder such as Khanjee would unduly disrupt this proceeding in precisely the way sought to be avoided under *EnviroPower* and *EnerNOC*. To the extent Khanjee has any helpful information, Khanjee can submit it into the record in this case without intervenor status. For the foregoing reasons, the Companies respectfully request that the Commission deny Khanjee's Motion to Intervene.

Dated: February 27, 2014

Respectfully submitted,

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## CERTIFICATE OF SERVICE

This is to certify that Louisville Gas and Electric Company and Kentucky Utilities Company's February 27, 2014 Response to Khanjee Infrastructure Development, LLC's Motion to Intervene is a true and accurate copy of the documents being filed in paper medium; that the electronic filing was transmitted to the Commission on February 27, 2014; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; that a copy of the filing in paper medium is being hand-delivered to the Commission on February 27, 2014; and that on February 27, 2014, electronic mail notification of the electronic filing will be provided to the following:

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September 7, 2012

**Subject: Request for Proposals to Sell Capacity and Energy (RFP)**

Dear Colleague in Development, Marketing and Trading of Electrical Power,

Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (jointly the "Companies") are evaluating alternatives means to provide least-cost firm generating capacity and energy to our customers in the future. To this end, the Companies are requesting proposals from parties wishing to sell capacity and energy that will qualify as a Designated Network Resource (DNR) either as an owned asset by the Companies or a Power Purchase Agreement with the Companies. The Companies will consider offers that are reliable, feasible and represent the least-cost means of meeting our customers' capacity and energy needs, including cost for transmission service, transmission upgrades and voltage support. The Seller should make its proposal as comprehensive as possible so that the Companies may make a definitive and final evaluation of the proposal's benefits to its customers without further contact with the Seller. However, the Companies reserve the right to request additional information. Any failures to supply the information requested will be taken into consideration relative to the Companies' internal evaluation of cost, risk, and value.

This inquiry is not a commitment to purchase and shall not bind the Companies or any subsidiaries of LG&E and KU Energy LLC in any manner. The Companies in their sole discretion will determine which Respondent(s), if any, it wishes to engage in negotiations that may lead to a binding contract. The Companies shall not be liable for any expenses Respondents incur in connection with preparation of a response to this RFP. The Companies will not reimburse Respondents for their expenses under any circumstances, regardless of whether the RFP process proceeds to a successful conclusion or is abandoned by the Companies at their sole discretion.

1. **Background** - This RFP is being issued in order to evaluate alternative means to provide least-cost firm generating capacity and energy to our customers in the future while meeting all laws and regulations. All alternatives (including any of the Companies' self-build options) will be evaluated in the context of meeting customers' load in a least-cost manner. If the Companies determine that a proposal maybe in the best interest of the Companies' customers, the Companies will enter into negotiations which may lead to the execution of definitive agreements. The Companies will consider all applicable factors including, but not limited to, the following to determine the least-cost proposal(s): (i) the terms of the purchased power proposal or facility or asset sale; (ii) Seller's creditworthiness; (iii) if applicable, the development status of Seller's generation facility including, but not limited to, site chosen, permitting, and transmission; or the operating history of Seller's generation facility; (iv) the degree of risk as to the availability of the power in the timeframe required; (v) the anticipated reliability of the power, particularly at times of winter and summer peak; and (vi) all other factors such as the cost of interconnection or transmission that may affect the Companies or their customers. The Companies are committed to implementing the best overall long-term solution for their customers.

