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Dianne B. Kuhnell.  
Senior Paralegal

**VIA HAND DELIVERY**

November 2, 2009

RECEIVED

NOV 02 2009

PUBLIC SERVICE  
COMMISSION

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd  
Frankfort, KY 40601

Re: Back-Up Power Supply Plan of Duke Energy Kentucky, Inc.  
Case No. 2009-00429

Dear Mr. Derouen:

Enclosed please find being hand-delivered an original and twelve copies of the *Back-Up Supply Plan of Duke Energy Kentucky, Inc* to be filed in the above captioned case. Also included is a Petition for Confidential Treatment with an envelope containing the confidential material

Please date-stamp the extra two copies of this letter, the Back-up Power Plan and the Petition filing and return to me in the enclosed envelope.

Sincerely,

Dianne B. Kuhnell  
Senior Paralegal

cc: Dennis Howard II

RECEIVED

NOV 02 2009

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

BACK-UP POWER SUPPLY PLAN )  
OF DUKE ENERGY KENTUCKY, INC. ) CASE NO. 2009-00429

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**BACK-UP POWER SUPPLY PLAN OF  
DUKE ENERGY KENTUCKY, INC.**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company) submits the following back-up power supply plan, as required pursuant to Paragraph 3 of the March 29, 2007 Order filed in Case No. 2007-00044..

A back-up power supply plan is necessary in the event Duke Energy Kentucky experiences outages with its generating facilities. The current back-up power supply plan was the result of a settlement agreement reached in Duke Energy Kentucky's last electric rate case, Case No. 2006-172. In that agreement, the Company committed to use its best efforts to procure a back-up power supply. On January 23, 2007, Duke Energy Kentucky filed an application to approve its back-up power supply plan. By Order dated March 29, 2007, in Case No. 2007-0044, the Commission approved the current back-up power supply plan through December 31, 2009.

The Commission's March 29, 2007, Order set forth a two-step procedural process regarding future back-up power supply plans. First, Duke Energy Kentucky is required to inform the Commission, in writing, of the Company's intentions concerning future

back-up power supply plans six (6) months prior to the expiration of the current plan. Second, Duke Energy Kentucky is required to submit any future back-up power supply plans for review and approval, no later than 60 days prior to the effective date of the new plan. By letter dated or about June 1, 2009, Duke Energy Kentucky notified the Commission of the Company's intent to file a new back-up supply plan.

**I. Executive Summary**

Duke Energy Kentucky used standard forecasting methods to calculate the back-up supply needs for the 2010-2014 period. Duke Energy Kentucky considered supply options available from: (1) the Midwest Independent System Operator, Inc.'s (MISO) daily energy markets; (2) a Request for Proposals (RFP) issued by Duke Energy Kentucky on or about June 22, 2009;<sup>1</sup> and (3) fixed forward contracts purchased through the Intercontinental Exchange (ICE) and/ or the over the counter (OTC) market.

Due to changes in the MISO capacity requirements since the filing of Duke Energy Kentucky's last back-up supply plan and the Company's installed capacity position, Duke Energy Kentucky will be able to comply with MISO Resource Adequacy Requirements without having to purchase capacity during the months when scheduled and unscheduled outages will occur. MISO's Tariff now includes a long-term Resource Adequacy Requirement that the Loss of Load Expectation (LOLE) due to resource inadequacy cannot exceed one day in ten years (0.1 days per year). The Planning Reserve Margin (PRM) that is assigned to each load serving entity (LSE) is on a UCAP (*i.e.*, unforced capacity) basis, such that the PRM on an ICAP (*i.e.*, installed capacity) basis is translated to  $PRM_{UCAP}$  by multiplying it by 1 minus the MISO system average equivalent forced outage rate excluding events outside of management control

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<sup>1</sup> Attachment 1.

(XEFOR<sub>d</sub>). Because each capacity resource is valued at its unforced capacity rating (*i.e.*, installed rating multiplied by 1 minus the 3-year average unit-specific XEFOR<sub>d</sub>), real-time scheduled and unscheduled outages do not impact the month-ahead compliance with MISO Resource Adequacy Requirements. Duke Energy Kentucky has sufficient UCAP to comply with the MISO requirements for the 2010-2012 timeframe.

The Company selected a back-up supply plan that balances cost and risk mitigation. For the 2010-2012 period, Duke Energy Kentucky projects that it will incur approximately \$17.9 million in costs for energy purchases for back-up supply during forced outages. For scheduled outages, the Company will make fixed-price financial swap purchases when market conditions appear economic, but the purchases will occur well in advance of the scheduled outages. Duke Energy Kentucky may use the fixed-price financial swap contracts for the scheduled outages in 2010 if they are economic.

Based upon its analysis, Duke Energy Kentucky has selected a back-up supply plan consisting of fixed priced financial swap contracts purchased through the ICE and/or the over-the-counter (OTC) broker market for scheduled outages and energy purchases through the MISO energy markets for forced outages. This is the same plan strategy the Commission approved in Case No. 2007-00044. Duke Energy Kentucky will continue to evaluate its back-up supply plan during the 2010-2012 period and will make any adjustments necessary due to changing conditions.

## **II. Analysis Methodology**

### **A. Commercial Business Model**

Duke Energy Kentucky used its Commercial Business Model (CBM) to analyze the different back-up supply alternatives and to select the optimal back-up supply plan.

The CBM is a proprietary software program that the Company developed to project power production requirements and costs under a variety of expected system and market conditions. The CBM uses current load forecasts and unit operational parameters, extensive historical data related to production costs (available generating resources; generating unit availability; fuel costs; *etc.*), wholesale power prices, historical weather data, and statistical modeling techniques to project future power needs and costs.

**B. Load Forecast**

The load forecasting group develops a load forecast by: (1) obtaining a service area economic forecast from Moody’s Economy.com; (2) preparing an energy forecast by applying statistical analysis to certain variables such as number of customers, economic measures, energy prices, weather conditions, *etc.*; and (3) developing monthly peak demand forecasts by statistically analyzing weather data. The Company uses the same load forecasting technique to prepare its back-up power supply plan used to prepare its integrated resource plans. The Company updates the load forecasts on a regular basis and the updated load forecasts are added to the CBM.

**C. Generating Resources and Fuel Costs**

Duke Energy Kentucky’s available generating assets consist of the following:

**Table 1 – General Description of Plants**

<b>Plant</b>	<b>Fuel</b>	<b>Type</b>	<b>Winter Rating<sup>2</sup></b>	<b>Spring/ Fall Rating</b>	<b>Summer Rating</b>	<b>Fuel Cost/ kWh<sup>3</sup> through Sept. 30<sup>th</sup></b>
East Bend 2	Coal	Base load	414 MW	414 MW	414 MW	\$0.028
Miami Fort 6	Coal	Intermediate	163 MW	163 MW	163 MW	\$0.027
Woodsdale 1-6	Gas	Peaking	94 MW	85 MW	77 MW	\$0.209
		<b>Total:</b>	671 MW	662 MW	654 MW	

<sup>2</sup> Duke Energy Kentucky owns 69% and The Dayton Power & Light Company owns 31% of East Bend.

<sup>3</sup> Based upon 2009 fuel costs through September 30, 2009.

