

McGuireWoods LLP
2600 Two Hannover Square
P.O. Box 27507 (27611)
Raleigh, NC 27601
Phone: 919.755.6600
Fax: 919.755.6699
www.mcguirewoods.com

Andrea Kells
Direct: 919.755.6614

McGUIREWOODS

akells@mcguirewoods.com

June 25, 2010

Kentucky Public Utilities Commission
Division of General Counsel
Division of Engineering-Electric Branch
211 Sower Blvd.
Frankfort, Kentucky 40502-0615
PH: (502)564-3940

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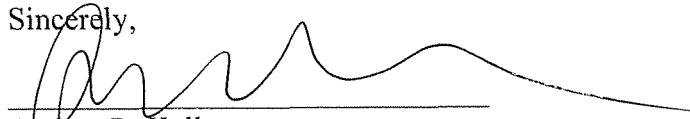
PUBLIC SERVICE
COMMISSION

Re: KyPSC Case no. 2010-203
Duke RTO Realignment

To Whom It May Concern:

Please find enclosed a copy of the RTO Realignment filing made today by Duke Energy Kentucky and Duke Energy Ohio with the Federal Energy Regulatory Commission. Please feel free to contact me if you have any questions.

Sincerely,



Andrea R. Kells
Counsel for Duke Energy Corporation

McGuireWoods LLP
Washington Square
1050 Connecticut Avenue N.W.
Suite 1200
Washington, DC 20036-5317
Phone: 202.857.1700
Fax: 202.857.1737
www.mcguirewoods.com

Noel H. Symons
Direct: 202.857.2929

McGUIREWOODS

nsymons@mcguirewoods.com
Direct Fax: 202.828.2992

June 25, 2010

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.
Docket No. ER10-____-000

FILED
SECRETARY OF THE
COMMISSION
2010 JUN 25 P 4: 12
FEDERAL ENERGY
REGULATORY COMMISSION

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act ("FPA"),¹ and Part 35 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission² (the "Commission" or "FERC"), Duke Energy Ohio, Inc. ("DEO") and Duke Energy Kentucky, Inc. ("DEK") hereby tender this filing ("Initial Filing") as the first step of their proposed move from the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") to PJM Interconnection, L.L.C. ("PJM") (the "RTO Realignment"). Consistent with the terms of the Midwest ISO TO Agreement³ and the PJM Operating Agreement,⁴ and upon receipt of applicable regulatory approvals, DEO and DEK expect to withdraw from the Midwest ISO and join PJM effective January 1, 2012.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35 (2010).

³ Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation, Midwest ISO Second Revised Rate Schedule FERC No. 1.

⁴ The Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Third Revised Rate Schedule FERC No. 24.

In this Initial Filing we request that the Commission issue an order by November 1, 2010 (i) determining that the proposed RTO Realignment meets the standard for withdrawal from an RTO (subject to the future filings described below), and (ii) approving the first step of DEO and DEK toward joining PJM: participation of load and resources in the DEO/DEK footprint in the RPM auctions to be held by PJM in the Spring of 2011, resulting in commitments for the delivery year commencing June 1, 2014. The technical implementation plan for integration into PJM is set forth in the Agreement to Implement Expansion of PJM Region for Duke Energy Ohio and Duke Energy Kentucky ("Integration Agreement"), which was executed on June 11, 2010 and is submitted herewith as Exhibit 1.

We have labeled this as the Initial Filing because it is the first in a series of filings necessary to withdraw from the Midwest ISO and join PJM. As the Commission noted in its order regarding the planned move of certain FirstEnergy companies from the Midwest ISO to PJM, "there are a number of steps involved in proceeding with an orderly withdrawal from an RTO."⁵ This is the first in that series of steps, and so the approvals we seek at this time are limited.

Moreover, the standard of review is narrow. There is no requirement, for example, to demonstrate benefits from the proposed RTO Realignment.⁶ Rather, there are three requirements that must be met for an RTO withdrawal request to be approved.⁷ First, the withdrawal must satisfy the terms of the applicant's contractual obligations as they relate to RTO

⁵ *American Transmission Systems, Inc.*, Order Addressing RTO Realignment Request and Complaint, 129 FERC ¶¶ 61,249 at P 29 (2009), (citing *Duquesne Light Co.*, 122 FERC ¶¶ 61,039 at P 29 (2008)) ("*FirstEnergy*"), Order Addressing Expedited Partial Requests for Clarification and Rehearing, 130 FERC ¶¶ 61,171 (2010).

⁶ *FirstEnergy*, 129 FERC ¶¶ 61,249 at P 136.

⁷ See *Id.* at P 27; *Duquesne Light Co.*, 122 FERC ¶¶ 61,039 at P 28 ("*Duquesne Withdrawal Order*"), order on reh'g and compliance, 124 FERC ¶¶ 61,219 (2008) ("*Duquesne Withdrawal Rehearing Order*").

withdrawal. Section II.A below explains how our proposal meets applicable contractual requirements. Second, the replacement arrangement must comply with Order No. 888⁸ and Order No. 890⁹ and the standard of review under those orders for proposed tariff provisions that differ from the *pro forma* OATT. Section II.B below discusses our plan to join PJM. Third, the replacement arrangement must be just, reasonable and not unduly discriminatory. This third requirement also is addressed by our plan to join PJM.

DEO and DEK do not address the following issues in this filing:

- Design for "Integration Auctions" for the procurement of capacity that can be used by load within the DEO and DEK footprints, at the option of that load, to satisfy PJM resource adequacy requirements in the period between integration of the DEO and DEK transmission systems into PJM (January 1, 2012) and full integration of resources and load into RPM (June 1, 2014) (we plan to file the Integration Auction design in approximately 30 to 60 days);
- Calculation of Midwest ISO exit fees, and any issues regarding pass-through of exit fees; and

⁸ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and rev'd in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) ("Order No. 888").

⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 119 FERC ¶ 61,119, *order on reh'g and clarification*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009); *appeal dismissed, Nat'l Rural Elec. Coop. Assoc.*, Case No. 08-1278 (D.C. Cir. Feb. 17, 2010) ("Order No. 890").

- Rates for transmission service for the zone that will be formed for DEO and DEK within PJM (the “Duke Energy Zone”), including recovery of transmission expansion costs and any so-called “hold harmless” issues.

DEO and DEK do not address these issues at this time because (a) we are focused on the initial approvals that are required at this time in order to meet the implementation schedule, and (b) additional time to consult with stakeholders and refine proposals with respect to other issues may help to reduce controversy, and indeed important sub-issues may well become moot as far as customers are concerned. For example, DEK has committed in a parallel proceeding before the Kentucky Public Service Commission that it will not seek to pass through to Kentucky retail customers Midwest ISO exit fees or any overlapping charges of MTEP¹⁰ and RTEP¹¹ costs. DEO has observed the FirstEnergy process in Ohio and is aware that FirstEnergy has offered a settlement in Ohio that is similar to DEK’s position in Kentucky.

Before filing on the issues that we think will be of greatest interest to state commissions, we wish to hold further discussions with the affected state commissions on those issues. In this regard, we note that there is no need for parties to seek to introduce, in response to this filing, questions regarding potential preemption of state rates with respect to exit fee costs and transmission costs, because we are not proposing in this filing any rate for exit fees or transmission. Rather, we are expressly deferring such rate issues.

We will coordinate closely with PJM and the PJM Independent Market Monitor (“PJM IMM”) to hold stakeholder meetings and otherwise address stakeholder concerns. We have begun the process of reaching out to stakeholders to discuss the issues that will be raised in this and subsequent filings, and if stakeholders have questions relating to this proceeding, we encourage them to contact us by calling James B. Gainer, Vice President for Federal

¹⁰ Midwest ISO Transmission Expansion Plan.

¹¹ PJM’s Regional Transmission Expansion Plan.

Regulatory Policy, at (704) 382-5618. In order to provide time for discussions before responsive pleadings are due, we request that the Commission provide an extended comment period of 30 days from the date of filing.

I. The Proposed RTO Realignment

The RTO Realignment will consist, in the first instance, of withdrawal by DEO and DEK of their transmission facilities from the Midwest ISO and transfer of operational control of such facilities to PJM. As a practical matter, the move will trigger the need for generation and load connected to the DEO and DEK transmission systems to realign their operations from the Midwest ISO to PJM.¹² The "RTO Realignment" is the movement of the transmission, load and generation in the DEO and DEK footprints to PJM. Thus, we describe here the transmission, load and generation within the DEO and DEK footprints. A Map illustrating the resulting reconfiguration of the RTO borders is attached as Exhibit 2.

A. Duke Participation in the Midwest ISO

1. Pre-Merger Cinergy Participation in the Midwest ISO

Cinergy Corp. ("Cinergy") joined the Midwest ISO in 1997 as a transmission owner on behalf of its then three utility operating companies, Duke Energy Ohio (f/k/a The Cincinnati Gas & Electric Company), Duke Energy Kentucky (f/k/a The Union Light Heat & Power Company), and Duke Energy Indiana (f/k/a PSI Energy). Cinergy was an active participant in the initial formation of the Midwest ISO as well as subsequent development of Day 2 markets and other developments in the market.

¹² Generation would not be required to move to PJM if the generation makes alternative arrangements for pseudo-tying back into the Midwest ISO. It is currently contemplated that the Madison generating facility owned by Duke Energy Indiana ("DEI"), which is interconnected to DEO's transmission system, will remain under the dispatch control of the Midwest ISO via a pseudo-tie.

2. The Duke-Cinergy Merger

The Commission approved the merger of Duke Energy Corporation ("Duke Energy") and Cinergy by order issued December 20, 2005.¹³ The Duke-Cinergy merger closed on April 3, 2006.¹⁴ Subsequently, the three Cinergy Operating Companies changed their corporate names. On October 1, 2006, PSI Energy, Inc. became Duke Energy Indiana, Inc. and The Union Light, Heat and Power Company became Duke Energy Kentucky, Inc. On September 19, 2006, The Cincinnati Gas & Electric Company became Duke Energy Ohio, Inc.

3. Duke Energy Ohio

Transmission. The DEO transmission system consists of approximately 403 circuit miles of 345 kV and 724 circuit miles of 138 kV transmission. DEO is interconnected with the transmission systems of American Electric Power ("AEP"), Dayton Power & Light ("DP&L"), East Kentucky Power, Ohio Valley Electric Company, LGE Energy, and DEI. Of these, only DEI is a member of the Midwest ISO.

Generation. The DEO transmission system is connected to approximately 5,007 MW of installed commercial generation capacity, consisting of coal-fired steam units and combustion turbines. Of this generation, DEO owns 2,484 MW of capacity, and DEK owns 1,077 MW of capacity.

Load. The maximum measured load plus losses served by the DEO transmission system for one hour was 5,783 MW. This occurred on July 25, 2005. This load consists of DEO's native retail load as well as load served by several municipalities, electric cooperatives,

¹³ *Duke Energy Corporation, Cinergy Corp.*, 113 FERC ¶ 61,297 (2005) ("*Duke Merger Order*"), *order denying reh'g*, 118 FERC ¶ 61,077 (2007).

¹⁴ Notice of Consummation, filed April 6, 2006 in Docket No. EC05-103-000.

and certified retail electric service providers doing business under Ohio's Electric Customer Choice Program. This load also includes 877 MW served in that hour by DEK.

Generation and Transmission Jointly Owned with PJM Utilities. In addition to the generation asset capacity mentioned above, DEO is co-owner of generating resources, and an associated transmission system, that are physically located in PJM. Specifically, DEO owns 1,410 MW of capacity that is associated with jointly-owned units operated by PJM members DP&L and AEP. This capacity is located at Stuart, Killen and Conesville Stations, and currently is pseudo-tied into the Midwest ISO via transmission that is jointly owned by DEO, DP&L, and AEP. The jointly-owned transmission system extends into the Midwest ISO, where it serves additional generation located at Walter C. Beckjord, W.H. Zimmer, Miami Fort, and East Bend Stations that is jointly owned by DEO, DEK, DP&L, and AEP in various combinations (that additional jointly-owned generation located in the Midwest ISO is included within the total figure for generation in the DEO footprint given above). Thus, DEO and DEK's movement to PJM will consolidate operation of these facilities within a single RTO.

Additional DEO Generation in PJM. DEO also owns (without co-owners) 3,104 MW of gas-fired capacity within PJM at the Washington, Lee, Hanging Rock, and Fayette Stations.