2. **Requirements** - The Companies are interested in Power Purchase Agreements ("PPA"), Tolling Agreements ("TA") or Build Own Transfer Agreements ("BOT"), or alternative power supplies (combined "Supply Agreements") for minimum quantities of 1 MW up to a total of 700 MW of firm summer and winter capacity and associated energy per facility or offer. The power being proposed must be generated from a defined source, a specific unit(s) or system that will qualify as a DNR and supply capacity/energy during the peak demand of the Companies' customers (typical Midwest seasonal load characteristics). The delivery of capacity and energy should begin no earlier than January 1, 2015, and later start dates will be considered. The Companies are interested in both short term (1 to 5 years) and long term (10 to 20 years) proposals. The Companies may procure more or less than 700 MW and may aggregate capacity and energy from multiple Sellers to meet its needs. A Seller offering power from a resource connected directly to the Companies' transmission system must conform to the Companies' Open Access Transmission Tariff (OATT) and must obtain in a timely manner an Interconnection Agreement for the facility.

3. **Key Terms and Conditions** - The Seller's proposal should include the proposed terms and conditions, which should include, where applicable to the Seller's proposal, among other things:

   3.1. Seller will guarantee all pricing and terms that affect pricing such as but not limited to heat rate, fuel cost, fuel availability, fuel transport, operation and maintenance cost, etc., for at least 150 days after the Proposal Due Date.

   3.2. Any Capacity Payments to the Seller will be based upon guaranteed capacity at the Summer Design Conditions delivered to the Companies' transmission system unless the location of the Seller's facility justifies alternate conditions. Summer Design Conditions shall be the following.

3.2.1. Dry Bulb: 89°F
3.2.2. Mean Coincident Wet Bulb: 78°F

3.3. Seller will guarantee the annual and seasonal availability and describe required maintenance outage schedule.

3.4. Seller should address in their proposal its remedies for failure to meet availability guarantees.

3.5. Seller will be responsible for any and all compliance related cost and fines (environmental, NERC, FERC, etc) incurred due to the non-compliance of the assets designated to supply power to the Companies.

3.6. After the evaluation of proposals is completed, the Companies will enter into negotiations on a timely basis if the Companies determine that a proposal is in their customer's best interests. Any subsequent contracts will be contingent on obtaining the necessary regulatory approvals.

3.7. The Companies termination rights will include, but may not be limited to: (i) failure to obtain all required regulatory approvals, (ii) failure to post or maintain required financial credit requirements, (iii) failure to meet key development and implementation milestones, (iv) failure to meet reliability requirements, and (v) failure to cure a material breach under the Supply Agreement.

4. **Dispatching and Scheduling** (Required Proposal Content) - The Companies prefer flexibility in the utilization of the generation resource being offered by the Seller. The Companies desire, at the Companies' expense, to install equipment at the generator site to facilitate real time control/dispatch of generation to follow load changes and respond to system frequency changes. The Seller should state its desire and willingness to allow and cooperate with the Companies in establishing real-time control of generation.

5. **Ancillary Services** (Required Proposal Content) - Under a Supply Agreement, the Companies desire to have the unrestricted right to utilize all ancillary services associated with generation being offered by the Seller. The Seller should describe the ancillary service capability of its proposal e.g., black start capability, voltage support, load following, energy imbalance, spinning reserve, and supplemental reserve. The ancillary services that would be available to the Companies should not be limited to those defined in this paragraph. The Companies desire to have the unrestricted rights to any future ancillary services defined by the industry and capable of being provided by the generation capacity being offered. In the case where the Companies purchase only part of the generation capacity from a unit, system or facility, then the Companies desire to have unrestricted rights to ancillary services on a prorated basis.

6. **<u>Pricing</u>** (Required Proposal Content) - The Seller's pricing must be a delivered price to the Companies' transmission system. The Companies will be responsible only for Network Integrated Transmission Service (NITS) on the Companies transmission system. Prices must be firm, representing best and final data and quoted in U.S. dollars. If pricing involves escalation or indexing, the details of such pricing, including the specific indices or escalation rates, must be included for evaluation.

    6.1. <u>The Seller's proposal must provide the product and generation characteristics on the attached form. Pricing information can be provided on the form or separately in another format that is appropriate for the offer. The Seller is encouraged to provide as much information as possible to aid in the evaluation of the offer.</u> These attached data forms may be utilized in any filings with regulatory agencies (such as the KPSC) related to this RFP.