Duke Energy Kentucky determined that it needs a back-up power supply for East Bend 2 and Miami Fort 6 (collectively, the Plants) because these are relatively low cost units to operate and the Company relies upon these Plants to serve customer load. For scheduled outages, the Company has determined that a back-up power supply is necessary for these low-cost units. Duke Energy Kentucky determined that no back-up power supply is necessary for the Woodsdale Generating Station because these are peaking units with higher operating costs, these units run much less frequently than East Bend 2 and Miami Fort 6; and the limited running time allows the Company to more easily plan scheduled outages during periods when the Company does not plan to run the peaking units.

**D. Scheduled and Forced Outages**

Duke Energy Kentucky estimated the number and expected timing of forced outages, using the definition of forced outages contained in the Commission’s Fuel Adjustment Clause (FAC) regulation, 807 KAR 5:056, as follows: non-scheduled losses of generation or transmission that (1) require substitute power for a continuous period in excess of six hours; and (2) result from faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance.

The Company used the Plants’ current known scheduled outages for 2010-2012. The Company used historical scheduled outage data to estimate the weeks and expected timing of projected scheduled outages during 2010-2011. Duke Energy Kentucky plans the following scheduled outages in 2010, and projects the following scheduled outages in 2011-2012:

**Table 2 – Scheduled Outages for Plants**

Plant	2010	2011	2012
-------	------	------	------

	(in weeks)	(in weeks)	(in weeks)
East Bend 2	1.5	1.5	8
Miami Fort 6	3		10
Woodsdale 1	1.5	6	12
Woodsdale 2		17	1.5
Woodsdale 3		12	1.5
Woodsdale 4	1.5	6	1.5
Woodsdale 5		6	1.5
Woodsdale 6	1.5	6	1.5

The Company estimated the forced outages using the five-year average Equivalent Forced Outage Rates (EFOR) for the Plants. The EFOR is a measurement that takes the number of forced outage hours and equivalent forced derate hours relative to the number of service hours and forced outage hours. The EFOR forecast data for the Plants is as follows:

**Table 3 – EFOR for Plants for 2010 - 2012**

Plant	Annual EFOR
East Bend 2	5%
Miami Fort 6	5%
Woodsdale 1-6	5%

**E. CBM Projection of Energy Needs**

The Company used the CBM software tool to project its energy needs for the peak summer and shoulder months for 2010:

**Table 4 – Energy Needs for 2010**

(in MWH)	April	May	June	July	August	September
Avg. Demand	█	█	█	█	█	█
Avg. Available						
Economic Generation	█	█	█	█	█	█
Net Avg. Demand	█	█	█	█	█	█

### III. Request for Proposals

Duke Energy Kentucky retained Burns & McDonnell to oversee a competitive and confidential bidding process for back-up power. Duke Energy Kentucky issued an RFP through Burns & McDonnell on June 22, 2009.<sup>4</sup> The Company sought bids for the following types of supply options: (1) Backstand Energy for East Bend and/or Miami Fort 6;<sup>5</sup> (2) Reliability Exchange for East Bend 2 and/or Miami Fort 6, beginning in 2010 for three- and five- year terms; and (3) intermediate and peaker daily call products. The RFP sought supply options to take effect on January 1, 2010, for various durations of time, up to five years.

Duke Energy Kentucky received a total of forty-four bid alternatives from eleven different bidders. Burns & McDonnell performed an initial screening of the bids for completeness and submitted redacted proposals to Duke Energy Kentucky to evaluate the proposed supply options. The following is a summary of the bidders' prices (using the lowest cost product presented by each bidder), which the bidders submitted in July 2009:

**Table 6 – Bid Summary**

	<b>Bid Description</b>	<b>Term</b>	<b>Quantity</b>	<b>Option Premium (2010)</b>	<b>Strike Price (2010)/ mwh</b>
Bid 1	500 MW 10.8 HR Call Option	3	Up to 500 MW	██████████	██████████
Bid 2	400 MW 13.5 HR Call Option	3	Up to 400 MW	██████████	██████████
Bid 3A	500 MW Fixed-Price Call Option	3	500 MW	██████████	██████████
Bid 3B	500 MW Fixed-Price Call Option	3	500 MW	██████████	██████████
Bid 4	200 MW 9 HR Call for Firm Energy	3	200 MW	██████████	██████████

<sup>4</sup> Attachment 1.

<sup>5</sup> The Backstand Energy product (Backstand Product) is a day-ahead, financially-settled call option that will be used in the event of a forced outage at the East Bend 2 and/or Miami Fort 6 units starting January 1, 2010, with a minimum term of three years and a maximum term of five years.



Bid 5	200 MW Financial On Peak 9 Heat Rate Call	3	200 MW		
Bid 6	10 Heat Rate Daily Call	3	100 MW		
Bid 7	\$60 Fixed Strike Daily Call	3	100 MW		
Bid 8	\$75 Fixed Strike Daily Call	3	100 MW		
Bid 9A	Opt 1: \$60 Fixed Strike Call	3	200 MW		
Bid 9B	Opt 2: \$45.5 Fixed Strike Call	3	200 MW		
Bid 9C	Opt 3: 12 Heat Rate Call	3	70 MW		
Bid 9D	Opt 4: 14 Heat Rate Call	3	130 MW		
Bid 9E	Opt 5: 7.5 Heat Rate Call	3	200 MW		
Bid 10	12.5 Heat Rate Call	3	Up to 200 MW		
Bid 11A	Prod 1: 10 Daily Heat Rate Call	1	200 MW		
Bid 11B	Prod 2: 10 Daily Heat Rate Call	2	200 MW		
Bid 12A	577 MW Call Option - 3 Yr	3	577 MW		
Bid 12B	577 MW Call Option - 5 Yr	5	577 MW		
Bid 13A	500 MW 8 HR Call Option - 3 Yr	3	Up to 500 MW		
Bid 13B	500 MW 8 HR Call Option - 5 Yr	5	Up to 500 MW		
Bid 14A	500 MW 10.5 HR Call Option - 3 Yr	3	Up to 500 MW		
Bid 14B	500 MW 10.5 HR Call Option - 5 Yr	5	Up to 500 MW		
Bid 15	139 MW Peaking Daily 12 HR Call	3	139 MW		
Bid 16	7 Heat Rate Call	3	500 MW		
Bid 17	10 Heat Rate Call	3	500 MW		
Bid 18	12 Heat Rate Call	3	500 MW		
Bid 19	7 Heat Rate Call	5	500 MW		
Bid 20	10 Heat Rate Call	5	500 MW		
Bid 21	12 Heat Rate Call	5	500 MW		
Bid 22	7 Heat Rate Call	3	500 MW		
Bid 23	10 Heat Rate Call	3	500 MW		
Bid 24	12 Heat Rate Call	3	500 MW		
Bid 25	7 Heat Rate Call	5	500 MW		
Bid 26	10 Heat Rate Call	5	500 MW		
Bid 27	12 Heat Rate Call	5	500 MW		
Bid 28	\$50 Call Option	3	500 MW		
Bid 29	\$75 Call Option	3	500 MW		
Bid 30	\$100 Call Option	3	500 MW		

Bid 31	\$50 Call Option	5	500 MW	[REDACTED]	[REDACTED]
Bid 32	\$75 Call Option	5	500 MW	[REDACTED]	[REDACTED]
Bid 33	\$100 Call Option	5	500 MW	[REDACTED]	[REDACTED]
Bid 34	Fixed Strike Call	3	100 MW	[REDACTED]	[REDACTED]
Bid 35	Insurance - Market/Fixed	3	577 MW	[REDACTED]	[REDACTED]

The above list includes a proposal for an insurance product that was not specifically requested in the initial RFP. The Company's experience is that there are few vendors offering insurance products and the premium typically makes those products not cost effective. Nonetheless, the Company did include this product as part of its evaluation of alternatives.