Wholesale Customer Comment. The proposed realignment will consolidate all Ohio utilities under the control of a single RTO. A wholesale customer, Buckeye, has openly encouraged this result, commenting as follows in the FirstEnergy proceeding: "A move by Duke Energy Ohio, Inc., at least, to PJM would result in consolidation of the entire State of Ohio into one RTO, with all of the attendant greater efficiencies."¹⁵

¹⁵ *In the matter of FirstEnergy Service Company, Comments of Buckeye Power, Inc., submitted September 25, 2009 in Docket No. ER09-1589, at n. 18.*

4. Duke Energy Kentucky

DEO and DEK together serve the greater Cincinnati region, with DEK representing the small part of that region that is located across the Ohio River in Kentucky.

Generation and Load. DEK owns three generation assets with a total of 1,077 MW of capacity (summer rating). These generation assets are connected to DEO's transmission system, and so would move to PJM with DEO whether DEK moved or not. One of these units is co-owned with PJM member DP&L. There is no generation interconnected to DEK's transmission system, and there is no third-party load. DEK's all time peak load is 912 MW.

Transmission. DEK owns and operates a 69 kV distribution and transmission system to serve its retail load. DEK also owns limited transmission facilities consisting solely of eighteen 138 kV "high side" connections including breakers and switches ("138 kV Connections"). DEO owns and operates the 138 kV and above transmission delivery system by which DEK is currently connected to the Midwest ISO. The eighteen 138 kV Connections serve as bridges between the DEO transmission system and the high side of DEK transformers that step down to serve the DEK distribution system.

DEK's transmission and distribution system is not interconnected to any Midwest ISO utility other than DEO and, consequently, would no longer have a direct point of interconnection to the Midwest ISO once DEO transfers control of its transmission facilities to PJM if DEK were not to move to PJM as well. The RTO Realignment will keep outage coordination and related functions for DEK's eighteen 138 kV Connections under the functional control of the same RTO as the DEO transmission system to which they are tied.

5. Duke Energy Indiana

DEI will remain in the Midwest ISO. The Midwest ISO is a robust, well-run RTO that is well-suited to the needs of a vertically integrated utility such as DEI. The recent additions to the

Midwest ISO of Dairyland, MidAmerican and others further demonstrate the strength of the RTO. Duke Energy values its relationship with the Midwest ISO and DEI looks forward to continuing to work with the Midwest ISO and other stakeholders to collectively shape a future that holds significant promise.

DEI owns the Madison generating facility, a 704 MW (summer rating) facility interconnected to DEO's transmission system. DEI is pursuing plans for Madison to remain under the dispatch control of the Midwest ISO via a pseudo-tie arrangement. DEI will work with the Midwest ISO and the Local Balancing Authorities under the NERC Joint Registration Organization JRO00001 to properly reflect DEI as a Local Balancing Authority under JRO00001 upon the effective date.

6. Affected Third Parties

The following third parties have generation or load within the DEO footprint. The following Transmission Customers currently serve load from the DEO system (by class):

Certified Retail Electric Providers:¹⁶

- Champion Energy Services
- Constellation New Energy
- Dominion Resources Inc.
- DPL Energy Resources
- First Energy Solutions
- Glacial Energy
- Sempra Energy Solutions
- Smart Paper Holdings
- DTE Energy
- Direct Energy
- Integrys Energy Services
- Duke Energy Retail Sales
- MidAmerican Energy

Wholesale Load Customers:

- City of Hamilton Ohio
- Village of Blanchester Ohio

¹⁶ This is a current list of transmission customers on the DEO transmission system as of June 24, 2010.

- City of Lebanon Ohio
- City of Williamstown Kentucky
- Village of Bethel Ohio
- Village of Georgetown Ohio
- Village of Hamersville Ohio
- Village of Ripley Ohio

Electric Cooperatives:

- Buckeye Power Inc.
- East Kentucky Power Cooperative (pre-OATT)

The following third party wholesale generators are currently connected to the DEO system:

AEP (joint-owned with DEO)
DEK
DP&L (joint-owned with DEO)
Smart Paper Holdings
Madison Generating Station (Duke Energy Indiana owned)

B. Proposed Integration Timeline and Identification of Future Filings

DEO and DEK seek to integrate into PJM on January 1, 2012. This date was chosen because it coincides with the expiration of DEO's current Ohio rate plan, and so will also mark the adoption of its next Ohio rate plan. December 31, 2011 is the earliest date permitted for withdrawal from the Midwest ISO consistent with the notice provisions of the Midwest ISO TO Agreement.

While DEO and DEK's integration into PJM is planned for January 1, 2012, complete integration into RPM cannot occur on that date because the Base Residual Auctions for the 2011-2012, 2012-13 and 2013-14 Delivery Years have already occurred. Thus, DEO and DEK seek to integrate the Duke Energy Zone load into PJM's RPM process for the 2014-15 Delivery Year. This means that the Duke Energy Zone load needs to be included in the May 2011 Base Residual Auction, and that the load needs to be committed into that auction before February 1, 2011.¹⁷ **To meet these deadlines, and to allow plenty of time for all concerned to address**

¹⁷ E.g., PJM Manual No. 18, RPM Auction Timeline at 57, *available at* <http://www.pjm.com>.

any contingency issues that may arise, DEO and DEK respectfully request that the Commission grant the relief described herein by November 1, 2010. This four month timeline is consistent with the time taken to provide approvals to FirstEnergy.

DEO, DEK and PJM also have scheduled future filings for the purpose of bringing the Duke Energy Zone into PJM. Some of these filings are described in Schedule 3.2.5 of the Integration Agreement. The filings include, but are not limited to, the following:

(i) a request -- to be filed in approximately 30-60 days -- for approval of DEO and DEK's FRR Integration Plan to meet PJM resource adequacy requirements from the date of transmission system integration (January 1, 2012) through the date of full participation in RPM (June 1, 2014);

(ii) a revised market power analysis to support a "change in status" filing, which is required within 30 days of the integration date;¹⁸

(iii) additions to the PJM Open Access Transmission Tariff ("PJM OATT") of zonal transmission rates for the Duke Energy Zone and any other revisions to the PJM OATT that may be necessary to effectuate integration into PJM;

(iv) the execution of certain required PJM agreements, including the PJM Reliability Assurance Agreement ("RAA"),¹⁹ the PJM Consolidated Transmission Owners Agreement ("PJM TO Agreement")²⁰ and the PJM Operating Agreement;

¹⁸ 18 C.F.R. § 35.42(a) (requiring "change in status" filing where there is a departure from the characteristics that the Commission relied on in granting market-based rate authority).

¹⁹ PJM RAA, Rate Schedule FERC No. 44.

²⁰ PJM TO Agreement, Rate Schedule FERC No. 42.

(v) execution or modification of various network integration transmission service agreements and/or point-to-point transmission service agreements among PJM and the appropriate transmission customers in the DEO and DEK footprints;

(vi) execution of new generator and load interconnection agreements among PJM, DEO and DEK, and third-party generators and loads. Filings also will be made to address transition of transmission service, generator and load interconnection queues, generator deactivation requests, and grandfathered agreements; and

(vii) a filing regarding payment to the Midwest ISO of an exit fee.

II. Requested Commission Approvals

As noted, there are three requirements that must be met for an RTO withdrawal request to be approved.²¹ First, the withdrawal must satisfy the terms of the applicant's contractual obligations as they relate to RTO withdrawal. Second, the replacement arrangement must comply with Order No. 888 and Order No. 890 and the standard of review under those orders for proposed tariff provisions that differ from the *pro forma* OATT. And third, the replacement arrangement must be just, reasonable and not unduly discriminatory. We discuss first our withdrawal from the Midwest ISO, followed by our replacement arrangements for joining PJM.

A. Withdrawal from the Midwest ISO

As described herein, DEO and DEK will satisfy existing contractual obligations under the Midwest ISO ASM Tariff and agreements. Specifically, DEO and DEK will comply with the provisions of the Midwest ISO TO Agreement governing withdrawal, and the corresponding provisions of the Midwest ISO ASM Tariff. DEO and DEK also will work with DEI and the Midwest ISO to arrange for a smooth transition to DEI's solo participation as a transmission, load, and balancing authority area zone within the Midwest ISO. Finally, transmission and

²¹ See *FirstEnergy*, 129 FERC at P 27; *Duquesne Withdrawal Order* at P 28.

interconnection customers will need to terminate their agreements with the Midwest ISO and take service under the corresponding PJM agreements. We discuss each in turn.

1. The Midwest ISO TO Agreement

a. Withdrawal Notice

Article Five, Section I of the Midwest ISO TO Agreement states that "[a] Member who is also an Owner may, upon submission of a written notice of withdrawal to the Chief Executive Officer (or if the Board chooses not to elect the Chief Executive Officer, the President), commence a process of withdrawal of its facilities from the Transmission System."²² Article Five, Section I further provides that "[s]uch withdrawal shall not be effective until December 31 of the calendar year following the calendar year in which notice is given, nor shall any such notice of withdrawal become effective any earlier than five (5) years following the date that the Owner signed this Agreement except as provided for in Article Seven of this Agreement."²³

DEO and DEK submitted written notice to the Midwest ISO on May 20, 2010, attached hereto as Exhibit 3, and propose to leave the Midwest ISO as of January 1, 2012. DEO and DEK also have satisfied their five-year initial commitment to remain in the Midwest ISO. DEO and DEK therefore have complied with the withdrawal notice requirement.

b. Continuing Transmission Service

Article Five, Section II.A of the Midwest ISO TO Agreement requires a transmission owner seeking to withdraw from the Midwest ISO to continue transmission service for existing customers as follows:

Users taking service which involves the withdrawing Owner and which involves transmission contracts executed before the Owner provided notice of its withdrawal shall continue to receive the same service for the remaining term of

²² Midwest ISO TO Agreement, Art. Five § I.

²³ *Id.*

the contract at the same rates, terms, and conditions that would have been applicable if there were no withdrawal. The withdrawing Owner shall agree to continue providing service to such Users and shall receive no more in revenues for that service than if there had been no withdrawal by such Owner.²⁴

DEO and DEK propose to satisfy this requirement principally by maintaining the same approach to zonal transmission rate design as they have today. DEO and DEK are presently subject to Attachment O to the Midwest ISO ASM Tariff, a rate formula that is adjusted every June to reflect historic transmission costs and loads incurred in the previous year and reported in FERC Form No. 1. This is the same rate structure that was used by Louisville Gas and Electric ("LG&E") when it was a Midwest ISO TO, and the Commission permitted LG&E to continue with that rate structure when it left the Midwest ISO and declined to join another RTO.²⁵

Schedule 3.2.5 of the Integration Agreement reflects DEO and DEK's plan to file their rates for transmission service in the Duke Energy Zone by approximately July 2011.²⁶ We expect that filing to track the existing DEO and DEK zonal rate formula closely, with changes made only to the extent necessary to reflect the rate de-coupling of the DEI and DEO/DEK transmission facilities and other necessary changes, such as changes to accommodate PJM billing practices such as the utilization of transmission pricing based on a 1 Coincident Peak ("CP") versus a 12 CP methodology that is employed by the Midwest ISO.²⁷

²⁴ Midwest ISO TO Agreement, Art. Five § II.A.

²⁵ See *Louisville Gas and Electric Company, et al.*, 114 FERC ¶ 61,282 at P 197 ("*LG&E Withdrawal Order*"); *order on reh'g*, 116 FERC ¶ 61,020 (2006).

²⁶ Exhibit 1, Integration Agreement, Schedule 3.2.5.

²⁷ The companies have not yet identified any specific tariff changes that would be made to treat DEI as its own transmission zone. It seems most likely, however, that any such changes will be ministerial in nature. To the extent that a Commission filing is required, it is contemplated that such a filing would be made at or about the same time that DEO and DEK file their proposed PJM zonal transmission rate.

In order to meet the requirement to provide continuing service to existing customers, the withdrawing transmission owner must "address FTRs and loop flow," particularly as related "to allocation of flowgate capacity and corresponding real-time management of loop flows."²⁸ The Midwest ISO "must have access to flowgate capacity necessary to provide customers with existing contracts the same service that these customers would have received absent Applicants' withdrawal."²⁹ We submit that the Joint Operating Agreement ("JOA") between PJM and the Midwest ISO addresses loop flows sufficiently to meet this requirement.³⁰

PJM will allocate FTRs and ARRs to the transmission customers in the Duke Energy Zone³¹ pursuant to the PJM OATT. PJM market participants generally acquire FTRs through a series of auctions³² or in the secondary market through bilateral transactions, while ARRs

²⁸ *LG&E Withdrawal Order*, 114 FERC ¶¶ 61,282 at P 47.