7. **<u>Delivery</u>** (Required Proposal Content) - The Companies consider reliable power delivery at the time of the typical summer and winter peak demand of its customers to be of the utmost importance. The delivery point is the Companies' transmission system. Under a Supply Agreement, Sellers would be responsible for providing firm transmission to the Companies' transmission system. The Seller is responsible for all costs associated with transmission interconnections and shall provide all studies and Interconnection Agreements. The Seller is responsible for all transmission reservations, losses and costs including system upgrades up to the delivery point and shall provide all studies and Transmission Reservations/Agreements. All costs associated with interconnections and transmission up to the delivery point should be included in the Seller's pricing where appropriate under current FERC orders and rulings. TranServ International, Inc., 2300 Berkshire Lane North, Minneapolis, Minnesota 55441, is an Independent Transmission Operator that administers the Companies' OATT. Tennessee Valley Authority (TVA) serves as the Companies' Reliability Coordinator (RC). For purposes of the Companies' evaluation of the proposals, the Companies may estimate any transmission costs that are not supported by the appropriate studies including deliverability and the associated voltage support to the Designated Network Load ("DNL") of the Companies. If the Seller has not completed all required transmission studies, it is essential that the following information be provided in order for the Companies to evaluate the proposal:
    - Size of the unit
    - Point of interconnection to the grid
    - Impedance of the generator step-up transformer
    - Transient and sub transient characteristics of the generator

8. **<u>Environmental</u>** - For the sale of generation capacity and energy to the Companies under a Supply Agreement, the Seller would be responsible for obtaining all necessary permits and providing all credits and allowances needed to comply with the

permit requirements for the life of the agreement, where permits, credits and allowances are applicable for the product being sold. Failure to obtain or comply with any environmental permit or governmental consent would not excuse nonperformance by Seller. The Companies require that Sellers provide the following information for evaluation:

- Unit heat rate, fuel specification, and control technologies employed.
- Emissions rates for NOx, SOx, CO, CO2, $PM_{10}$, and Hg.
- Copy of air permit or permit application if available.
- Timing and status of all permit applications including air, water withdrawal, wastewater disposal, fuel byproducts handling and disposal, etc.

9. **Development Status** – Seller shall provide a comprehensive narrative of the status of the development of any generation project intended to be used to meet Seller's obligations to the Companies. Seller's narrative shall include the following.
   9.1. A comprehensive development and construction schedule,
   9.2. A listing of all required permits and governmental approvals and their status,
   9.3. A listing of all required electric interconnection and or transmission agreements and their status,
   9.4. A financing plan, and
   9.5. A summary of key contracts (fuel, construction, major equipment) to the extent that they exist.

10. **Other Information Requirements** - Sellers shall provide a complete description of the generation facilities that would be used to fulfill the Seller's obligations to the Companies. The description should include the following:
    - Seller's operating experience with similar technology.
    - Guaranteed capacity rating and heat rate at Summer Design Conditions of:

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|---|---|---|
| Dry Bulb | 89 | F |
| Wet Bulb | 78 | F |

    - Guaranteed capacity rating and heat rate at winter design conditions of:

| | | |
|---|---|---|
| Dry Bulb | 14 | F |

    - Guaranteed capacity rating and heat rate at average day design conditions

| | | |
|---|---|---|
| Dry Bulb | 57 | F |
| Relative Humidity | 60 | % |

    - Guaranteed ramp rate in MWs/minute if applicable.

- Guaranteed annual and seasonal availabilities including EFOR values and planned maintenance schedules.
- Technology employed (combined cycle, pulverized coal, CFB, super-critical, etc.)
- Plant location along with proof or status of ownership or control of site.
- Zoning status of plant site.
- If the plant site is subject to site approval by a governmental authority, provide a description of the approval status including a copy of the application. If approval has been granted, provide a copy of the approval.
- Status of engineering and design work.
- Key project participants including owners, operators, engineer/contractors, fuel suppliers

The Seller should also provide any additional information the Seller deems necessary or useful to the Companies in making a definitive and final evaluation of the benefits of the Seller's proposal without further interaction between the Companies and Seller.