**IV. Non-RFP Supply Options Evaluated**

Duke Energy Kentucky evaluated a back-up power supply plan consisting of market energy purchases. One alternative considered energy purchases through the MISO energy markets for all outages. Another alternative considered fixed-priced financial swap contracts to lock-in the price of power during scheduled outages and MISO energy market purchases during forced outages. The Company has used this same type of strategy for procuring back-up power supply since 2006.

The Company considered the alternative that relies solely on the MISO daily energy markets for back-up power needs for both planned and forced outages. This plan has the potential to expose the Company to possible price spikes during scheduled outage periods. The Company determined that it would not be feasible to make fixed forward price purchases for forced outages because the Company would not know in advance when such outages would occur, and it would not be economical to purchase power at fixed forward prices for the entire peak month period. After a forced outage occurs, the

Company considers fixed forward price purchases or call options for the remaining duration of the outage.

Duke Energy Kentucky evaluated fixed- priced financial swap purchases during scheduled outages, to mitigate the risk of potential price spikes. Duke Energy Kentucky would use the ICE or the OTC broker market to make these fixed-priced financial swap contract purchases. The ICE is a well-established electronic marketplace for trading energy-related products. Among other product types, ICE offers trading in bilateral contracts for energy at fixed forward prices. The contract terms (such as hours of the day covered, the index price, credit, and liquidated damages provisions) are clearly defined, to enable trading in standardized products.

#### **V. Comparison of Supply Plans**

Duke Energy Kentucky performed a screening analysis on the redacted bids from Burns & McDonnell, running all forty-four bid permutations through a dispatch spreadsheet. The spreadsheet modeled a 5% random forced outage rate on Miami Fort 6 and East Bend 2. During the forced outages, each bid's "strike price" was compared to the market for the daily peak hours. Under this analysis, if the bid was more cost effective than the market, the bid was called upon. The total bid strike costs plus the bid premiums were added, ranked, and compared to market purchases for the forced outage periods. The analysis showed that none of the bids provided a net benefit when compared to market purchases.

Duke Energy Kentucky further analyzed the top least cost three- and five-year bid proposals that met the Plants forced outage needs with the CBM (discussed in Section II A). These bids and the results are found in Tables 7 and 8, respectively.

**Table 7 – Comparison of 2010-2012 Plan Costs**

<b>3-Year 2010-2012 Plans</b>	<b>Supply Plan</b>	<b>Total Cost for Backup Power Supply</b>
A	FRP Bid #13A	██████████
B	FRP Bid #24	██████████
C	FRP Bid #18	██████████
D	FRP Bid #14A	██████████
E	FRP Bid #23	██████████
F	Daily energy purchase from MISO market for all outages (forced and planned)	██████████
G	Daily energy purchase from MISO market for forced outages Fixed Forward price purchase for planned outages	██████████

**Table 8 – Comparison of 2010-2014 Plan Costs**

<b>5-Year 2010-2014 Plans</b>	<b>Supply Plan</b>	<b>Total Cost for Backup Power Supply</b>
A	RFP Bid #33	██████████
B	RFP Bid #13B	██████████
C	RFP Bid #27	██████████
D	RFP Bid #32	██████████
E	RFP Bid #14B	██████████
F	Daily energy purchase from MISO market for all outages (forced and planned)	██████████
G	Daily energy purchase from MISO market for forced outages Fixed Forward price purchase for planned outages	██████████

Duke Energy Kentucky evaluated these top-ranked call option bids (A through E) using CBM runs at the time the option bids were received. The CBM model uses a Monte-Carlo simulation-based hourly price shape to evaluate the hourly payout of those option products. For any hour within the term, if the market power price is higher than the strike price, Duke Energy Kentucky will receive the difference (option payout) between them. Analysis confirms that the net payout, which is the total payout of all

hours within the option term minus the option premiums, turns out to be negative for all the options evaluated. The premiums for the call options were tied to energy quantity or fixed payments. In every case the net payout between any savings from the option price and the cost to buy the option was negative. In other words, the option products result in additional cost to Duke Energy Kentucky. The Company came to the conclusion that the option bids were not economic.

Plans F and G involve purchasing power through the MISO daily energy markets, and are the least-cost supply plans based upon current projections for energy markets. Plan F was less costly for the three-year period than Plan G but presented greater risk. However, Plan F appears slightly more expensive than Plan G for the five-year period. Plan F called for the Company to obtain its full back-up power requirements (planned and forced outages) from the MISO daily energy markets; however, it would have provided no protection against possible price spikes. If Duke Energy Kentucky's projections of the MISO daily energy market prices are too low, then this plan would prove more costly than the other plans.

Plan G provides that Duke Energy Kentucky will obtain back-up power through the MISO daily energy market during forced outages and use fixed forward contract purchases during scheduled outages. This mitigates the risk of price spikes during scheduled outages because the price for back-up power would be fixed. The cost for this risk mitigation is reasonable, because the estimated cost difference between Plan G and Plan F is just over \$5 million over the three-year period. Plan G looks slightly more favorable on the five-year planning horizon.

Plan G also mitigates the risk presented by the daily call products because it does not require the Company to lock in market price projections for a full three-year time period. Since the ICE and or OTC markets are liquid, Duke Energy Kentucky can make its forward contract purchases a few months in advance of the scheduled outages, without paying a premium to lock in the prices now for a three-year time period. If prices appear to be increasing, Plan G provides the flexibility to make the forward contract purchases for long-term periods. If prices are flat or falling, the Company can postpone these purchases. If the Company changes the dates for its scheduled outages, Plan G provides flexibility because, even if the Company has already purchased the fixed forward contract product, the liquidity of the ICE market allows the Company to easily unwind its position and make a new purchase to match the new scheduled outage dates.

Duke Energy Kentucky also evaluated the insurance product proposals submitted in response to the RFP. The insurance product was evaluated with strike prices at our production. This product also included a high deductible and a premium. Duke Energy Kentucky's internal evaluation indicates that the deductibles were too high for the Company to receive any payout. For the "At-The-Money" product (where strike price is the same as forward power price), Duke Energy Kentucky conducted a risk analysis for an extreme situation where we assumed a hypothetical forced outage rate of 25% for Miami Fort 6 and East Bend 2 for all months in 2010-2012. The results indicated a reasonable exposure under these extreme assumptions. Consequently, the Company's conclusion is that the insurance product (including premiums) was not economic.

Duke Energy Kentucky believes another long-term supply plan could involve exchanging some capacity at the existing Plants for capacity owned by other companies.