²⁹ *Id.*

³⁰ *See, e.g., Wisc. Pub. Serv. Corp.*, 118 FERC ¶¶ 61,089, *order on reh'g*, 120 FERC ¶¶ 61,269 at P 44 (2007) ("Through the JOA, the RTOs have achieved levels of coordination unequaled by other RTOs. Under the JOA, the RTOs have instituted a process to coordinate dispatch on their systems with the objective of managing loop flow and congestion in the most cost-effective manner.")

³¹ Exhibit 5 attached hereto sets forth a list of the DEO and DEK transmission customers.

³² The FTR Auctions are as follows:

(i) Long-term FTR Auctions are conducted annually for the three consecutive PJM planning periods immediately subsequent to the Delivery Year during which such auction is held. PJM OATT, Attach. K App. § 7.1A.1. During such auctions, PJM offers for sale the residual system capability after the Annual ARR Allocation and Annual FTR Auction. *Id.*

(ii) Annual FTR Auctions take place prior to the commencement of each PJM Delivery Year. During such auctions, "the entire transmission entitlement that is available on the PJM system on an annual basis" is offered for sale by PJM. PJM Manual 6 at 38, *available at* <http://www.pjm.com>.

(iii) Monthly FTR Auctions take place each month and provide "a method of auctioning the residual FTR capability that remains on the PJM Transmission System after the Long-term and Annual FTR Auction [are] conducted." PJM Manual 6 at 39.

(which represent entitlements to allocation of the proceeds from the Annual FTR Auction) are allocated to firm transmission customers via PJM's Annual ARR Allocation process.³³

In the case of new load zones, such as the Duke Energy Zone, PJM conducts a "transitional FTR Allocation" covering "the period of time between the implementation of the new zone . . . and the next Annual ARR Allocation in which the new member elects to participate."³⁴ During this transitional period, which may extend through "the succeeding two Annual FTR Auctions after the integration of the new zone," transmission customers that receive and pay for service that sinks or sources in the new zone, at their election, may either receive a direct allocation of FTRs or obtain ARRs in accordance with the Annual ARR Allocation.³⁵ Such election must be made prior to each Annual FTR Auction. The allocation of FTRs and ARRs among existing transmission service customers will take place as described in the PJM OATT and in PJM Manual 6.³⁶ Schedule 3.2.5 of the Integration Agreement reflects that DEO, DEK and PJM will conduct stakeholder meetings for the purpose of identifying and educating customers that will be affected by the transitional FTR Allocations. Individual or specific customer concerns about ARR and FTR issues will be addressed in the course of this stakeholder process or, to the extent necessary, can be resolved in a subsequent FERC proceeding.

c. Honoring Financial Obligations

Article Five, Section II.B of the Midwest ISO TO Agreement states that "[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such

³³ PJM OATT, Attach. K App. § 7.4.2; PJM Manual 6 at 12-13, 18.

³⁴ PJM Manual 6 at 34.

³⁵ *Id.*

³⁶ PJM OATT, Attach. K App. Art. 7; PJM Manual 6 at 34.

withdrawal shall be honored by the Midwest ISO and the withdrawing Owner."³⁷ To that end, Schedules 10, 16 and 17 of the Midwest ISO ASM Tariff contain provisions for exit fees to be the subject of a contested or uncontested settlement accepted by FERC.³⁸ Article Five, Section II.D of the Midwest ISO TO Agreement provides that "[o]ther obligations between the Midwest ISO and the withdrawing Owner shall be renegotiated as between the Midwest ISO and the withdrawing Owner."³⁹

DEO and DEK will work with the Midwest ISO to confirm the appropriate fees and a plan for payment of those fees, as well as credits for DEO and DEK against future incurrence of fees under Schedules 10, 16 and 17 by DEO and DEK. DEO and DEK will pay the fees for their respective footprints in the Midwest ISO. DEO and DEK will make a supplemental filing when the exit fees are finalized with the Midwest ISO, recognizing that payment of any exit fee is not due until their departure from the Midwest ISO on January 1, 2012. As discussed above, because neither DEK nor DEO is seeking approval of any rate for recovery of an exit fee at this time, it would be premature at this juncture for parties to raise associated preemption issues.

d. Construction of Facilities

Article Five, Section II.C of the Midwest ISO TO Agreement provides that "[o]bligations relating to the construction of new facilities pursuant to an approved plan of the Midwest ISO shall be renegotiated as between the Midwest ISO and the withdrawing Owner."⁴⁰ The Midwest ISO ASM Tariff similarly provides that "[a] Party that withdraws from the Midwest ISO shall remain responsible for all financial obligations incurred pursuant to this Attachment FF while a

³⁷ Midwest ISO TO Agreement, Art. Five § II.B.

³⁸ Midwest ISO ASM Tariff, Schedules 10, 16, and 17.

³⁹ Midwest ISO TO Agreement, Art. Five § II.D.

⁴⁰ Midwest ISO TO Agreement, Art. Five § II.C.

Member of the Midwest ISO⁴¹ DEO and DEK will enter into the contemplated discussions with the Midwest ISO and in any event will satisfy their obligations relating to the construction of new facilities.

e. Regulatory Approvals

Article Five, Section III of the Midwest ISO TO Agreement provides that “the withdrawal by an Owner of its facilities from the Midwest ISO shall be subject to applicable federal and state regulatory approvals or procedures”⁴² This filing seeks the requisite FERC approvals. DEK has made a filing with the Kentucky Public Service Commission (“KPSC”) requesting that the KPSC authorize the RTO realignment as it pertains to DEK. DEO and DEI have commenced discussions regarding cost recovery in retail rates of any costs resulting from this transaction with the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission, respectively; no regulatory approvals are required in Ohio and Indiana for the transaction.

2. The Midwest ISO Balancing Authority Agreement

DEO and DEI are, jointly, currently a Local Balancing Authority or LBA under the Midwest ISO BAA.⁴³ After the RTO Realignment, DEI will remain in the Midwest ISO, and it is contemplated that DEI will therefore remain an LBA. DEO and DEK will work with the Midwest ISO to determine the appropriate mechanics for this LBA reconfiguration. Since the DEI LBA

⁴¹ Midwest ISO ASM Tariff, Attach. FF § III.A.2.i.

⁴² Midwest ISO TO Agreement, Art. Five § III.

⁴³ An LBA is “[a]n operational entity or Joint Registration Organization, as defined in the NERC Rules of Procedure, which is (i) responsible for compliance to NERC for the subset of NERC Balancing Authority Reliability Standards defined in this Amended Agreement for their local area within the Midwest ISO Balancing Authority Area, (ii) a Party to this Amended Agreement, excluding the Midwest ISO, and (iii) shown in Appendix A to this Amended Agreement.” Midwest ISO BAA § 2.20. The “collection of generation, transmission, and loads that are within the metered boundaries of an LBA” are a Local Balancing Authority Area (“LBAA”). *Id.* § 2.21.

will remain in the Midwest ISO, we do not believe that notice is required under the withdrawal provision of the Midwest ISO BAA,⁴⁴ and the Midwest ISO has confirmed that no notice is required.

3. Transmission and Interconnection Agreements

Midwest ISO transmission and interconnection service customers in the DEO and DEK footprints will no longer be able to take service under the Midwest ISO ASM Tariff as of the date that DEO and DEK integrate into PJM. Customers taking transmission service from that point forward, other than customers with transmission agreements that are grandfathered under RTO tariffs, will be required to do so under the PJM OATT. To the extent required by the terms of the PJM OATT, affected customers will need to execute new or modified agreements described by or reflected in the terms of the PJM OATT for the period beginning January 1, 2012. Schedule 3.2.5 of the Integration Agreement reflects that DEO, DEK and PJM will conduct stakeholder meetings for the purpose of identifying and educating customers that will be subject to these requirements. Individual or specific customer concerns will be addressed in the course of this stakeholder process. A list of transmission and interconnection customers is provided as Exhibit 4.

⁴⁴ Section 13.5 of the Midwest ISO BAA, governing withdrawals, provides: (a) An LBA may withdraw from this Amended Agreement if (i) there are no transmission facilities or there will no longer be transmission facilities subject to the Midwest ISO's functional control located within the LBAA of that entity, or for a generation-only LBA, there are no direct interconnections with any portion of the transmission system subject to the Midwest ISO's functional control; (ii) the LBA ceases or will cease to be an LBA; (iii) the Tariff provisions in Schedule 24 are materially modified or conditioned by a final Commission order; (iv) the entity obtains or receives an order to withdraw from the Midwest ISO by a regulatory authority with jurisdiction over that entity, or (v) the entity terminates service under an applicable Rate Schedule, the terms of which required the entity to become a signatory to this Amended Agreement. (b) The LBA shall provide at least one hundred eighty (180) days notice (or a shorter time period if required by a regulatory authority with jurisdiction, or by law, or as agreed to by the Midwest ISO) to the Midwest ISO of such withdrawal, which withdrawal may not be effective any earlier than the date upon which the applicable conditions set forth in this Section 13.5 are fully satisfied.

Customers in the queue for Midwest ISO transmission or interconnection service will be transitioned to the PJM queue. Each customer's position in the PJM queue will be based on the time-stamp it received upon its initial request to the Midwest ISO. DEO and DEK also will work with customers that have grandfathered transmission agreements that are listed in Attachment P to the Midwest ISO ASM Tariff to modify or replace these customers' arrangements with comparable service in PJM.⁴⁵ A list of such grandfathered agreements is provided in Exhibit 5.

4. Compliance with NERC Reliability Standards

The RTO Realignment will involve only modest changes associated with compliance with NERC's mandatory Reliability Standards. The registered entities in the DEO and DEK footprints will continue to be bound by NERC's Reliability Standards and will continue to operate within the *ReliabilityFirst* region. The primary changes will involve PJM becoming (i) the Transmission Operator for the transmission facilities in the DEO and DEK footprints (whereas today the Midwest ISO is not the Transmission Operator for transmission owners in its footprint), and (ii) the exclusive registrant for Balancing Authority, Transmission Planner and Resource Planner for the DEO and DEK footprints (whereas today the Midwest ISO and Duke Energy are registered for these responsibilities within the DEO and DEK footprints). Schedule 3.2.5 of the Integration Agreement provides a process for implementing the RTO Realignment, which includes stakeholder meetings for the purpose of educating stakeholders regarding changes in registration and compliance with the Reliability Standards.

B. DEO and DEK's Plan to Join PJM

At this time we submit the Integration Agreement and also seek a ruling on our request for pre-integration participation in the RPM base residual auction in 2011. These are the first steps in our plan to join PJM, which also includes the other filings described above.

⁴⁵ See Midwest ISO ASM Tariff, Attach. P.

1. The Integration Agreement

The Integration Agreement submitted herewith is modeled on prior integration agreements between PJM and other utilities.⁴⁶ The Integration Agreement includes a project implementation plan to accommodate the integration of the DEO and DEK transmission facilities into PJM and the timing and amount of costs to be paid to PJM for the services provided. Among other things, the Integration Agreement requires DEO and DEK to execute the PJM RAA, the PJM TO Agreement and the PJM Operating Agreement. These steps will result in operation of DEO and DEK's transmission facilities under the PJM OATT, thereby meeting the requirement to provide for replacement transmission arrangements that are consistent with Order Nos. 888 and 890.⁴⁷

2. Integration into PJM's Capacity Market

DEO and DEK request approval (subject to the other filings described above) to join PJM effective January 1, 2012, midway through the 2011-12 Delivery Year. Given the unique "three-year forward" structure of RPM, this timeline creates two issues for the LSEs in the Duke Energy Zone. First, because of the three-year forward nature of the RPM auctions, in order to participate fully in RPM at the earliest possible date after integration into PJM, the Duke Energy Zone LSEs will need to (a) participate in the Base Residual Auction for the 2014-15 Delivery Year before the January 1, 2012 date when DEO and DEK plan to integrate into PJM, or (b) prepare and submit an independent FRR plan if they meet PJM's qualifications. Second, the

⁴⁶ See, e.g., Agreement to Implement Expansion of PJM Region for FirstEnergy Service Company, provided as Exhibit 1 to August 17, 2009 FirstEnergy request for FERC approval of RTO realignment (Docket No. ER09-1589); *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,012 (2004), order on reh'g, 110 FERC ¶ 61,234 (2005) (establishing PJM South to incorporate Dominion as part of PJM); *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,318 (2004), reh'g denied, 110 FERC ¶ 61,395 (2005) (incorporating AEP and DP&L into PJM).