11. **Financial Capability** - Should the Companies elect to enter into an agreement with a Seller who fails to meet its obligations at any point in time, the Companies' customers may be exposed to the risk of higher costs. Therefore, the Sellers will be required to demonstrate, in a manner acceptable to the Companies, the Seller's ability to meet all financial obligations to the Companies throughout the applicable development, construction and operations phases for the term of the Supply Agreement. Under no circumstances, should the Companies' customers be exposed to increased costs relative to the cost defined in an agreement between the Seller and the Companies.

    11.1. At all times, the Seller will be required to maintain an investment grade credit rating with either S&P or Moody's or have a parent guarantee from an investment grade entity that meets the approval of the Companies.

    11.2. Upon execution of the Supply Agreement, Sellers will be required to post a letter of credit ("LOC") to protect the Companies' customers in the event of default by the Seller. The exact amount of a LOC will be subject to approval by the Companies based upon the Companies' models. This amount shall take into account the cost of replacement energy and associated environmental cost with the production of replacement energy and any byproducts of such replacement energy. If the Companies draw down the LOC amount at any time, the Seller must replace the LOC to the original value within five days.

12. **Alternate Power Supplies** - Alternate power supply arrangements may include the acquisition of generation assets, existing generation facilities, projects under development, system firm products, or other power supply arrangements that meet the Companies' requirements described in this RFP. The Seller must make all transmission arrangements for the delivery of alternate power supply arrangements to

the delivery point and include the cost for transmission in the pricing. Sellers interested in proposing alternative power supplies must provide all information specified in this document and applicable to the alternate power supply needed for the Companies to fully evaluate the proposal. Those Sellers proposing the sale of generation facilities should include the following:

- Complete description of the facilities included in the sale.
- Firm offer price
- Term sheet which identifies key terms and conditions
- Latest condition report
- Projected operating data including output, heat rate, and forced outage rate as appropriate
- Projected operating expenses and capital expenditures
- For existing facilities, provide historical operating data, operating expenses, and capital expenditures for a minimum of the latest five years or since the start of commercial operation if in commercial operation for less than five years.

13. **RFP Schedule** - All proposals must be complete in all material respects and be received no later than 4 p.m. EST on Friday, November 2, 2012. Email proposals must be followed up with a signed original within two business days.

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| RFP Issued | Friday, September 7, 2012 |
| Proposals Due | Friday, November 2, 2012 |
| Evaluation Completed | Friday, March 15, 2013 |

Proposals will not be viewed until 4 p.m. EDT on Friday, November 2, 2012. After the evaluation of proposals is completed, the Companies will enter into negotiations on a timely basis if the Companies determine that a proposal is in their customer's best interests. Any subsequent contracts will be contingent on obtaining the necessary regulatory approvals.

## 14. Treatment of Proposals

14.1. The Companies reserve the right, without qualification, to select or reject any or all proposals and to waive any formality, technicality, requirement, or irregularity in the proposals received. The Companies also reserve the right to modify the RFP or request further information, as necessary, to complete its evaluation of the proposals received.

14.2. Sellers who submit proposals do so without recourse against the Companies for either rejection by the Companies or failure to execute an agreement for purchase of capacity and/or energy for any reason. Sellers are responsible for any and all costs incurred in the preparation and submission of a proposal and/or any subsequent negotiations regarding a proposal.