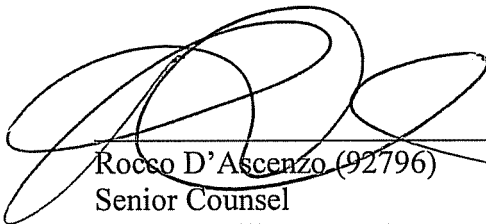
Although requested as part of the RFP, no bids were received for such an exchange. The Company may continue to seek such a capacity exchange to mitigate the present “lumpy” structure of its portfolio, where a great amount of its capacity is concentrated in a few Plants. If a capacity exchange occurs during the 2010-2012 period, this could also impact the value of the daily call product. This is another reason why Duke Energy Kentucky does not consider it prudent to lock-in the daily call product at this time.

**VI. Conclusion**

Based upon its analysis, Duke Energy Kentucky has selected Plan G because it appeared to be the most reasonable plan in achieving a reasonable balance between cost and risk mitigation. Additionally, Plan G allows Duke Energy Kentucky to procure back-up power from well-established, reliable supply sources. Duke Energy Kentucky has used this same strategy since the Commission approved the Company’s back-up supply plan in Case No 2007-00044. Duke Energy Kentucky has successfully implemented this strategy to achieve the goals of providing reliable and reasonably priced electric service and balancing cost and risk mitigation.

Based on the foregoing, Duke Energy Kentucky respectfully requests that the Commission approve this back-up supply plan.

Respectfully submitted,




Rocco D'Ascenzo (92796)  
Senior Counsel  
Amy B. Spiller (85309)  
Associate General Counsel  
Duke Energy Business Services, Inc.  
Room 2500  
139 East Fourth Street

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(513) 419-1846 facsimile  
rocco.d'ascenzo@duke-energy.com

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on the following parties of record by first class, U.S. mail; postage prepaid this 2<sup>nd</sup> day of November, 2009.

  
\_\_\_\_\_  
Rocco D'Ascenzo

Hon. Dennis G. Howard  
Office of Attorney General  
Utility Intervention and Rate Division  
1024 Capital Center Drive  
Frankfort, Kentucky 40601



**Duke Energy Kentucky**

REQUEST FOR PROPOSALS  
FOR  
REPLACEMENT ENERGY



Table of Contents

<u>Section</u>	<u>Description</u>	<u>Page</u>
<b>1.0</b>	<b>Purpose of Request for Proposals</b>	1
<b>2.0</b>	<b>Instructions to Bidders</b>	1
2.1	General	1
2.2	Overview of Process	2
2.3	Notice of Intent to Bid	2
2.4	Deadline and Method for Submitting Proposals	3
2.5	Questions and Interpretation of RFP	3
2.6	Requirements of the Proposals	4
<b>3.0</b>	<b>Proposal Organization</b>	6
3.1	Executive Summary	6
3.2	Statements	6
3.3	Contract Terms	6
3.4	Proposal Limitations	6
3.5	Relevant Experience	6
3.6	Cost Proposal	6
<b>4.0</b>	<b>Proposal Content</b>	6
4.1	Price Proposal	7
4.2	Technical Proposal	8
<b>5.0</b>	<b>Proposal Evaluation and Contract Negotiations</b>	8
5.1	Screening	8
5.2	Short List Development	9
5.3	Contract Negotiations	10
Exhibit A	Schedule	12
Exhibit B	Notice of Intent to Bid	13
Exhibit C	Confidentiality Agreement	14
Exhibit D	Certification and Indemnity Agreement	20

## 1.0 Purpose of Request for Proposals

The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc. ("Duke Energy Kentucky") offers this Request for Proposals ("RFP") for the purpose of acquiring supply-side capacity resources for 2010, with a term of 3 to 5 years, to provide for Backstand Energy for East Bend 2 and Miami Fort 6 during unplanned outages.

Duke Energy Kentucky desires to maximize the value of its supply portfolio by diversifying its current supply options for the supply of energy during outages of East Bend 2 and Miami Fort 6. As such, Duke Energy Kentucky is looking for offers for a variety of product offerings such as call options, reliability exchanges and unit-contingent backstand supply for forced outages. Duke Energy Kentucky seeks bid proposals that provide the greatest value to Duke Energy Kentucky and its customers. Duke Energy Kentucky has retained an independent third party, Burns & McDonnell ("B&M"), to develop, administer and oversee all aspects of this competitive solicitation process on Duke Energy Kentucky's behalf. Specifically, B & M has designed the solicitation, will administer the bidding process and will independently evaluate the bids prior to Duke Energy Kentucky's final selection.

## 2.0 Instructions to Bidders

### 2.1 General

- 2.1.1 Nothing contained in this RFP shall be construed to require or obligate Duke Energy Kentucky to complete this RFP process, to select any proposals or to limit the ability of Duke Energy Kentucky to reject any or all proposals in its sole and exclusive discretion. Duke Energy Kentucky further reserves the right to withdraw and terminate this RFP or any pending negotiations arising from this RFP at any time prior to the execution of a contract.
- 2.1.2 The submission of a proposal to B&M shall constitute a Bidder's acknowledgment and acceptance of all the terms, conditions and requirements of this RFP.
- 2.1.3 Subject to 2.1.4, all proposals submitted to B&M pursuant to this RFP shall become the exclusive property of Duke Energy Kentucky and may be used for any reasonable purpose by Duke Energy Kentucky.
- 2.1.4 B&M and Duke Energy Kentucky shall consider materials provided by Bidders in response to this RFP to be confidential only if such materials are clearly designated as "Confidential". Bidders should be aware that their proposal, even if marked "Confidential," may be subject to discovery and disclosure in regulatory or judicial proceedings that may or may not be initiated by Duke Energy Kentucky. Bidders may be required to justify the requested

confidential treatment under the provisions of a protective order issued in such proceedings. If required by a valid request by a court, administrative agency, or a party to a judicial or administrative proceeding, or an order of a regulatory agency or court of competent jurisdiction, Duke Energy Kentucky may produce the material in response to such order without prior consultation with the Bidder and Duke Energy Kentucky shall not be responsible to the Bidder for disclosure of such confidential information under these circumstances.

2.1.5 Bidders shall be responsible for all costs and issues associated with their bids; contract negotiations; completion of the contract; all taxes, duties, fees and other charges associated with the delivery of energy under the contract; and compliance with all local, state and federal laws that may affect the contract.

2.1.6 The Delivery Point shall be the Cinergy Hub as defined by the MISO. All costs and coordination required for delivery of the product to the Delivery Point are the responsibility of the Bidder. Bidders are required to insure compliance with the MISO and ReliabilityFirst requirements. Duke Energy Kentucky will use MISO Network Integrated Transmission Service to deliver the product to the load.

## 2.2 Overview of Process

2.2.1 B&M has set-up an e-mail address to facilitate all communication from potential Bidders. B&M also created a web site to provide uniform communication including questions and answers, updates and other specific RFP detail as may be provided from time to time through this bidding process. The e-mail address is [DEKRFP@burnsmcd.com](mailto:DEKRFP@burnsmcd.com). The web site is <http://www.dekrfp.com>.

2.2.2 The bid process will include the activities and events as indicated on the schedule in **Exhibit A**. Following the release of the RFP, interested Bidders are requested to submit a Notice of Intent to Bid form. Bidders who submit the Notice of Intent to Bid (NOIB), are a registered Market Participant in the MISO market and submit an executed confidentiality agreement will receive supplementary data for use in preparing bids. Following the proposal submittal deadline, the bid opening will be performed in private by B&M. Proposals will be screened and offers that do not meet the minimum terms and conditions contained in this RFP and supporting documents will be rejected as non-conforming. Following the proposal screening, a short list of Bidders will be developed. Bidders on the short list will be invited to begin negotiations of final details of the offers. Final evaluation of the offers, considering contract terms and transmission service requirements, will then occur.