⁴⁷ See *LG&E Withdrawal Order*, 114 FERC ¶ 61,282 at PP 96-97; *Duquesne Withdrawal Order*, 124 FERC ¶ 61,219 at P 42.

Duke Energy Zone LSEs will need to independently satisfy resource adequacy obligations for the last five months of the 2011-2012 Delivery Year, as well as the 2012-13 and 2013-14 Delivery Years, because the Base Residual Auctions for those delivery years have already occurred.

There will be two separate processes to manage these two issues. We are developing – and will in approximately 30-60 days request Commission approval of – an out-of-time Fixed Resource Requirement Integration Plan (“FRR Integration Plan”) to cover capacity arrangements during the period from January 1, 2012 through May 31, 2014.

We seek authorization here for all load and generation in the DEO and DEK footprints to participate in the May 2011 Base Residual Auction (for the 2014-15 Delivery Year). Although participation in the auction would precede integration into PJM, this timing is appropriate given the three-year forward nature of RPM. The Commission authorized similar prior participation in *FirstEnergy* and in the *Duquesne Settlement Order*.⁴⁸ As discussed above, we request that the Commission authorize such participation by November 1, 2010. This will help to ensure that all affected parties have sufficient time to understand the process, resolve any open issues, and submit the data that must be submitted before February 1, 2011, so that they can be included in the auction.⁴⁹

III. Contents of this Filing

In addition to this filing letter, we submit the following Exhibits:

Exhibit 1 – Integration Agreement

⁴⁸ See *FirstEnergy*, 129 FERC ¶ 61,249 at P 78; *Duquesne Settlement Order*, 126 FERC ¶ 61,074 at P 35 (“The Settlement Agreement permits Duquesne to participate in PJM’s upcoming RPM auctions and to otherwise satisfy PJM’s capacity commitment protocols as they apply to future delivery years.”); *Duquesne Settlement* § II.C.2.

⁴⁹ See PJM Manual 18 at 64.

Exhibit 2 – RTO Configuration Map

Exhibit 3 – DEO and DEK Notice of Withdrawal from the Midwest ISO

Exhibit 4 – List of Generator Interconnection and Transmission Customers

Exhibit 5 – List of Grandfathered Transmission Service Agreements

IV. Communications

We request that all communications and correspondence with respect to this filing be directed to the following individuals and that these individuals be included on the Commission's official service list for this proceeding.

James B. Gainer
Vice President
Federal Regulatory Policy
Duke Energy Corporation
526 South Church Street
P.O. Box 1006
Charlotte, NC 28202
(704) 382-5618
james.gainer@duke-energy.com

Noel Symons
Andrea R. Kells
McGuireWoods LLP
Washington Square
1050 Connecticut Avenue, NW
Suite 1200
Washington, D.C. 20036
(202) 857-2929
nsymons@mcguirewoods.com

Jeffrey M. Trepel
Associate General Counsel
Duke Energy Corporation
EC03T
526 South Church Street
Charlotte, NC 28202
(704) 382-8131
jeffrey.trepel@duke-energy.com

V. Service and Request for Waiver of any Additional Requirements

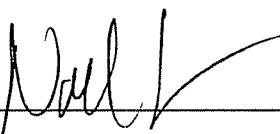
We have served a copy of this filing, electronically or by first class mail, with attachments, upon all of the generator interconnection and transmission customers identified in Exhibits 4 and 5, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission, the Midwest ISO, PJM, and the Independent Market Monitors for the Midwest ISO and PJM.

We respectfully request waiver of any requirements of 18 C.F.R. § 35.13 that have not been fulfilled by this filing. In addition, we request waiver of any other Commission rule or regulation as may be necessary to permit the Commission to grant the requested relief.

VI. Conclusion

For the reasons set forth herein, we request that the Commission issue an order by November 1, 2010 (i) determining that the proposed RTO Realignment meets the standard for withdrawal from an RTO (subject to the future filings described above), and (ii) approving our proposal for pre-integration participation in PJM's 2011 RPM base residual auction.

Respectfully Submitted,



James B. Gainer
Vice President
Federal Regulatory Policy
Duke Energy Corporation
526 South Church Street
P.O. Box 1006
Charlotte, NC 28202
(704) 382-5618
james.gainer@duke-energy.com

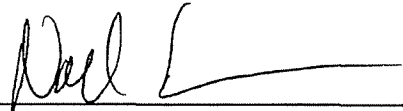
Noel Symons
Andrea R. Kells
McGuireWoods LLP
Washington Square
1050 Connecticut Avenue, NW
Suite 1200
Washington, D.C. 20036
(202) 857-2929
nsymons@mcguirewoods.com

Counsel for Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.

Jeffrey M. Trepel
Associate General Counsel
Duke Energy Corporation
EC03T
526 South Church Street
Charlotte, NC 28202
(704) 382-8131
jeffrey.trepel@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon the entities identified in this Initial Filing in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.



Noel Symons
McGuireWoods LLP
Washington Square
1050 Connecticut Avenue, NW
Suite 1200
Washington, D.C. 20036
(202) 857-2929

June 25, 2010



**AGREEMENT TO IMPLEMENT EXPANSION OF PJM REGION
FOR DUKE ENERGY OHIO AND DUKE ENERGY KENTUCKY**

This Agreement To Implement Expansion Of PJM Region For Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. ("Implementation Agreement"), dated June 11, 2010, by and between,

Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. (collectively "Transmission Owner"); and

PJM Interconnection, L.L.C. ("PJM"), a limited liability company organized under the laws of Delaware

(Each a "Party" and together, "Parties").

Whereas, Transmission Owner owns electric transmission facilities which form an integrated transmission system used to provide electric service to its retail customers and to provide open access transmission service pursuant to requirements of the FERC;

Whereas, PJM is the regional transmission organization ("RTO") comprised of interconnected electric transmission systems in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, North Carolina and the District of Columbia.

Whereas, PJM is the transmission provider under, and the administrator of, the PJM Tariff, operates the PJM Interchange Energy Market and Reliability Pricing Model, administers the Regional Transmission Expansion Planning Process ("RTEPP"), and controls the day-to-day operations of the bulk power system of the PJM Region;

Whereas, subject to the terms and conditions of the Transmission Owners Agreement, Operating Agreement, the PJM Tariff, and the Reliability Assurance Agreement, all as defined herein, and subject to any required regulatory approvals of such amendments, Duke Energy Kentucky, Inc. has elected to become a member of PJM, transfer functional control of its transmission facilities to PJM for inclusion in the PJM Region, integrate its control area into the PJM Interchange Energy Market and other PJM markets, and otherwise facilitate the establishment and operation of PJM as the ISO, RTO and transmission provider with respect to its Transmission Facilities as contemplated by this Implementation Agreement;

Whereas, subject to the terms and conditions of the Transmission Owners Agreement, Operating Agreement, the PJM Tariff, and the Reliability Assurance Agreement, all as defined herein, and subject to any required regulatory approvals of such amendments, Duke Energy Ohio, Inc., already a member of PJM, has elected to transfer functional control of its transmission facilities to PJM for inclusion in the PJM Region, integrate its control area into the PJM Interchange Energy Market and other

PJM markets, and otherwise facilitate the establishment and operation of PJM as the ISO, RTO and transmission provider with respect to its Transmission Facilities as contemplated by this Implementation Agreement;

Whereas, in order to accept functional control of the Transmission Facilities and commensurately expand the PJM markets, PJM will be required to make additions and modifications to its systems and facilities and thereby incur Expansion Costs, as defined herein; and

Whereas, the Parties accordingly enter into this Implementation Agreement to provide for the payment of Expansion Costs to PJM and to develop a project implementation plan to accommodate the integration of the Transmission Owner's transmission facilities into PJM.

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and intending to be legally bound thereby, and for other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 GLOSSARY AND RULES OF CONSTRUCTION

Unless the context otherwise specifies or requires, capitalized terms used in this Implementation Agreement shall have the meanings assigned or referred to in this Article 1 (such definitions to be equally applicable to both the singular and the plural forms of the terms defined). Unless otherwise specified, all references to articles or sections are to articles or sections of this Implementation Agreement. Exhibits and schedules referred to in this Implementation Agreement are incorporated herein and made a part hereof. As both Parties have been involved in the drafting of this Implementation Agreement and represented by competent counsel, no rule that a contract shall be construed against the drafter shall be applied to the construction or interpretation of this Implementation Agreement.

1.1 "Capitalized Expansion Costs" shall have the meaning stated in section 4.1.3.

1.2 "Completion Date" shall mean the earliest date on which both of the following conditions have occurred: (1) PJM has commenced to serve as the transmission provider under the PJM Tariff with respect to the Transmission Facilities and (2) PJM has commenced to perform all functions allocated to PJM under section 3.2.1 in the Control Area of Transmission Owner.

1.3 "Control Area" shall have the meaning stated in section 1.7 of the Operating Agreement.

1.4 "Directly Assigned Expansion Costs" shall have the meaning stated in section 4.1.4.

1.5 “**Effective Date**” of this Implementation Agreement shall be as provided in section 2.1.

1.6 “**Expansion Costs**” shall have the meaning stated in section 4.1.1.

1.7 “**FERC**” shall mean the Federal Energy Regulatory Commission or any successor federal agency, commission or department exercising jurisdiction over the PJM Tariff, Transmission Owners Agreement, Operating Agreement, or the Reliability Assurance Agreement.

1.9 “**Interim Expansion Expenses**” shall have the meaning stated in section 4.1.5.1.

1.9 “**ISO**” shall mean Independent System Operator as that term is defined by the FERC.

1.10 “**Operating Agreement**” shall mean the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., as in effect and which may be amended from time to time.

1.11 “**Party**” or “**Parties**” shall have the meaning stated in the preamble.

1.12 “**PJM Tariff**” shall mean the PJM Open Access Transmission Tariff providing transmission and other related services within the PJM Region, including any schedules, appendices, attachments, charts, annexes, or exhibits attached thereto, as in effect and which may be amended from time to time.

1.13 “**PJM Region**” shall mean the aggregate of the Control Areas recognized by the North American Electric Reliability Council.

1.14 “**Project Implementation Plan**” shall have the meaning stated in section 3.2.5.

1.15 “**Reliability Assurance Agreement**” shall mean the PJM Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region as in effect and which may be amended from time to time.

1.16 “**RTO**” shall mean Regional Transmission Organization as that term is defined by the FERC.

1.17 “**Transmission Facilities**” shall have the meaning stated in section 1.44 of the Operating Agreement.

1.18 “**Transmission Owners Agreement**” shall mean the Consolidated Transmission Owners Agreement (Rate Schedule FERC No. 42) among PJM and Certain Owners of Electric Transmission Facilities, as may be amended from time to time.

**ARTICLE 2
EFFECTIVE DATE**

2.1 Effective Date Not Subject to Regulatory Approval. The Effective Date of this Implementation Agreement shall occur upon execution by the Parties and shall not be conditioned upon whether regulatory approval of this Implementation Agreement is sought or obtained. Transmission Owner shall fulfill its payment obligations under this Implementation Agreement without regard to whether any regulatory authority has asserted jurisdiction over the Implementation Agreement or approved, disapproved, or conditioned, any provision of this Implementation Agreement, or any other agreement related to the establishment of PJM as the RTO for the Transmission Facilities.

**ARTICLE 3
PARTIES' UNDERTAKINGS IN FURTHERANCE OF EXPANSION
OF PJM REGION**

3.1 Undertakings to Execute Agreements and Seek Regulatory Approvals from the FERC.

3.1.1 Upon obtaining any and all necessary regulatory approvals on the terms and conditions described in the Transmission Owner's application for the same from the FERC Transmission Owner shall execute, in a manner consistent with such approvals, the Consolidated Transmission Owners Agreement, Operating Agreement and Reliability Assurance Agreement.