15. **Confidentiality** - As regulated utilities, it is expected that the Companies will be required to release proposal information to various government agencies and/or others as part of a regulatory review or legal proceeding. The Companies will use reasonable efforts to request confidential treatment for such information to the extent it is labeled in the proposal as "Confidential." Please note that confidential treatment is more likely to be granted if limited amounts of information are designated as confidential rather than large portions of the proposal. However, the Companies cannot guarantee that the receiving agency, court, or other party will afford confidential treatment to this information. Subject to applicable law and regulations, the Companies also reserve the right to disclose proposals to their officers, employees, agents, consultants, and the like (and those of its affiliates) for the purpose of evaluating proposals. Otherwise, the Companies will not disclose any information contained in the Seller's proposal that is marked "Confidential," to another party except to the extent that (i) such disclosures are required by law or by a court or governmental or regulatory agency having appropriate jurisdiction, or (ii) the Companies subsequently obtain the information free of any confidentiality obligations from an independent source, or (iii) the information enters the public domain through no fault of the Companies.

16. **Contacts** - All correspondence should be directed to:

Charles A. Freibert, Jr.
Director Marketing
LG&E and KU Energy LLC
Energy Services
220 West Main Street
Louisville, KY 40202

E-mail: charlie.freibert@lge-ku.com
Phone: 502-627-3673

In closing, I look forward to your response by 4 p.m. EDT on Friday, November 2, 2012, and the possibility of doing business to meet the Companies' future power needs. Your interest in this request is greatly appreciated. Please contact me if you have any questions and would like to discuss further. For immediate concerns in my absence, please contact Donna LaFollette at 502-627-4765.

Sincerely,

Charles A. Freibert, Jr.

## LG&E and KU RFP Data Form

*Note to bidder: Provide a separate term sheet for each different "Term of Contract" or capacity offering*

**Seller** ______________________________________________________

**<u>Product and Generation Characteristics:</u>**

Proposal Description_____________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
Generation Source Description _____________________________________________
Transmission Interconnection Point of the Source ________________________________
Point of interconnection to the grid ________________________________________
Fuel Commodity Price (if applicable) ___________________
Firm Fuel Transport Price (if applicable)
Start Date and Term of Contract ___________________________________________
Summer Firm Capacity Amount ________ MW
Summer Maximum Dispatch Capacity Amount (if applicable) ________MW
Summer Minimum Dispatch Capacity Amount (if applicable) ________ MW
Guaranteed Heat Rate (or heat rate curve) (if applicable) ________Btu/kwh
Winter Firm Capacity Amount ________ MW
Winter Maximum Dispatch Capacity Amount (if applicable) ________MW
Winter Minimum Dispatch Capacity Amount (if applicable) ________MW
Output in 10 minutes ________MW
Guaranteed Ramp capability ________MW/minute (if applicable)
Start-up time to minimum capability ________________________________
Start-up time to maximum capability ________________________________
Minimum run time _________________________
Minimum down time _______________________
Constraints on production time (if applicable) ___________________________
Forced Outage Rate _________________%
Guaranteed Availability _______________________________________
Planned Outage Schedule ____________________________________

**<u>Pricing Information (provide a separate pricing form if applicable):</u>**

Sale Price __________ or, Capacity Price _________________ ($/MW-yr)
Year of Capacity Price Quote _________________
Capacity Price Escalation/Year or Index_________________
Fixed O&M_______________($/MWH or $/MW-yr)
Year of Fixed O&M Price Quote ____
Fixed O&M Price Excalation/yr or Index_________
Energy Pricing (Provide energy pricing in one of the following formats)

1. Fixed Energy price over the term ____________($/MWH)
2. Escalating Price Over Term__________ ($/MWh) escalating at ____ % per year
3. Production Cost: Variable O&M + Guaranteed Heat Rate * Fuel Price over Term
    a. Variable O&M ___________ ($/MWh)
    b. Guaranteed Heat Rate _______ (Btu/kwh)
    c. Fuel Price ___________

Note: Energy pricing to include all ancillary service costs, taxes and other fees necessary for delivery of the energy to the Delivery Point.