## 2.3 Notice of Intent to Bid

- 2.3.1 Each potential Bidder is requested to advise B&M by June 30, 2009 of its intent to submit a proposal by submitting a completed Notice of Intent to Bid, attached hereto as **Exhibit B**. Through the submission of the NOIB, the prospective Bidder represents that it is qualified to perform Market Participation activities within the MISO market.
- 2.3.2 Each potential Bidder who submits a NOIB and is a registered Market Participant in the MISO market has the option to submit a signed confidentiality agreement, attached hereto as **Exhibit C**, in order to receive available supplemental data to the RFP. For those Bidders that submit a signed confidentiality agreement, B&M will provide information including historical outage rates, future scheduled outages, and other operational and cost data for the East Bend 2 and Miami Fort 6 units. Duke Energy Kentucky makes no warranty or representation that historical outage rates are any indication of future outage rates, nor that any projected outage rates will in fact occur. This data is provided as information only to the Bidders for their information in developing their offers.
- 2.4 Deadline and Method for Submitting Proposals
- 2.4.1 Proposals must be submitted in the complete name of the party expecting to execute any resulting contract with Duke Energy Kentucky. The proposal must be executed by a person who is duly authorized to bind the Bidder to a contract.
- 2.4.2 All proposals submitted in response to this RFP must be received by B&M no later than 4:00 PM CPT July 31, 2009.
- 2.4.3 **B&M will not accept proposals received after the specified date and time set forth in Section 2.4.2 for any reason, and said proposals will be disqualified from further evaluation.**
- 2.4.4 Bidders are required to provide three (3) bound sets of all documents, including exhibits, as part of its proposal. It is further requested that multiple proposals submitted by each Bidder be identified separately. Proposals must be delivered to the following address:

Duke Energy Kentucky RFP  
c/o Jon Summerville  
Burns & McDonnell  
9400 Ward Parkway  
Kansas City, MO 64114

**Only hard copies of the proposals will be allowed. Emailed proposals will not be accepted as meeting the time requirements for submission.**

## 2.5 Questions and Interpretation of RFP

B&M requests that all questions concerning this RFP be submitted electronically to B&M at the e-mail address indicated in Section 2.2.1. All questions and answers will be provided through written responses posted to the website with company-specific information redacted. If confidential information is involved, only those Bidders who have submitted a signed confidentiality agreement will receive the response. Neither Duke Energy Kentucky nor B&M will be responsible for other explanations or interpretations of the RFP. Written questions will be accepted by B&M until seven days before the proposal submittal deadline. Answers will be provided by e-mail to all Bidders as quickly as practicable.

It shall be the Bidders' obligation to identify to B&M any statements in the RFP or related documents deemed by the Bidder to be in conflict or incomplete, any need for clarification or omissions of pertinent data from the RFP before bids are due. Any questions not resolved by the bid date shall be identified in the proposal and a statement shall be made in the Bidder's proposal as to whether the proposal contains any conditions.

## 2.6 Requirements of the Proposals

2.6.1 Duke Energy Kentucky is requesting proposals for purchase of the following products:

2.6.1.1 **Backstand Energy:** Backstand Energy for East Bend 2 and/or Miami Fort 6. The Backstand Energy product (Backstand Product) is a day-ahead, financially-settled call option that will be used in the event of a forced outage at the East Bend 2 and/or Miami Fort 6 units starting January 1, 2010 with a minimum term of 3 years and a maximum term of 5 years. The maximum rate of energy that will be required by Duke Energy Kentucky from the Bidder at the Delivery Point will be 577 MW per hour.

When a forced outage occurs at East Bend 2 or Miami Fort 6, Duke Energy Kentucky will have the right, but not the obligation, to call replacement energy for the amount of the outage from the Bidder on a day ahead scheduled basis. When the replacement energy is called by Duke Energy Kentucky, a financial settlement will occur.

Offers for the Backstand Product will be priced using one of the following methods for pricing the energy:

A) Variable Operating Cost Cap: Called energy will be financially-settled at the Delivery Point at the previous

month's average variable operating costs for Miami Fort 6 or East Bend 2, as applicable.

B) Fixed Energy Price: Called energy will be financially settled at the Delivery Point at a fixed price throughout the term of the offer.

Bidders may propose on either or both of the above energy pricing approaches. A contract term through at least December 31, 2012 is required by Duke Energy Kentucky. Bids with extended terms or options for extension will also be considered.

- 2.6.1.2 **Reliability Exchange Product:** A Reliability Exchange for East Bend 2 and/or Miami Fort 6, beginning in 2010 for 3- and 5-year terms. Duke Energy Kentucky is interested in options whereby it provides energy in exchange for like energy from other resources to further diversify its resource portfolio. Resources proposed for this option in exchange for East Bend 2 energy should have similar operating characteristics to the East Bend 2 unit. Resources proposed for this option in exchange for Miami Fort 6 energy should have similar operating characteristics to the Miami Fort 6 unit. Duke Energy Kentucky will consider proposals for up to approximately 50 percent of the unit output (200MW for East Bend 2 and 80MW for Miami Fort 6). Proposed blocks of energy are required to be in 50MW blocks for East Bend 2 and 40MW blocks for Miami Fort 6. Bidder to describe the ability of Duke Energy Kentucky to select combinations of blocks offered.
- 2.6.1.3 **Intermediate and Peaker Daily Calls:** Energy products up to 500 MWs which meet MISO qualifications beginning in 2010 for 3-and5-year terms. These products may include but shall not be limited to Intermediate daily calls and Peaker daily calls. Energy pricing may be fixed price, gas heat rate calls, or calls settled against the Cinergy Hub. Fuel pricing may include actual or fixed price using an actual or fixed heat rate that includes any transportation charges to the Chicago City Gate. All gas costs shall be settled against the Chicago City Gate.
- 2.6.1.4 Duke Energy Kentucky would also be open to receiving bids for other products or combinations of products that would fulfill this need.
- 2.6.2 The description of products proposed shall be in accordance with the Edison Electric Institute's Master Power Purchase & Sale Agreement, Schedule P: Products and Related Definitions.

- 2.6.3 Bidders are advised that prior to Duke Energy Kentucky signing a power supply agreement, the Bidder will be required to provide substantial evidence of current and ongoing credit assurance. All forms of credit assurance will be approved by Duke Energy Kentucky before entering into an agreement. The form and quality of credit assurance shall be approved by Duke Energy Kentucky and its lending institutions, as applicable, prior to further negotiations.
- 2.6.4 Proposals must be provided in the format outlined in Section 3.0. The content of proposal(s) shall be subject to the requirements of this RFP. B&M requests that all exhibits, documents, schedules, *etc.* submitted as a part of a proposal be clearly labeled and organized in a fashion that facilitates easy location and review. All proposals should conform, as applicable, to the requirements within this RFP.

### 3.0 Proposal Organization

All Proposals should include the following minimum components in the order provided:

#### 3.1 Executive Summary

An "executive summary" of the highlights and special features of the Proposal.