3.1.2 It is agreed that in order for Transmission Owner to transfer functional control of its Transmission Facilities to PJM for inclusion in the PJM Region, integrate its Control Area into the PJM Interchange Energy Market and other PJM markets, and otherwise facilitate the establishment and operation of PJM as the RTO with respect to its Transmission Facilities, it will be necessary to amend the following documents: (a) Consolidated Transmission Owners Agreement; (b) Reliability Assurance Agreement; (c) Operating Agreement; and (d) PJM Tariff. PJM and Transmission Owner, in the context of PJM's stakeholder review process, shall negotiate in good faith all such amendments. Promptly upon agreement to such amendments, the Parties shall make good faith efforts to initiate and, subject to section 3.1.3, pursue diligently, all proceedings necessary and appropriate to seek and obtain all regulatory approvals required from the FERC of all such amendments, of the transfer of functional control of the Transmission Facilities to PJM, and of Interim Operating Expenses (see section 4.1.5). The filings to initiate and prosecute such proceedings shall be initiated on or before July 1, 2011, and shall be joint except as provided in section 3.1.3.

3.1.3 Transmission Owner shall have sole responsibility for obtaining regulatory approval of amendments to the PJM Tariff that provide for Transmission Owner's transmission rates and/or revenue requirements with respect to service provided on the Transmission Facilities. Additionally, Transmission Owner shall have

sole responsibility to ensure its transmission rates comply with applicable FERC orders and PJM shall not oppose Transmission Owner's filings with respect to such rates.

3.1.4 If, in accepting amendments submitted for approval under section 3.1.2, or related agreements or filings in furtherance of PJM's service as the RTO for the Transmission Facilities, the FERC rejects, modifies or conditions its acceptance of such amendments, agreements or filings, within thirty (30) days of the FERC order rejecting, modifying or otherwise imposing such conditions, the Parties shall either: (1) notify the FERC and each other of their acceptance of any such modification or condition; (2) negotiate with FERC on mutually agreeable terms for the amendment, agreement or filing; or (3) enter into and complete discussions to determine whether the amendment, agreement or filing would be mutually beneficial in light of the FERC's action. If a Party shall determine that the amendment, agreement or filing would not be beneficial, the amendment, agreement, or other filing shall become null and void, provided, that nothing in this section shall diminish Transmission Owner's obligation to pay all amounts otherwise due to PJM under this Implementation Agreement.

3.2 Undertakings to Exercise Functional Control Over the Transmission Facilities and Integrate the PJM Markets Into the Transmission Owner Control Area.

3.2.1 "Transmission Owner Expansion" shall mean the upgrade, expansion, modification, development, design, or acquisition by PJM of any new or existing hardware, software, systems, or facilities of PJM of any kind or description, or any other work required or appropriate to be performed as more specifically set forth in the Project Implementation Plan; *provided however*, that the Parties acknowledge and agree that the internal timing milestones described in the Project Implementation Plan provide guidance and estimates based on present assumptions relating to the Transmission Owner Expansion and should not be construed as firm obligations on the part of PJM; *provided further however*, that PJM shall nonetheless remain obligated to use best efforts, as described in section 3.2.5, to meet the January 1, 2012 deadline. PJM shall serve as the RTO for the Transmission Facilities and administer the PJM markets to include Transmission Owner's Control Area. By way of further explanation, and not in qualification of the above, Transmission Owner Expansion shall not include any upgrade, expansion, modification, development, design, acquisition, or other work in furtherance of expansion of the PJM Region to include the transmission facilities of any entity not a Party to this Agreement or any other development or expansion of PJM. The foregoing notwithstanding, the Parties recognize and agree that if PJM incurs expenses to implement Transmission Owner Expansion, which expenses are attributable to some further expansion of PJM Region proceeding concurrently with the Transmission Owner Expansion, then PJM shall allocate such expenses between Expansion Costs hereunder and such other Control Areas or regions, as applicable, on the basis of the ratio of the total load of Transmission Owner to the total loads of the other Control Areas or regions benefiting from the common tasks.

3.2.2 Expansion Goals. Upon completion of Transmission Owner Expansion, PJM agrees to exercise functional control over the Transmission Facilities

and to fully integrate the PJM markets into the Control Area of Transmission Owner. PJM shall make good faith efforts to achieve such functionality in accordance with the goals stated in the Project Implementation Plan as defined in Section 3.2.5.

3.2.3 PJM Staffing. Nothing in this Implementation Agreement shall require that PJM (a) increase internal staffing to perform Transmission Owner Expansion or (b) allocate staff in a manner that PJM determines may jeopardize its ability to meet its obligations as the RTO for any Control Area where it serves in such capacity.

3.2.4 Designees for Contract Administration. By Notice, each Party shall designate in writing an individual who shall have the primary responsibility of administering responsibilities under this Implementation Agreement and shall designate an alternate to perform such responsibilities in the event the primary designee is unavailable (the primary or alternate designee, as applicable, is referred to as the "Project Designee"). A Party may change its designations by Notice.

3.2.5 "Project Implementation Plan" shall mean the plan for a timeline for Transmission Owner Expansion attached hereto as Schedule 3.2.5 or as amended by the Parties from time to time in accordance with this section. It is recognized that PJM may reasonably determine, from time to time, that changes to the Project Implementation Plan are necessary or appropriate to achieve economies, efficiencies, or the success the Transmission Owner Expansion or other PJM projects. In such event, PJM shall give Notice to Transmission Owner of the change and the Parties shall in good faith negotiate amendments to the Project Implementation Plan, provided, that Transmission Owner shall not unreasonably withhold consent to reasonable changes to the Project Implementation Plan proposed by PJM, and provided further, that nothing in this section shall override the rights of Transmission Owner under section 4.2. Furthermore, it is recognized by PJM that Transmission Owner requires full integration into PJM by the first clock minute of January 1, 2012, that the Project Implementation Plan will be structured, and PJM will use best efforts, to meet that goal. Except as otherwise expressly stated herein, the Project Implementation Plan shall be modified only if agreed to by the Parties.

3.2.6 PJM Requests for Information. Transmission Owner shall respond, at its own cost, with a full and timely good faith effort to all reasonable requests for information or technical support made by PJM from time to time to facilitate Transmission Owner Expansion.

3.2.7 Financing Condition. It is understood that subject to reimbursement (see section 4.1.2.2), PJM will be required to make initial expenditures to cover Capitalized Expansion Costs as defined herein (see section 4.1.2) and it is further understood that PJM may lack capital necessary to make such expenditures. It is agreed, therefore, that PJM shall not be required to incur Capitalized Expansion Costs until and unless PJM has closed transactions necessary to obtain all required financing for Capitalized Expansion Costs in a total amount no less than specified in section 4.1.2.1. PJM agrees to use reasonable best efforts to secure such financing.

ARTICLE 4
ALLOCATION AND PAYMENT OF EXPANSION COSTS

4.1 Definitions and Certain Payment Obligations.

4.1.1 “Expansion Costs” are all costs and expenses PJM incurs from the Effective Date of this Implementation Agreement through thirty (30) days after the Completion Date in order to perform Transmission Owner Expansion, including the costs of vendors, consultants, independent contractors, PJM employees (including allocable compensation and general and administrative overhead) attributable to Transmission Owner Expansion. In the event Transmission Owner gives Notice under section 5.2 or section 5.3.1 or otherwise does not transfer control of Transmission Facilities to PJM, Expansion Costs shall also include any reasonable suspension, termination and demobilization costs and expenses incurred. PJM will take commercially reasonable measures to mitigate any suspension, termination and demobilization costs.

Expansion Costs consist of the following cost categories:

Capitalized Expansion Costs (see section 4.1.2)

Directly Assigned Expansion Costs (see section 4.1.3)

Interim Expansion Expenses (see section 4.1.4)

Suspension, termination and demobilization costs and expenses (if any)

The Parties expect that most Expansion Costs will be incurred by PJM and recovered by PJM under sections 4.1.2.2, 4.1.3.2 and 4.1.4.2 of this Implementation Agreement, and that Transmission Owner will directly incur only relatively minor additional costs, such as telecom system upgrades and any such similar costs. The Parties recognize that the cost recovery provisions of this Implementation Agreement will minimize PJM's carrying costs for Interim Expansion Expenses. The Parties agree that carrying costs for Capitalized Expansion Costs will be expensed and that, subject to section 5.4, PJM will recover Capitalized Expansion Costs as described in section 4.1.2.2. To the extent that PJM incurs common costs or expenses for expansion on common tasks applicable to PJM expansion into any other Control Areas, PJM shall allocate such costs between Expansion Costs hereunder and such other Control Areas or regions, as applicable, on the basis of the ratio of the total load of Transmission Owner to the total loads of the other Control Areas or regions benefiting from the common tasks.

4.1.2 Capitalized Expansion Costs.

4.1.2.1 “Capitalized Expansion Costs” shall mean all Expansion Costs that are properly capitalized by PJM according to Generally Accepted Accounting Principles (“GAAP”), excluding any such costs that are Directly Assigned

Expansion Costs. As of the Effective Date of this Implementation Agreement, the Parties estimate that Capitalized Expansion Costs, excluding any suspension, termination and demobilization costs and expenses, will be \$900,000.

4.1.2.2 PJM Recovery of Capitalized Expansion Costs.

Subject to section 5.3.2, PJM shall recover Capitalized Expansion Costs from users of PJM services under Schedule 9 of the PJM Tariff.

4.1.3 Directly Assigned Expansion Costs.

4.1.3.1 “Directly Assigned Expansion Costs” are: all Expansion Costs PJM incurs to conform Transmission Owner’s internal systems with PJM’s technology and communications requirements, and for PJM to establish telecommunication links with Transmission Owner. As of the Effective Date of this Implementation Agreement, the Parties estimate that Directly Assigned Expansion Costs, excluding any suspension, termination and demobilization costs and expenses, will be \$2,050,000.

4.1.3.2 Payment of Directly Assigned Expansion Costs.

Transmission Owner agrees to fund all applicable Directly Assigned Expansion Costs in accordance with the procedures set forth in sections 4.4.1 and 4.4.2.

4.1.4 Interim Expansion Expenses.

4.1.4.1 “Interim Expansion Expenses” are all Expansion Costs that are properly expensed by PJM according to GAAP, and any carrying costs (including actual or implicit costs of funds), excluding any such costs that are Directly Assigned Expansion Costs. As of the Effective Date of this Implementation Agreement, the Parties estimate that Interim Expansion Expenses will be \$50,000.

4.1.4.2 Payment of Interim Expansion Expenses.

Transmission Owner agrees to fund Interim Expansion Expenses in accordance with the procedures set forth in sections 4.4.1 and 4.4.2.

4.2 Provision of Certain Expansion Costs Estimates. As of the Effective Date of this Implementation Agreement, the Parties estimate that total Expansion Costs will be \$3,000,000, excluding any suspension, termination and demobilization costs and expenses. In the event PJM incurs or expects to incur Expansion Costs (subject to these exclusions) that exceed this estimate by more than twenty percent (20%), it shall notify Transmission Owner and, without in any way limiting the applicability of Article 5, Transmission Owner may withdraw from Transmission Owner Expansion. In the event Transmission Owner withdraws under this provision, section 5.3.2 shall apply.

4.3 Cost Records and Inspection of Books of Account. PJM shall create and maintain records pertaining to all amounts it is entitled to recover under this Implementation Agreement, including records pertaining to Transmission Owner Expansion and the performance of all tasks performed hereunder and all payments

made to vendors, subcontractors or any other third parties hereunder. Transmission Owner shall have the right, upon 48-hour Notice, to inspect such records at the PJM corporate office during PJM's customary business hours. In the event Transmission Owner determines in good faith that an expenditure attributed to Transmission Owner Expansion should not be so attributed, Transmission Owner shall pay the entire amount specified in the invoice within such sixty (60) day period and may seek recovery of the disputed amount under the dispute resolution procedures set forth in Article 6.