#### 3.2 Statements

3.2.1 A statement from the Bidder must be provided clearly indicating the time period during which the proposal will remain effective.

3.2.2 A signed Certification and Indemnity Agreement must be provided, which is to be completed entirely by the Bidder, a copy of which is attached hereto as **Exhibit D**.

3.2.3 All documentation and signatures required depending on the nature of the proposal must be provided.

#### 3.3 Contract Terms

A comprehensive listing and description, including a rationale if warranted, of all contract terms and conditions that the Bidder would seek during contract negotiations. Duke Energy Kentucky will use either the EEI or ISDA contract formats for any contracts resulting from this RFP.

#### 3.4 Proposal Limitations



A listing of any economic, operational or system conditions (including sensitivities to anticipated dispatch levels) that might affect the Bidder's ability to deliver energy as offered.

### 3.5 Relevant Experience

A description of transaction experience with similar products in the MISO service area as well as references for similar transactions.

### 3.6 Cost Proposal

Information on the cost of the product must be provided. Information shall be included as discussed in Section 4.1.

## 4.0 Proposal Content

For consideration in the evaluation process, proposals must contain the information outlined in the following paragraphs.

### 4.1 Price Proposal

Proposals must provide a detailed description of the pricing terms and conditions. For consideration in the evaluation process, proposals must contain the information outlined in the following paragraphs.

1. The Bidder must demonstrate that it has the requisite regulatory authorization to make sales contemplated by its proposal.

2. The fixed cost for the proposed product shall be provided for each year (or month) of the agreement.

3. Proposed energy rates for the proposed product shall include all fuel, start up, losses, ancillary services and other charges associated with delivery to the designated Delivery Point. The Bidder shall provide the initial energy rate and applicable formula for escalation, if any, with proposed indices or a schedule of energy rates for the proposed contract term. Where the energy rate is a function of the price of coal, Bidders shall provide a documented coal price forecast over the proposed term. Such pricing will include all handling, ash disposal, environmental allowance costs and other costs associated with the fuel. Where the energy rate is a function of the price of natural gas, Bidders shall provide a documented gas price forecast at the Chicago City Gate over the proposed term.

4. The actual delivered energy, in any month, shall be determined in accordance with the metering procedures as set forth in the contract which will be negotiated between Duke Energy Kentucky and the successful Bidder.

5. As applicable, the Bidder's proposal should include all formulae that will be used to calculate the full energy rate, or any other rate that the Bidder may specify, with all its respective components well defined. A sample calculation illustrating the application of each formula is also required.

6. The Bidder must provide a printed schedule projecting for each contract year, quarter, or month, as appropriate, depending upon how frequently the Bidder's rate(s) or its respective components will be updated, for the full term of the proposed contract of the following:

- a) option premium or fixed demand charge payment
- b) energy payment (It is the Bidder's obligation to provide sufficient explanatory information to allow B&M to replicate this schedule.)
- c) documented projections of any independent variables that are to be used in the calculation of payments

#### 4.2 Technical Proposal

Bidders who provide a proposal for the Reliability Exchange product are required to provide the following information about the resource to be provided as the basis for the product:

- 1. Name, location and commercial operating date of the unit.
- 2. Five year operating history of the facility
- 3. Fuel source and fuel supply risk mitigation approach
- 4. Five year averages for availability and EFOR
- 5. Anticipated scheduled outages for routine maintenance and unit upgrades for environmental compliance modifications
- 6. Projected fixed (\$/MW-year) and variable operating costs (\$/MWh) for the term of the offer, including any known or anticipated cost for environmental compliance.
- 7. Start up costs, minimum up and down times, ramp rates and other factors necessary for production cost modeling analysis.

### 5.0 Proposal Evaluation and Contract Negotiations

#### 5.1 Screening

5.1.1 After the proposal submittal deadline, B&M will privately open all proposals and begin reviewing proposals for completeness and responsiveness.

5.1.2 An initial screening will be developed to identify those proposals that meet the minimum criteria established by B&M for evaluation. These minimum criteria consist of the following:

a. The proposal is from a Bidder that is a registered Market Participant in MISO.

b. The proposal provides substantially all the information outlined in Part 3.0 and Part 4.0 and the structure of which is valid to

c. The proposal designates the Delivery Point as the Cinergy Hub.

Those proposals not considered to meet the required threshold will be identified to the respective Bidder and the Bidder will have one week to cure the deficiency. If not cured within the allotted time, notification will be provided to the unsuccessful Bidders.

5.1.3 B&M may request that a Bidder provide additional information or clarification to its original proposal. B&M shall make such requests in writing and will also specify a deadline for compliance. Failure to provide the requested information or clarification by the deadline will result in the disqualification of the proposal.

5.1.4 B&M may select any number of proposals for further consideration. Further, Duke Energy Kentucky may at any time withdraw and terminate this RFP pursuant to Section 2.1.1, as it, in its sole and exclusive judgment, deems appropriate.

5.1.5 In screening the bids, B&M will ensure that any information identifying specific bidders is redacted.

## 5.2 Short List Development

5.2.1 After the initial screening, B&M will work with Duke Energy to develop a recommended short list. The following criteria will be used to evaluate the products in order to develop the short list:

**Backstand Product:** The Backstand Product proposals will be evaluated using the levelized cost of the fixed cost component and the energy component over the proposed term. The amount of energy required for the product will be estimated from the amount of projected forced outage hours for the East Bend 2 and Miami Fort 6 units plus the forced outage hours determined by multiplying the EFOR average over the past five years for the respective unit multiplied by the hours in the year. Additional longer-term forced outage conditions will be considered.

The offers priced using the Variable Operating Cost Cap approach will have the cost of the energy component estimated by multiplying the expected outage hours determined above by the respective variable operating cost of the respective unit for the preceding month.

The offers priced using the Fixed Energy Price approach will have the cost of the energy component estimated by multiplying the expected outage hours determined above by the fixed energy price schedule provided by the Bidder.

**Reliability Exchange:** The Reliability Exchange proposals will be evaluated using the levelized cost of the fixed and variable components over the term of the proposal. Levelized costs will be developed by respective generating unit on a unit cost basis (\$/MW and \$/MWh).

**Intermediate and Peaker Call Option:** The Intermediate and Peaker Call Option proposals will be evaluated using the levelized cost of the option based on the pricing structure proposed. All proposals will be evaluated on a resultant energy cost basis assuming a 30 percent capacity factor for the Intermediate option and a 5 percent capacity factor for the Peaker option.

5.2.2 B&M and Duke Energy Kentucky will work together to develop a short-list for further joint evaluation. The recommended short list will be provided to Duke Energy Kentucky with the identification of the proposing firm's name redacted from any information provided to Duke Energy Kentucky. Duke Energy Kentucky will perform more detailed modeling using the utility's production cost and risk assessment models and the factors from the proposals. Burns & McDonnell and Duke Energy Kentucky will jointly evaluate the short listed offers to identify the single proposal or portfolio of proposals that provide Duke Energy Kentucky with the lowest overall evaluated net present value cost power supply program. This analysis will bring out the advantages of the proposals with consideration of the expansion plans currently considered by Duke Energy Kentucky and a more robust probability analysis.

During the evaluation process, B&M and Duke Energy Kentucky may choose to initiate discussions with one or more Bidders and to obtain refreshed pricing. For purposes of this RFP, discussions shall simply indicate Duke Energy Kentucky's interest in a particular proposal and its desire to obtain from the Bidder additional detailed information that may not necessarily be contained in the proposal. Discussions with a Bidder shall in no way be construed as commencing "negotiations" with a Bidder. B&M and Duke Energy Kentucky intend to use such discussions as a method of reducing the number of proposals to those, if any, that B&M and Duke Energy Kentucky determine warrant further evaluation and, possibly, contract negotiations. If B&M and Duke Energy Kentucky intend to initiate discussions, it will notify the Bidder of such intention and require the Bidder of such proposal to confirm, in writing, the offer and representations contained in its original proposal. B&M will be the communication channel between

the bidder and Duke Energy Kentucky to obtain further clarifications or refreshed pricing.

- 5.2.3 If B&M or Duke Energy Kentucky is not interested in a particular proposal, it will notify the Bidder as soon as practical after such determination is made.

### 5.3 Contract Negotiations

- 5.3.1 At the completion of the evaluation phase, the bidding parties will be identified to Duke Energy Kentucky. B&M will notify a Bidder in writing of its interest in commencing contract negotiations with that Bidder. Duke Energy Kentucky's commencement of and active participation in such negotiations shall not be construed as a commitment from Duke Energy Kentucky to continue discussions or to execute a contract. If, however, a contract is successfully negotiated, it shall not be effective unless and until fully executed by Duke Energy Kentucky in accordance with its procedures, and all required regulatory approvals have been received, including approval by the Federal Energy Regulatory Commission and the Kentucky Public Service Commission so that Duke Energy Kentucky will be able to obtain retail rate recovery of the costs related to the supply option.
- 5.3.2 Duke Energy Kentucky reserves the right at any time, during contract negotiations, at its sole discretion, to terminate or, once terminated, to resume negotiations with a Bidder.
- 5.3.3 Duke Energy Kentucky may require that certain provisions be included in its contracts. Such provisions may include, but are not limited to, financial assurance (depending on the financial means and historical performance of the Bidder), indemnification, liquidated damages for non-performance, ability of Duke Energy Kentucky to reassign its entire rights, or a portion thereof, to the contract to another party, and a "regulatory out" provision, or regulatory pre-approval for retail rate recovery.
- 5.3.4 This RFP contains general guidelines and requirements for developing and submitting proposals. Nothing herein shall be construed to bind Duke Energy Kentucky unless and until a contract with a Bidder has been successfully negotiated, executed, and is effective. Once effective, the contract will govern the relationship between and responsibilities of the parties. The costs for responding to the RFP are the responsibility of the Bidder.

**Exhibit A**  
**Schedule**

The schedule as outlined below and referred to throughout this document is based on Duke Energy Kentucky's expectations as of the release date of this RFP.

Release of RFP	June 22, 2009
Notice of Intent to Bid	July 7, 2009
Bidder Notification of Qualification	July 17, 2009
<b>Proposal Submittal Deadline</b>	<b>July 31, 2009</b>

It is the intent of B&M and Duke Energy Kentucky to have the initial short list identified in August and begin contract negotiations in September. B&M and Duke Energy Kentucky reserves the right to extend or otherwise modify any portion of the schedule or terminate the RFP process at its sole discretion.

**Exhibit B**  
**NOTICE OF INTENT TO BID**  
 Due July 7, 2009

CONTACT INFORMATION			
Company			
Contact:			
Name			
Title			
Telephone / Fax			
E-mail			
Mailing Address			
We intend to bid	Yes _____ No _____		
Signature of Respondent		Date	

Fax: 816.822.3027  
 Burns & McDonnell  
 Attn: Duke Energy Kentucky RFP

Email: DEKRFP@burnsmcd.com

**Exhibit C**

**CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement ("Agreement") is entered into by and between The Union Light Heat and Power Company d/b/a Duke Energy Kentucky, Inc. ("Duke Energy Kentucky"), a Kentucky corporation with offices at 139 East Fourth Street Cincinnati, Ohio 45201 and \_\_\_\_\_ a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ ("Bidder") as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009 (the "Effective Date"). Duke Energy Kentucky and Bidder may be referred to as a "Party" or collectively as "Parties."

**WITNESSETH:**

WHEREAS, Duke Energy Kentucky has issued a Request for Proposals for the supply of replacement power; and

WHEREAS, Bidder desires to provide a proposal to Duke Energy Kentucky for the supply of replacement power (the "Relationship"); and

WHEREAS, the Parties desire to ensure the confidentiality of certain information provided or to be provided by a Party or Parties (in such capacity, collectively the "Providing Party") to another Party or Parties (in such capacity, collectively the "Receiving Party") in connection with the Relationship;

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

**1. CONFIDENTIAL AND PROPRIETARY NATURE OF THE CONFIDENTIAL INFORMATION**

The Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information (as defined below) and that any unauthorized disclosure or unauthorized use thereof by the Receiving Party will injure the Providing Party's business. The Receiving Party agrees to hold and keep the Confidential Information as provided in this Agreement and otherwise agrees to each and every restriction and obligation set forth in this Agreement.

**2. CONFIDENTIAL INFORMATION**

As used in this Agreement, the term "Confidential Information" means and includes any and all:

- a. information concerning the business and affairs of the Providing Party, however documented, that has been or may hereafter be provided or shown to the Receiving Party by the Providing Party or by the directors, officers, employees, agents, Bidders,



advisors, or other representatives including legal counsel, accountants and financial advisors (each, a "Representative") of the Providing Party (collectively, the "Providing Party Representatives") or is otherwise obtained from review of Providing Party documents or property or discussions with Providing Party Representatives by the Receiving Party or its Representatives irrespective of the form of the communication, and also includes all notes, analyses, compilations, studies, summaries, and other material prepared by the Receiving Party or the Receiving Party's Representatives containing or based, in whole or in part, on any information included in the foregoing; and

- b. trade secrets concerning the business and affairs of the Providing Party, plant and product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current, and planned research and development, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures and architectures (and related processes, formulae, composition, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods and information), and any other information, however documented, that is a trade secret within the meaning of applicable law.

"Confidential Information" shall not include any oral information exchanged between the parties that is not promptly reduced to writing and confirmed by the applicable parties.

Further, "Confidential Information" shall not include any information of the Providing Party which:

- a. was or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or the Receiving Party's Representatives;
- b. was available, or becomes available, to the Receiving Party on a non-confidential basis prior to its disclosure to the Receiving Party by the Providing Party or a Providing Party Representative, but only if (i) to the best of the Receiving Party's knowledge after due inquiry, the source of such information is not bound by a confidentiality agreement with the Providing Party or is not otherwise prohibited from transmitting such information to the Receiving Party or the Receiving Party's Representatives by a contractual, legal, fiduciary or other obligation, and (ii) the Receiving Party provides the Providing Party with prompt written notice of such prior possession; or
- c. was independently acquired or developed by the Receiving Party without violating any of its obligations under this Agreement.