4.4. Deposit and Billing Procedures.

4.4.1 Within three (3) business days after the Effective Date of this Implementation Agreement, Transmission Owner shall pay PJM a deposit equal to the total of \$700,000. PJM shall draw payments from deposited funds in accordance with the billing and payment procedures set forth in section 4.4.2. On the tenth business day of each month thereafter, and until the Completion Date, PJM shall provide Transmission Owner with a written forecast of Directly Assigned Expansion Costs and Interim Expansion Expenses to be incurred during the three-month period commencing with the following month. On or after the date when the FERC issues the regulatory approval described in section 3.1.1 hereof, and in accordance with the billing and payment procedures set forth in section 4.4.2, Transmission Owner shall deposit with PJM such additional funds as are necessary such that the total amount of funds deposited with PJM equals \$700,000 until such point when PJM's most recent written forecast delivered pursuant to the immediately preceding sentence is less than that \$700,000, at which time the deposit obligation shall be reduced to an amount that is equal to the written forecast. After the Completion Date, and after all obligations under sections 4.1.4.2 and 4.1.5.2 have been satisfied, PJM shall refund to Transmission Owner any remaining funds on deposit with PJM, if any.

4.4.2 On the 10th day of each month (or, if such day falls on a Saturday, Sunday, or holiday, on the next business day), PJM shall issue monthly billing statements to Transmission Owner for Directly Assigned Expansion Costs under section 4.1.4.2 and Interim Expansion Expenses under section 4.1.5.2, and PJM shall deduct such amounts from Transmission Owner's funds on deposit under section 4.4.1 to the extent available. Such statements shall set forth: (a) any additional payments required that were not covered by deposited funds; (b) any additional funds required to be deposited under section 4.4.1; (c) an itemization of the costs and expenses incurred; and (d) an estimate of the remaining Expansion Costs. Transmission Owner shall make payment no later than the 20th day of the same month, or if such day falls on a Saturday, Sunday, or holiday, on the next business day.

**ARTICLE 5
LIMITATIONS ON AND PAYMENT
OBLIGATIONS IN THE EVENT OF WITHDRAWAL**

5.1 Withdrawal; Unconditional Character of Payment Obligations.

5.1.1 Limitation on Withdrawal. Except as provided under this Article 5 and in section 4.2, neither Party shall withdraw from this Implementation Agreement after the Effective Date.

5.1.2 Payment Obligation. Neither the failure of Transmission Owner to transfer control of the Transmission Facilities to PJM, nor any withdrawal by Transmission Owner from Transmission Owner Expansion, nor any subsequent withdrawal of the Transmission Facilities from PJM shall excuse or diminish Transmission Owner's obligation to pay all reasonably incurred Expansion Costs under this Implementation Agreement, except as may be provided in this Article 5. By way of example, but not limitation, the following events shall not excuse or diminish such payment obligations: (a) a failure by Transmission Owner to meet any obligation under sections 3.1.1, 3.1.2, 3.1.3, or 3.1.4; (b) any action or inaction by the FERC, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, or any other regulatory agency that has the effect of denying or failing to grant any required regulatory approval; (c) any change in law or regulation that reduces or eliminates any regulatory basis or incentive for such transfer of control of the Transmission Facilities to, or retention of control of the Transmission Facilities by, an ISO or RTO; (d) any decision to transfer control, or seek to transfer control, of the Transmission Facilities to an ISO, RTO, other than PJM or an organization other than PJM that seeks or intends to seek approval from the FERC to serve as an ISO, RTO, or Independent Transmission Provider; or (e) any order of the FERC approving withdrawal of Transmission Owner from this Implementation Agreement or the withdrawal of any other owner of transmission facilities from PJM in any region.

5.2 Suspension for Regulatory Delay. In the event that on or before **January 1, 2011**, the FERC has not issued an initial order concerning approval of the terms and conditions described in the Transmission Owner's application for authorization to transfer of functional control of the Transmission Facilities to PJM required to effect the integration of Transmission Owner into the PJM Region, and Transmission Owner reasonably believes that such approval is not expected to be forthcoming within a reasonable time as will permit integration on the requested terms, then by Notice to PJM, Transmission Owner may suspend Transmission Owner Expansion. In the event of such suspension, Transmission Owner shall compensate PJM for all reasonable documented costs of suspension, including demobilization costs and expenses, and costs, expenses, and penalties incurred in terminating or suspending contracts with consultants, landlords, vendors, and employees. PJM will take commercially reasonable measures to mitigate any suspension, termination and demobilization costs. During Transmission Owner Expansion, PJM will respond to reasonable requests from Transmission Owner for estimates of the costs of suspension

that would be due under this section if such suspension were invoked under this section.

5.3 Obligations of Transmission Owner if Transmission Owner Does Not Transfer Control of the Transmission Facilities to PJM or Withdraws from PJM.

5.3.1 Notice; Termination of Region Expansion. If Transmission Owner determines that there is a material possibility that it will not transfer control of the Transmission Facilities to PJM under the Operating Agreement and Transmission Owners Agreement, such that PJM will not serve as the RTO with respect to such Transmission Facilities, Transmission Owner shall give Notice to PJM pursuant to section 7.8 as soon as reasonably practicable. Upon receipt of such Notice, PJM and Transmission Owner shall confer and, unless Transmission Owner and PJM agree in writing that Transmission Owner Expansion shall continue, PJM shall immediately commence termination of such Transmission Owner Expansion, including demobilization and giving notice of termination or other applicable notice under contracts with third parties. In the event Transmission Owner fails to give Notice under this section, PJM shall not be expected to terminate Transmission Owner Expansion regardless of whether or not PJM is aware of any event or occurrence or circumstance giving rise to the right to give Notice, and PJM may continue Transmission Owner Expansion at Transmission Owner's cost under this Implementation Agreement until Notice is given under this section.

5.3.2 Transmission Owner's Obligation to Reimburse PJM for Expansion Costs If Transmission Owner Does Not Transfer Control of the Transmission Facilities. In the event Transmission Owner gives Notice to PJM under section 5.3.1, withdraws under section 4.2 or otherwise does not transfer control of Transmission Facilities to PJM, then Transmission Owner shall pay PJM its unpaid Directly Assigned Expansion Costs, unpaid Interim Expansion Expenses, and Capitalized Expansion Costs incurred by PJM and calculated in accordance with Article 4. Reimbursement shall be made first from any amounts on deposit with PJM under section 4.3.1 of this Implementation Agreement, and the balance shall be paid to PJM no later than sixty (60) days after PJM issues an invoice therefor, which invoice shall include an itemization of all applicable Expansion Costs incurred through the date of such notice. In the event Transmission Owner disputes the amount stated in PJM's invoice, Transmission Owner shall pay the entire amount specified in the invoice within such sixty (60) day period and may seek recovery of the disputed amount under the dispute resolution procedures set forth in Article 6. The remedies provided herein are not exclusive. If, after Transmission Owner has paid PJM its unpaid Directly Assigned Expansion Costs, unpaid Interim Expansion Expenses, and Capitalized Expansion Costs incurred by PJM and calculated in accordance with Article 4, a positive balance of funds on deposit with PJM remains, PJM shall refund to Transmission Owner such balance within a commercially reasonable period.

5.4 Obligations if Transmission Owner Transfers Control of Transmission Facilities to PJM but Withdraws Control Prior to Recovery by PJM of All Capitalized Expansion Costs Under the PJM Tariff. In the event Transmission Owner withdraws control of its Transmission Facilities from PJM within three (3) years from the Completion Date, PJM shall issue an invoice to Transmission Owner for Capitalized Expansion Costs calculated in accordance with section 4.1.3, if any, that PJM shall not have recovered pursuant to section 4.1.3.2 under the PJM Tariff as of the effective date of such withdrawal. No later than thirty (30) days after receipt of such invoice, Transmission Owner shall pay the amount stated in the invoice. In the event Transmission Owner disputes the amount stated in the invoice, Transmission Owner shall pay the entire amount specified in the invoice within such thirty (30) day period and may seek recovery of the disputed amount under the dispute resolution procedures set forth in Article 6. In the event Transmission Owner withdraws and pays the amounts due under this section, and PJM determines in good faith that some or all of the work product funded through Capitalized Expansion Costs will be of recoupable value to PJM, then Transmission Owner and PJM shall negotiate in good faith any appropriate rebate to Transmission Owner of the amounts paid by Transmission Owner under this section.

5.5 Injunctive Relief.

5.5.1 PJM's Rights. Transmission Owner understands and agrees that PJM relies on recovery of expenditures under the PJM Tariff to fund its operations, and that, in the event PJM does not recover any portion of Expansion Costs under sections 4.1.3.2, 4.1.4.2, 4.1.5.2, 4.3, 5.1 (and subsections thereof), 5.2, 5.3 (and subsections thereof), or 5.4, PJM will suffer irreparable harm. Therefore, Transmission Owner consents, stipulates, and agrees to the issuance of a temporary, preliminary, and permanent injunction by any federal or state court with jurisdiction to require that Transmission Owner comply with its payment obligations under sections 4.1.2.2, 4.1.3.2, 4.1.4.2, 4.3 5.1 (and subsections thereof), 5.2, 5.3 (and subsections thereof), and 5.4, as applicable. Transmission Owner expressly consents to the personal jurisdiction of any such court located in Pennsylvania for this purpose. PJM's entitlement to a grant of injunctive relief under this section shall be without prejudice to any rights PJM may have to additional remedies at law or in equity.

5.5.2 Transmission Owner's Rights. PJM understands and agrees that in the event that PJM does not comply with its obligations set forth in sections 4.4.1, 5.3.2 or 7.6(ii) Transmission Owner will suffer irreparable harm. Therefore, PJM consents, stipulates, and agrees to the issuance of a temporary, preliminary, and permanent injunction by any federal or state court with jurisdiction to require that PJM comply with its obligations under section 4.4.1, 5.3.2 or 7.6(ii). PJM expressly consents to the personal jurisdiction of any such court located in Pennsylvania for this purpose. Transmission Owner's entitlement to a grant of injunctive relief under this section shall be without prejudice to any rights Transmission Owner may have to additional remedies at law or in equity.

ARTICLE 6 DISPUTE RESOLUTION

Should a dispute arise under or relating to this Implementation Agreement, the Parties shall undertake good-faith negotiations between designated executive representatives with authority to resolve the matter in dispute. In the event such negotiations fail, the dispute shall be subject to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association, to be held in Washington, D.C., and judgment thereon may be entered by a court with jurisdiction; provided, that in the event Transmission Owner fails to make a payment required under this Implementation Agreement, PJM, in its sole discretion, may submit the dispute to binding arbitration under this Article, seek injunctive relief under section 5.5, or seek both injunctive and arbitral remedies, and this Article shall not bar such an action for injunctive relief brought by PJM or the grant of such relief therein; provided, further, that in the event PJM fails to make a payment required under section 7.6(ii) or a refund required under this Implementation Agreement, Transmission Owner, in its sole discretion, may submit the dispute to binding arbitration under this Article, seek injunctive relief under section 5.5, or seek both injunctive and arbitral remedies, and this Article shall not bar such an action for injunctive relief brought by Transmission Owner or the grant of such relief therein.

ARTICLE 7 ADDITIONAL AND MISCELLANEOUS MATTERS

7.1 Relationship of the Parties. This Implementation Agreement shall not be interpreted or construed to create any association, joint venture, or partnership between or among the Parties or to impose any partnership obligation liability upon any Party. No Party shall have the right, power or authority under this Implementation Agreement to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

7.2 No Third-Party Beneficiaries. This Implementation Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns and is not intended to and shall not confer any rights or benefits on, any third party (other than the Parties' successors and permitted assigns) that is not a signatory hereto.

7.3 Term and Termination. This Implementation Agreement shall be effective upon the Effective Date and shall continue in effect from year to year thereafter unless and until terminated by the terms of this Implementation Agreement or by satisfaction of all obligations of each Party.

7.4 Successors and Assigns. This Implementation Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors, but shall not be assigned without the prior written consent of the other Party, and except, in the case of Transmission Owner, to a successor in the operation of the Transmission Facilities by reason of a merger, consolidation, reorganization, sale, spin-off, or

foreclosure, as a result of which all or substantially all such Transmission Facilities are acquired by such a successor and assign, and such successor and assign expressly is made a party to this Implementation Agreement.

7.5 Force Majeure No Excuse. The occurrence of an Act of God or event of Force Majeure, as customarily defined, shall neither excuse Transmission Owner from making any payment required under this Implementation Agreement, nor excuse PJM from using best efforts to integrate Transmission Owner into PJM as anticipated by section 3.2.6.

7.6 Limitations on Liability. Neither Party shall be liable to the other Party for any claim for damages, whether direct, indirect, actual, incidental, special, punitive or consequential damages, or loss of the other Party, including, but not limited to, loss of profits or revenues, cost of capital of financing, or loss of goodwill arising from such Party's carrying out, or failing to carry out, any obligations contemplated by this Implementation Agreement. Notwithstanding the foregoing:

- (i) Transmission Owner shall remain liable with respect to the payment obligations provided in this Implementation Agreement;
- (ii) PJM shall be liable in the event it willfully and without justification abrogates its undertakings described in this Implementation Agreement or misappropriates or converts deposits or funds advanced hereunder by Transmission Owner; in either event, such liability shall be limited strictly to the return of any misappropriated or converted deposits or funds, together with interest; and
- (iii) provided, however, that nothing herein shall be deemed to reduce or limit the obligation of any Party with respect to the claims of persons or entities not a party to this Implementation Agreement.

7.7 Governing Law. This Implementation Agreement shall be interpreted, construed and governed by the laws of the state of Delaware without regard to conflicts of law principles.

7.8 Notice. Whether or not expressly stated, all notices, demands, requests and other communications required or permitted by or provided for in this Implementation Agreement ("Notice") shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this section, and shall be delivered in person, by first class, registered or certified mail, or by overnight courier service:

For all Notices:

PJM Interconnection, L.L.C.
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497
Attn: Terry Boston
President & CEO

Duke Energy Ohio, Inc.
139 East Fourth Street
Cincinnati, OH 45202
Attn: Julie Janson
President

Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202
Attn: Julie Janson
President

With a copy to:

PJM Interconnection, L.L.C.
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497
Attn: Vincent Duane
Vice President & General Counsel

Duke Energy Ohio, Inc.
139 East Fourth Street
Cincinnati, OH 45202
Attn: Catherine Stempien
Senior Vice President - Legal

Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202
Attn: Catherine Stempien
Senior Vice President - Legal

7.9 Execution of Counterparts. This Implementation Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together will constitute one instrument, binding upon the Parties, notwithstanding that all such Parties may not have executed the same counterpart.

7.10 Representations and Warranties.

7.10.1 Each Party represents and warrants to the other Party that, as of the Effective Date of this Implementation Agreement as to such Party:

7.10.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction where organized, and qualified to do business in each state in which it is required to be so qualified;

7.10.1.2 The execution and delivery of this Implementation Agreement and the performance of its obligations hereunder have been duly and validly authorized by all requisite action on the part of the Party and do not conflict with any applicable law or with any other agreement binding upon the Party. The Implementation Agreement has been duly executed and delivered by the Party. The Implementation Agreement constitutes the legal, valid and binding obligation of the Party enforceable against it in accordance with its terms except insofar as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting the enforcement of creditor's rights generally and by general principles of equity concerning such enforcement, regardless of whether such principles are applied in a proceeding at law or in equity.

7.10.2 PJM hereby disclaims any warranties, express or implied, in the provision of Transmission Owner Expansion.

7.11 Severability and Renegotiation

7.11.1 Severability. Each provision of this Implementation Agreement shall be considered severable and if for any reason any provision is determined by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect and shall in no way be affected, impaired or invalidated, and such invalid, void or unenforceable provision shall be replaced with valid and enforceable provision or provisions which otherwise give effect to the original intent of the invalid, void or unenforceable provision.

7.11.2 Renegotiation. If any provision of this Implementation Agreement is held by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, or if the Implementation Agreement is modified or conditioned by a regulatory authority exercising jurisdiction over this Implementation Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments as will restore the relative benefits and obligations of the Parties immediately prior to such holding, modification or condition. If after 60 days such negotiations are unsuccessful then this Implementation Agreement shall be deemed terminated except that the following shall survive such termination:

Section 4.1.2.2 (payment of capitalized expansion costs)

Section 4.1.3.2

Section 4.1.4.2

Section 4.3 (and subsections thereof)

Section 5.1 (and subsections thereof)

Section 5.3 (and subsections thereof)

Section 5.4

Section 5.5

Article 6

Article 7

7.12 Headings. The article and section headings used in this Implementation Agreement are for convenience only and shall not affect the construction or interpretation of any of the provisions.

7.13 Entire Agreement. This Implementation Agreement and Schedule 3.2.6 attached hereto shall constitute the entire agreement between the Parties with respect to the subject matter hereof. There are no prior contemporaneous agreements or representations affecting such subject matter other than those expressed in this Agreement. Notwithstanding the foregoing, the Non-Disclosure Agreement executed by and between PJM and Duke Energy Kentucky, Inc., dated June 11, 2010 shall continue in full force and effect and shall govern any continuing exchanges of information by PJM and Duke Energy Kentucky, Inc. relating to performance under this Implementation Agreement, as set forth therein.

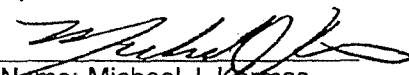
7.14 Duty to Mitigate. Each party shall take commercially reasonable measures to mitigate any costs and expenses incurred by it in performing its obligations under this Implementation Agreement.

7.15 Standing. The parties agree that the provisions of section 11.6 of the Operating Agreement are incorporated herein by reference and that Transmission Owner has standing, in any court or other forum of competent jurisdiction, to enforce said provisions to the same extent, and as if, it were a party to the Operating Agreement.

IN WITNESS WHEREOF, the Parties have caused this Implementation Agreement to be executed by their duly authorized representatives.

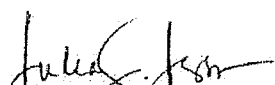
PJM Interconnection, L.L.C.

By:


Name: Michael J. Kormos
Title: Senior Vice President - Operations
Date: 6/14/10

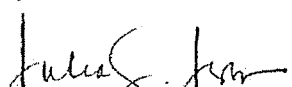
Duke Energy Ohio, Inc.

By:


Name: Julie S. Janson
Title: President
Date: 6.11.10

Duke Energy Kentucky, Inc.

By:

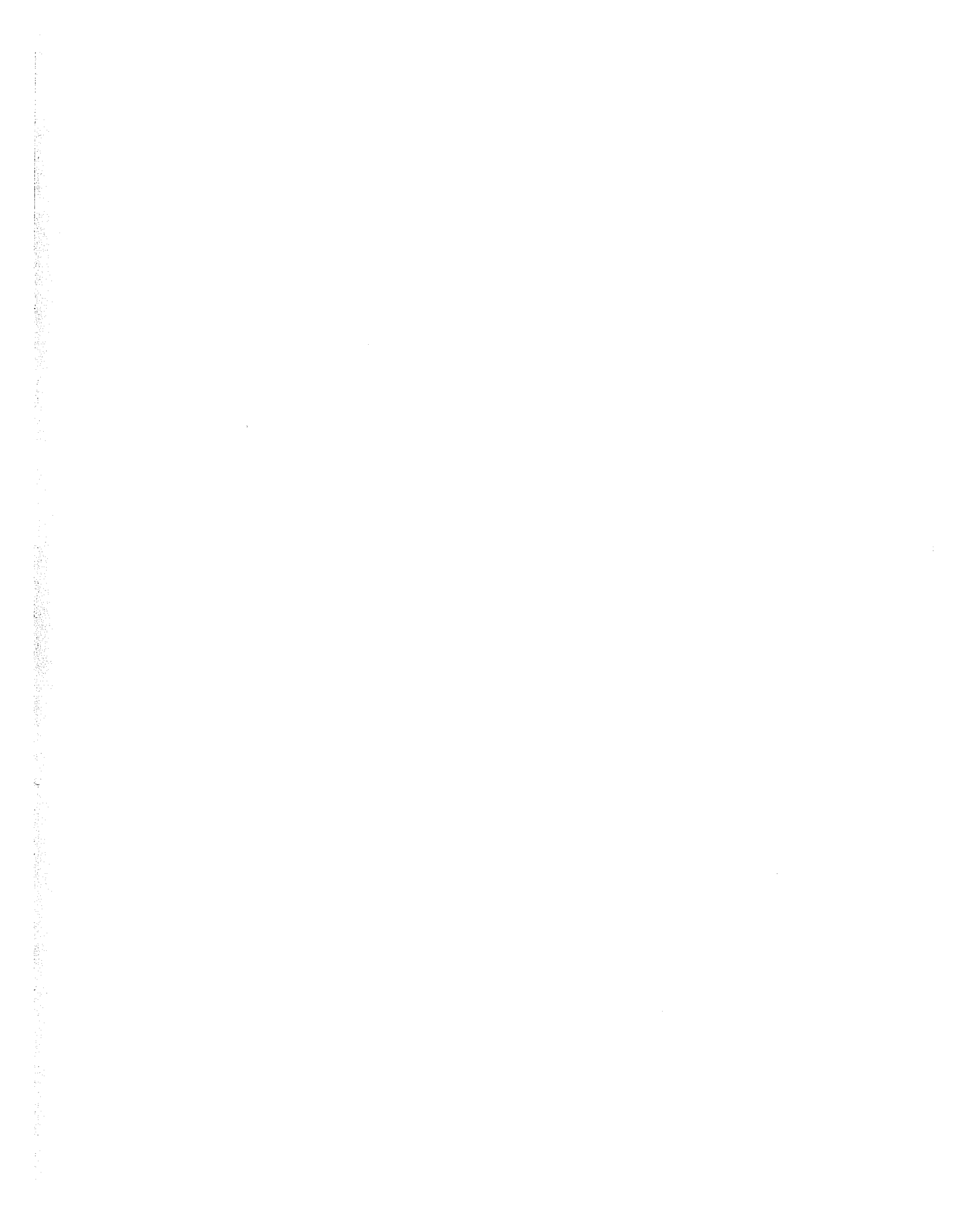

Name: Julie S. Janson
Title: President
Date: 6.11.10

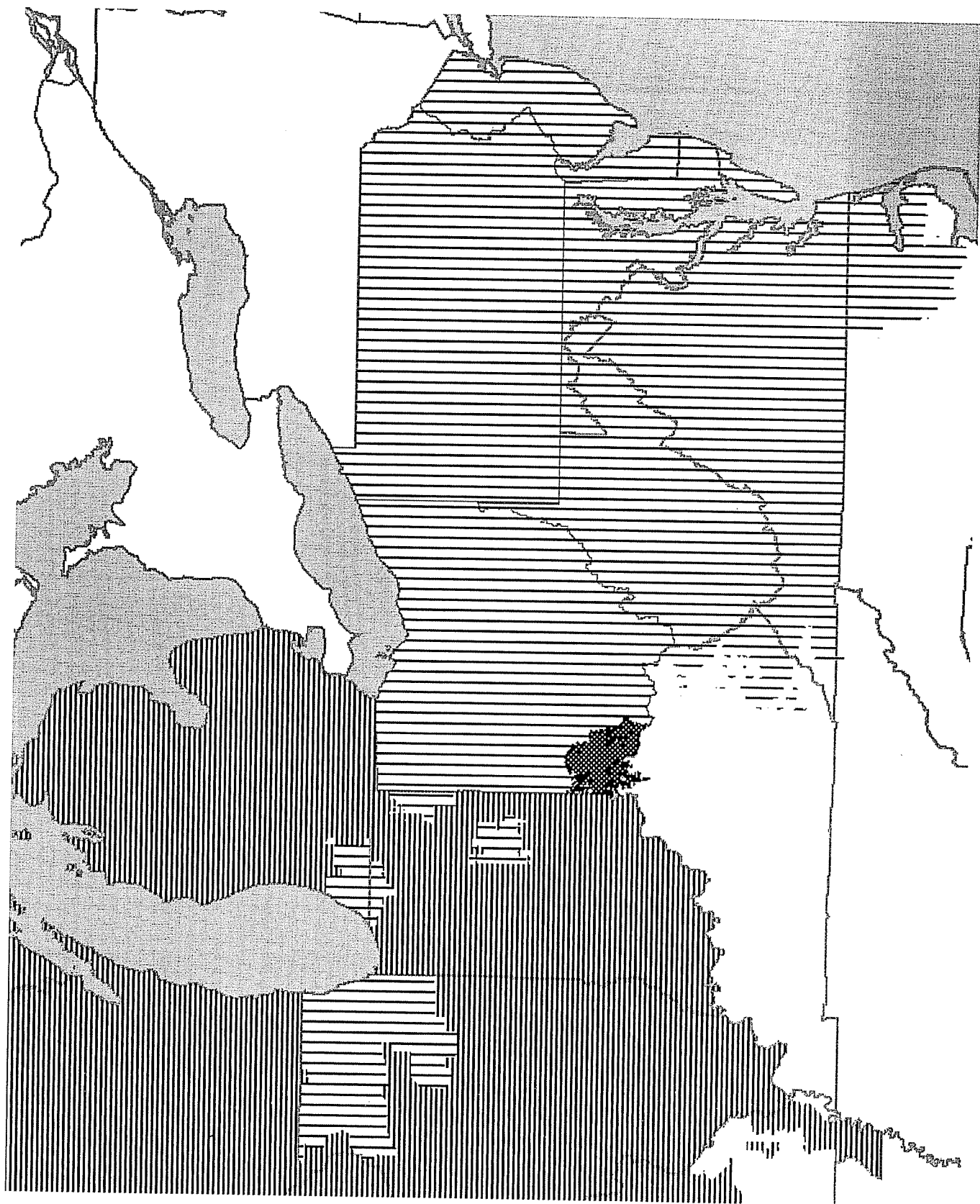
**Schedule 3.2.5
Project Implementation Plan**

2010		
1.	Initial Meetings with Project Team	June
2.	Create/Confirm Initial Assumptions	June
3.	Begin Detailed Project Plan & Estimates	July
4.	Establish Project Team Meeting Schedule with Transmission Owner	July
5.	Initial integration FERC filing including submission of signed Implementation Agreement	July
6.	Determine Initial Resource Requirements	August
7.	Develop Workforce/Consultant RFP's (if necessary)	August
8.	Complete Project Estimates (less volume analysis impacts)	August
9.	Complete Project Plan & Create Integration Whitepaper	September
10.	Roll Out Integration Web Site and e-mail for FAQ submission	September
11.	Initial PJM Stakeholder Meetings - Brief Members on: <ul style="list-style-type: none"> • PJM Integration Plan and Projected Costs • Communication Plan • In Progress Review Schedule • Capture Issues/Concerns 	October
12.	Meet with Impacted RTOs/ISOs to capture their concerns	October - November
13.	Initial Meetings with the impacted state commissions.	October - December
14.	Initial Meetings FERC, NERC, and Regional Staffs—share plan to maintain reliability and capture their concerns	October - December
15.	Planning Retool Models	September – November
16.	Planning Conducts Deliverability analysis of Transmission Owner Control Area Resources	November – December
17.	Within reasonable time after issuance of FERC order approving terms and conditions of Transmission Owner's application for authorization to enter PJM, Transmission Owner signs OA, TOA and RAA	November

2011		
18.	2 nd PJM Stakeholder Meeting	January - February
19.	PJM Forecast changes to IRM Projections	January
20.	EMS & Markets Model Enhancements	January - June
21.	PJM completes MISO/PJM JOA CMP Impacts on flowgates & coordinates allocation changes with MISO	January – March
22.	Planning Conducts additional Stability and Blackstart analysis	January - June
23.	Conduct PJM Systems' Volume Analysis	March - May
24.	Planning Parameters Posted for May RPM Auction	February 1 st
25.	PJM Spring Seminar for All Operators – Training on Operational Changes with Transmission Owner Integration	February - April
26.	Members Approve any Necessary Manual Revisions	February -- June
27.	Operations Procedures Enhancements & Manual Revisions	March – June
28.	3 rd PJM Stakeholder Meeting (if necessary)	March
29.	2014/2015 RPM BRA Including Transmission Owner zones	May
30.	Hold Integration RPM Auctions for Transmission Owner's Control Area 11/12, 12/13 and 13/14 Delivery Years	June
31.	Refine Project Plan Scope/Schedule/Budget based upon volume assessment	June
32.	PJM Stakeholder Training	June - October
33.	FERC filings for (i) OA, TOA and RAA revisions to add Transmission Owner operating Companies; and (ii) Tariff rates and other Tariff revisions for a January 1 st effective date	July 1
34.	Sign off on Integration Test Schedule	August
35.	RC/BA/TOP Changes Coordinated with Neighbors	September – October
36.	Develop Product and Integration Test Plans	September-November
37.	Transmission Owner Operators Complete PJM Operator Certification	October
38.	PJM EMS Expansion In Production (Contingencies Not Alarmed)	September
39.	Prep for RFC/NERC Certifications	September

40.	Develop Migration Plan	September - October
41.	Conduct PJM & Transmission Owner Operator Training	September - October
42.	January – May 2012 FTR Allocation Process for New Duke Ohio and Kentucky Zone(s)	October
43.	RFC/NERC BA & RC Certifications Complete	October - November
44.	EMS Parallel Operations	October - December
45.	PJM Coordinates Reliability Plan with RFC & SERC	November
46.	Operator Drills (Restoration/Emergency) – Lessons Learned Integrated Into Training	November
47.	DA and RT Market Trials	November - December
48.	NERC OC Approves PJM Reliability Plan	December
49.	Integration Dry Runs	December
50.	File report with FERC 20 days in advance of integration date to explain testing of data exchange and communication systems per Order issued March 18, 2004, in Docket No. ER04-375, 106 FERC ¶ 61,251 at ¶ 104 (2004).	December 12 th
2012		
51.	INTEGRATION “GO LIVE”	January 1 st
52.	Issue Identification/Resolution	January - March
53.	Final Integration Issues Closed Out	April 1 st







JULIE S. JANSON
President

Duke Energy Ohio, Inc.
Duke Energy Kentucky, Inc.
139 E. Fourth Street / EA503
Cincinnati, OH 45202

513-419-5757
513-419-5842 fax
julie.janson@duke-energy.com

May 20, 2010

Mr. John Bear
President and Chief Executive Officer
Midwest Independent Transmission System Operator, Inc.
720 Center City Drive
Carmel, Indiana 46032-2866

RE: Notice of Withdrawal of Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.

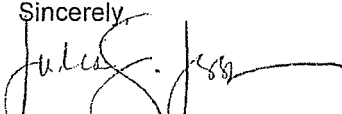
Dear Mr. Bear:

Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. (the "Companies") notify you of their intent to withdraw their transmission facilities from the Midwest ISO effective 11:59 p.m. December 31, 2011. This notice is provided under Article Five, Section I of the Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. (the "Transmission Owners Agreement").

The Companies intend to integrate into PJM Interconnection, L.L.C. effective January 1, 2012. We request that you post this notice on the Midwest ISO OASIS and the Midwest ISO website to ensure that transmission customers are aware of it.

Representatives of the Companies will contact your staff shortly regarding discussions required by various provisions of the Transmission Owners Agreement. In the meantime, please feel free to contact Jim Gainer, Vice President, Federal Regulatory Policy, Duke Energy Corporation, at 704-382-5618 with any questions.

Sincerely,



Julia S. Janson

cc: Stephen Kozey (Vice President, General Counsel & Secretary Midwest ISO)
JoAnn Thompson (Chair, Midwest ISO Transmission Owners)

EXHIBIT 4

**TRANSMISSION AND
INTERCONNECTION CUSTOMERS AND
INTERCONNECTED TRANSMISSION OWNERS**

DEO's transmission system is interconnected with the following utilities:

Dayton Power and Light
East Kentucky Power Cooperative
American Electric Power
LGE Energy
Ohio Valley Electric Corporation

The following Transmission Customers currently serve load from the Duke Ohio system (by class):

Certified Retail Electric Providers:¹

Champion Energy Services
Constellation New Energy
Dominion Resources Inc.
DPL Energy Resources
First Energy Solutions
Glacial Energy
Sempra Energy Solutions
Smart Paper Holdings
DTE Energy
Direct Energy
Integrays Energy Services
Duke Energy Retail Sales
MidAmerican Energy

Wholesale Load Customers:

City of Hamilton Ohio (point to point)
Indiana Municipal Power Agency (Village of Blanchester)
American Electric Power (City of Lebanon Ohio)
AMP Ohio (City of Williamstown Kentucky)
Village of Bethel Ohio
Village of Georgetown Ohio
Village of Hamersville Ohio
Village of Ripley Ohio

¹ This is the most current list of transmission customers on DEO's system as of Thursday, June 24, 2010.

Electric Cooperatives:

Buckeye Power Inc.
East Kentucky Power Cooperative (Pre-OATT)

The following third party wholesale generators are currently connected to the DEO system:

Smart Paper Holdings
Madison Generating Station (Duke Energy Indiana owned)

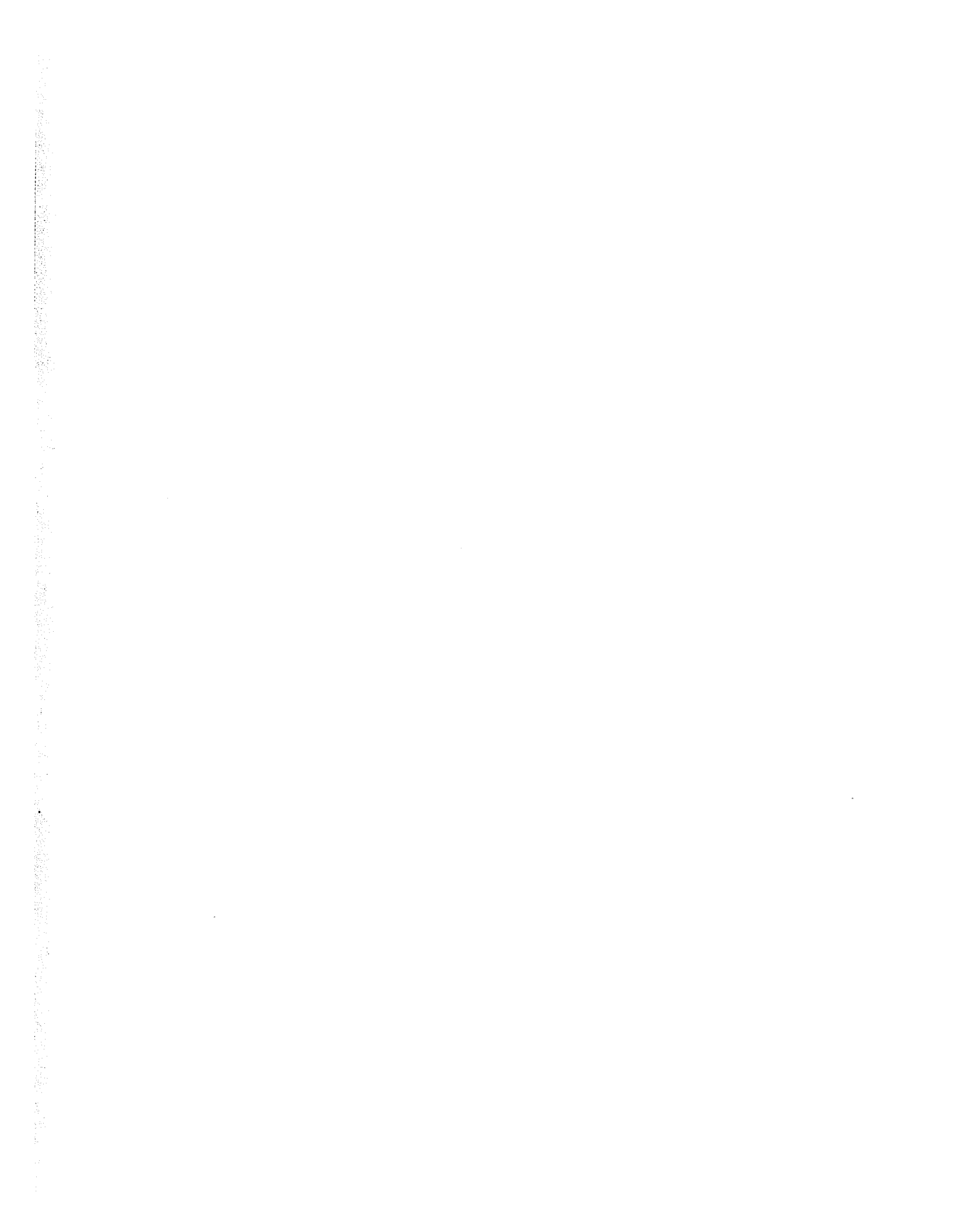


EXHIBIT 5
GRANDFATHERED TRANSMISSION AGREEMENTS
LISTED IN ATTACHMENT P TO THE MIDWEST ISO ASM TARIFF

Columbus Southern Power Co. and DP&L (CCD) Contract # 148, 154, 155, 156, 157, 158 (These allow for the use of the jointly owned transmission assets)

East Kentucky Power Cooperative Contract # 149, 159

Dayton Power and Light Contract # 153 (CD Transmission)