### 3. RESTRICTED USE OF CONFIDENTIAL INFORMATION

The Receiving Party agrees that (a) it will keep confidential any and all Confidential Information and, except as provided in the following paragraph or as otherwise expressly permitted by the terms of this Agreement, will neither, without the specific prior written consent of the Providing Party, disclose any Confidential Information to any person (including the fact that the Confidential Information has been made available to the Receiving Party or that the Receiving Party has inspected any portion of the Confidential Information); and (b) it will not use any of the Confidential Information for any reason or purpose other than to perform its obligations, if any, in the Relationship.

The Receiving Party may disclose Confidential Information to those Representatives of the Receiving Party who (i) in the judgment of the Receiving Party, require access to such material for the purpose of assisting the Receiving Party in performing work directly associated with the Relationship and (ii) are informed by the Receiving Party of the confidential nature of the Confidential Information and the obligations of this Agreement and agree to be bound by all the provisions hereof applicable to the receipt and use of Confidential Information by the "Receiving Party." The Receiving Party agrees to be fully responsible for enforcing as to the Receiving Party's Representatives the obligations of this Agreement applicable to the Receiving Party and to take such action, legal or otherwise, to the extent necessary (including all actions that the Receiving Party would take to protect its own confidential information and trade secrets) to cause its Representatives to comply with such obligations.

### 4. DISCLOSURE REQUIRED BY LAW

If the Receiving Party or any of the Receiving Party's Representatives are requested or become legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a regulatory or judicial body to make any disclosure that is prohibited or otherwise constrained by this Agreement, the Receiving Party or such Representative, as the case may be, will provide the Providing Party with prompt notice of such request so that it may seek an appropriate protective order or other appropriate remedy. Subject to the foregoing, the Receiving Party or such Representative may furnish that portion (and only that portion) of the Confidential Information that, in the written opinion of its counsel, reasonably acceptable to the Providing Party, the Receiving Party is legally compelled or is otherwise required to disclose. In addition, the Receiving Party or such Representative shall use reasonable efforts to obtain reliable assurances that confidential treatment will be accorded any Confidential Information so disclosed. Notwithstanding any other provision of this agreement, Duke Energy Kentucky may disclose the Confidential Information under seal with a petition requesting confidential treatment to the Kentucky Public Service Commission and to any intervenors who sign a confidentiality agreement in connection with Case No. 2006-00172, the Company's current rate proceeding.

### 5. RETURN OF CONFIDENTIAL INFORMATION

If the Receiving Party determines that it does not wish to proceed with the Relationship or if the Providing Party notifies the Receiving Party that it does not wish the Receiving Party to

consider the Relationship any further, then the Receiving Party, upon request of the Providing Party, (a) (i) will promptly deliver to the Providing Party all documents or other materials furnished by the Providing Party or any Providing Party Representative to the Receiving Party or the Receiving Party's Representatives constituting Confidential Information, together with all copies and summaries thereof in the possession or under the control of the Receiving Party or the Receiving Party's Representatives, and (ii) will destroy materials generated by the Receiving Party or the Receiving Party's Representatives that include or refer to any part of the Confidential Information, without retaining a copy of any such material; or (b) as an alternative to the procedure described in the preceding clause (a) if the Providing Party gives its prior written consent, the Receiving Party will promptly destroy all documents or other matters constituting Confidential Information in the possession or under the control of the Receiving Party or the Receiving Party's Representatives and shall promptly certify the same in writing to the Providing Party (including in such certification a list of the destroyed materials).

## 6. REMEDIES

The Receiving Party agrees to indemnify and hold the Providing Party harmless from any damages, loss, cost, or liability (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from any unauthorized use or disclosure by the Receiving Party or the Receiving Party's Representatives of the Confidential Information or other violation of this Agreement. In addition, because an award of money damages (whether pursuant to the foregoing sentence or otherwise) would be inadequate for any breach of this Agreement by the Receiving Party or the Receiving Party's Representatives and any such breach would cause the Providing Party irreparable harm, the Receiving Party also agrees that, in the event of any breach or threatened breach of this Agreement, the Providing Party will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to the Providing Party.

## 7. MISCELLANEOUS

(a) Modification. The agreements set forth in this Agreement may be modified or waived only by a separate writing signed by the Providing Party and the Receiving Party expressly modifying or waiving such agreements.

(b) Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (ii) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the

right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

(c) Person. The term "person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization or other entity.

(d) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. If any of the covenants or provisions of this Agreement are determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision and enforce them in their reduced form for all purposes contemplated by this Agreement.

(e) Costs. The Receiving Party agrees that if it is held by any court of competent jurisdiction to be in violation, breach, or nonperformance of any of the terms of this Agreement, then it will pay all costs of such action or suit, including reasonable attorneys' fees.

(f) Assignment. Neither party may assign any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.

(g) Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Kentucky without regard to conflicts of laws principles thereof.

(h) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same agreement.

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, all as of the date set forth at the beginning of this Agreement.

Duke Energy Kentucky

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By: Julie Janson

Its: President

---

By:

Its:

**Exhibit D**  
Certification and Indemnity Agreement

THIS CERTIFICATION AND INDEMNITY AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between The Union Light, Heat & Power Company d/b/a Duke Energy Kentucky, Inc. ("Duke Energy Kentucky") and \_\_\_\_\_, ("Bidder").

WHEREAS, Bidder has submitted a Proposal to Duke Energy Kentucky in response to Duke Energy Kentucky's Request for Proposals for Power Supply ("RFP"), and

WHEREAS, the RFP provides general guidelines for the development and submission of such Proposal and entails the evaluation of such Proposal on the basis of its individual characteristics, as assessed by Duke Energy Kentucky in accordance with economic assessments and operational considerations, and other pertinent factors, and

WHEREAS, Duke Energy Kentucky will rely on the information set forth in the Proposal when making its assessments and determinations.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Bidder hereby certifies and agrees as follows:

Certification

Bidder hereby certifies, represents and warrants to Duke Energy Kentucky as follows:

The Bidder understands that Duke Energy Kentucky will rely on the representations contained in the Proposal and this Agreement in its evaluation and consideration of proposals submitted pursuant to the RFP. The Bidder further understands that its inability to substantiate and verify any such representation may result in the termination of further consideration and/or evaluation of the Proposal. All such representations made in the Proposal are true and accurate to the best of the Bidder's knowledge and belief.

Covenants

The Bidder covenants that:

At its own cost and expense (including reasonable attorney fees), Bidder shall defend Duke Energy Kentucky and its respective subsidiaries, affiliates, successors and assigns, and each and every one of its respective past, present, or future officers, directors, trustees, employees, shareholders, executors, administrators, successors, and assigns, and hold Duke Energy Kentucky harmless from and against any and all manner of past, present, or future claims, demands, disputes, controversies, complaints, suits,

actions, proceedings, or allegations of any kind which in any manner relate to, arise out of, or result from any false, misleading or incomplete statement in the Proposal or breach of any covenant or representation set forth in this agreement by the Bidder.

#### Successors and Assigns

If the Bidder transfers the ownership, or an interest therein, in the Bidder's rights, interests or property, whether real or personal, the Bidder warrants that such transfer shall be pursuant to a transfer agreement that shall provide Duke Energy Kentucky, subsidiaries, affiliates, successors and assigns, and each and every one of its respective past, present, or future officers, directors, trustees, employees, shareholders and agents, as well as their heirs, executors, administrators, successors and assigns with a degree of protection at least equivalent to that afforded them under this Agreement.

Certified and Agreed:

By:

Title:

Date:

Attest: