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**RECEIVED**

**JUL 26 2010**

**PUBLIC SERVICE  
COMMISSION**

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July 26, 2010

**RE: Application of Kentucky Utilities Company and Louisville Gas & Electric Company to Retain Southwest Power Pool, Inc. to Perform Independent Transmission Organization Functions**  
**Case No. 2010-00237**

Dear Mr. DeRouen:

Please accept for filing in the above-referenced proceeding on behalf of Kentucky Utilities Company and Louisville Gas and Electric Company (collectively, "Companies") the enclosed Second Amended and Restated Independent Transmission Organization Agreement between Louisville Gas and Electric Company and Kentucky Utilities Company and Southwest Power Pool, Inc. ("ITO Agreement"). The Companies are filing the ITO Agreement in accordance with the commitment in their Application in this proceeding to file the agreement with the Commission after the parties had executed it. (See Application at 5.)

The principal terms of the final, executed ITO Agreement are as described in the Companies' Application: the Southwest Power Pool, Inc. ("SPP"), will continue to serve as the Companies' ITO, performing the same services it currently provides, for two years beginning on September 1, 2010 for a compensation of \$8 million per year (\$3 million up-front annual payment, \$416,667 per month). Notably, the ITO Agreement will not cause SPP to have more functional control of the Companies' transmission system than it currently

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has under the authority of the Commission's July 6, 2006 Order in Case No.2005-00471.<sup>1</sup> In addition, the agreement: clarifies SPP's and the Companies' respective duties and obligations with regard to compliance issues (Sections 1.4 and 1.5); provides reimbursement to SPP for certain out-of-pocket expenses and for any additional services the Companies request (Section 3.1); and requires SPP to provide "hold over services" to the Companies in the event that the required regulatory orders do not issue in time to allow an August 31, 2012 termination date (Section 4.8).

Also, the Companies respectfully request the Commission Staff to hold an informal conference to discuss the terms of the ITO Agreement and the status of this proceeding. If it is agreeable to the Commission Staff, the Companies respectfully suggest holding the informal conference anytime during the day on Tuesday, August 3, 2010, or anytime between 1:30 and 5:00 p.m. on Thursday, August 5, 2010.

If you have any questions or concerns, please contact me at your first convenience.

Sincerely,



Lonnie E. Bellar

cc: Counsel to the Parties of Record

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<sup>1</sup> The Commission approved the amount of control presently vested in SPP as the Companies' ITO in *In the Matter of the Application of Louisville Gas and Electric Company and Kentucky Utilities Company to Transfer Functional Control of their Transmission Facilities*, Case No. 2005-00471, Order at 8 (July 6, 2006).

**SECOND AMENDED AND RESTATED  
INDEPENDENT TRANSMISSION ORGANIZATION  
AGREEMENT**

**BETWEEN**

**LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY**

**AND**

**SOUTHWEST POWER POOL, INC.**

## TABLE OF CONTENTS

	Page
<b>Section 1 - Scope of Functions; Standards of Performance.....</b>	<b>2</b>
1.1 Functions.....	2
1.2 Coordination with Reliability Coordinator .....	2
1.3 Expansion.....	2
1.4 ITO Performance; Compliance .....	2
1.4.1 Performance .....	2
1.4.2 Compliance .....	3
1.4.3 Assistance to LG&E/KU.....	3
1.5 LG&E/KU Performance; Compliance.....	3
1.5.1 Performance .....	3
1.5.2 Compliance .....	3
<b>Section 2 - Independence.....</b>	<b>4</b>
2.1 ITO Personnel .....	4
2.2 Standards of Conduct Treatment .....	4
<b>Section 3 - Compensation, Billing and Payment.....</b>	<b>4</b>
3.1 Compensation .....	4
3.2 Compensation After Termination .....	6
3.3 Payments.....	6
3.4 Compensation Disputes Regarding Renegotiation of Fees and Substantial Incremental Burdens .....	7
<b>Section 4 - Effective Date; Term; Termination; Termination Fees; Transition Assistance Services.....</b>	<b>7</b>
4.1 Term; Effective Date.....	7
4.2 Termination by LG&E/KU .....	8
4.3 Termination at End of Term .....	8
4.4 Termination for Cause .....	8
4.4.1 Termination by Either Party.....	8
4.4.2 Termination for Lack of Independence.....	9
4.5 FERC Approval .....	9
4.6 Return of Materials .....	9
4.7 Survival.....	9

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4.8	Hold-Over Services..... 9
4.8.1	Hold-Over Services Period ..... 9
4.8.2	Hold-Over Services Compensation..... 10
<b>Section 5 -</b>	<b>Data Management..... 10</b>
5.1	Supply of Data ..... 10
5.2	Property of Each Party ..... 10
5.3	Data Integrity ..... 10
5.4	Confidentiality ..... 11
<b>Section 6 -</b>	<b>Intellectual Property ..... 11</b>
6.1	Pre-Existing Intellectual Property ..... 11
6.1.1	Exclusion..... 11
6.2	Jointly-Owned Intellectual Property ..... 11
6.3	ITO Retained Rights ..... 12
6.4	LG&E/KU Retained Rights ..... 12
6.5	ITO Non-Infringement; Indemnification ..... 12
6.6	LG&E/KU Non-Infringement; Indemnification ..... 13
<b>Section 7 -</b>	<b>Indemnification ..... 14</b>
7.1	LG&E/KU Indemnification ..... 14
7.2	ITO Indemnification ..... 14
7.3	No Consequential Damages ..... 14
7.4	Cooperation Regarding Claims..... 14
7.5	Stakeholders Management Meetings ..... 15
<b>Section 8 -</b>	<b>Contract Managers; Dispute Resolution ..... 15</b>
8.1	LG&E/KU Contract Manager ..... 15
8.2	ITO Contract Manager ..... 15
8.3	Resolution of Disputes..... 15
8.3.1	Notice of Dispute ..... 16
8.3.2	Dispute Resolution by Contract Managers ..... 16
8.3.3	Dispute Resolution by Executive Management Representatives..... 16
8.3.4	Dispute Resolution by Mediation ..... 16

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
8.3.5 Exercise of Remedies at Law or in Equity.....	16
8.4 Rights Under FPA Unaffected.....	16
8.5 Statute of Limitations; Continued Performance .....	16
<b>Section 9 - Insurance .....</b>	<b>16</b>
9.1 Requirements .....	16
9.2 Insurance Matters.....	17
9.3 Compliance with Section 9 .....	17
<b>Section 10 - Confidentiality.....</b>	<b>17</b>
10.1 Definition of Confidential Information.....	17
10.2 Protection of Confidential Information.....	17
10.3 FERC Requests for Confidential Information .....	18
<b>Section 11 - Force Majeure.....</b>	<b>18</b>
11.1 Force Majeure .....	18
<b>Section 12 - Reporting; Audit.....</b>	<b>19</b>
12.1 Reporting.....	19
12.2 Books and Records .....	19
12.3 Regulatory Compliance .....	20
<b>Section 13 - Independent Contractor.....</b>	<b>20</b>
<b>Section 14 - Taxes.....</b>	<b>20</b>
<b>Section 15 - Notices .....</b>	<b>21</b>
15.1 Notices .....	21
15.2 Changes.....	21
<b>Section 16 - ITO Personnel; Work Conditions .....</b>	<b>21</b>
16.1 ITO Personnel .....	21
16.2 Conduct of ITO Personnel and Reporting .....	21
16.3 Personnel Screening.....	21
16.4 Security .....	22
<b>Section 17 - Miscellaneous Provisions.....</b>	<b>22</b>
17.1 Governing Law .....	22
17.2 Consent to Jurisdiction.....	22

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
17.3 Amendment.....	22
17.4 Assignment .....	22
17.5 No Third Party Beneficiaries .....	23
17.6 Waivers .....	23
17.7 Severability; Renegotiation.....	23
17.8 Representations and Warranties.....	24
17.8.1 Organization.....	24
17.8.2 Authority .....	24
17.8.3 Binding Effect.....	24
17.8.4 Regulatory Approval.....	24
17.8.5 No Litigation.....	24
17.8.6 No Violation or Breach.....	24
17.9 Further Assurances.....	24
17.10 Entire Agreement .....	24
17.11 Good Faith Efforts .....	25
17.12 Time of the Essence .....	25
17.13 Interpretation.....	25
17.14 Joint Effort .....	26
17.15 Counterparts.....	26

**SECOND AMENDED AND RESTATED**  
**INDEPENDENT TRANSMISSION ORGANIZATION AGREEMENT**

This Second Amended and Restated Independent Transmission Organization Agreement (this “Agreement”) is entered into on July 14, 2010, between Louisville Gas and Electric Company and Kentucky Utilities Company, corporations organized pursuant to the laws of the Commonwealth of Kentucky (collectively, “LG&E/KU”), and Southwest Power Pool, Inc., an entity organized pursuant to the laws of the State of Arkansas (the “ITO”). LG&E/KU and the ITO may sometimes be individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, LG&E/KU owns, among other things, an integrated electric transmission system (“Transmission System”), over which open access transmission service is provided to customers in the LG&E/KU Control Area (as defined in Section 1.7 of LG&E/KU’s Open Access Transmission Tariff, as filed with the Federal Energy Regulatory Commission (“FERC”) (the “OATT”));

WHEREAS, pursuant to the ITO Agreement dated April 7, 2006 (as amended prior to the date hereof, the “Original ITO Agreement”), the ITO currently performs certain key transmission-related functions for LG&E/KU;

WHEREAS, the Parties desire to amend and restate the terms and conditions of the Original ITO Agreement to reflect the new terms and conditions on which the ITO shall provide and LG&E/KU shall pay for service, all as more fully provided for herein; and

WHEREAS, LG&E/KU remains the owner of its Transmission System and will bear the ultimate responsibility for the provision of transmission services to Eligible Customers (as defined in the OATT), including the sole authority to amend the OATT;

WHEREAS, the ITO: (i) is a FERC-approved regional transmission organization; (ii) is independent from LG&E/KU; (iii) possesses the necessary competence and experience to perform the functions provided for hereunder; and (iv) is willing to perform such functions under the terms and conditions agreed upon by the Parties as set forth in this Agreement; and

WHEREAS, as part of LG&E/KU’s goal to maintain the requisite level of independence in the operation of its Transmission System to prevent any exercise of transmission market power, LG&E/KU entered into a Reliability Coordinator Agreement (the “Reliability Coordinator Agreement”) with the Tennessee Valley Authority, a North American Electric Reliability Corporation (“NERC”)-certified reliability coordinator (the “Reliability Coordinator”), pursuant to which the Reliability Coordinator provides to LG&E/KU certain required reliability functions, including reliability coordination, transmission planning and regional coordination, identifying upgrades required to maintain reliability, providing non-binding recommendations relating to economic transmission system upgrades, and administration of any seams agreements to be entered by LG&E/KU;

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:



## **Section 1 - Scope of Functions; Standards of Performance.**

1.1 Functions. The ITO shall perform the functions assigned to it and described in Attachment P to the OATT (the “Functions”) during the Term in accordance with the terms and conditions of this Agreement. The ITO agrees that it shall perform all services within the Scope of its Functions, which Scope includes the categories of tariff administration, scheduling, contingency reserve sharing, transmission planning, and OASIS host and operations, as set forth in this Agreement and Attachment P to the OATT. “Additional Services” are hereby defined as services that are outside the identified Scope of the ITO’s Functions e.g., the role of Reliability Coordinator or Market Monitor. The Parties agree that the ITO is under no obligation to provide Additional Services to LG&E/KU and that the terms and conditions of any such Additional Services shall be subject to a separately negotiated agreement by the Parties. “Substantial Incremental Burdens” are hereby defined as obligations imposed on the ITO as a result of regulatory or governmental actions that (i) do not exist as of the Effective Date (ii) were not reasonably foreseeable by the Parties as of the Effective Date, and (iii) require the commitment of significant additional ITO resources beyond those contemplated under this Agreement. Any future claim by the ITO for costs associated with “Substantial Incremental Burdens” shall be made in accordance with the procedures of Section 3 hereof.

1.2 Coordination with Reliability Coordinator. In conjunction with its performance of the Functions, the ITO shall coordinate and cooperate with the Reliability Coordinator and provide, subject to the terms and conditions of this Agreement, including the ITO’s obligations with respect to Confidential Information in Section 10, any information that the Reliability Coordinator may reasonably request in order to carry out its functions under the Reliability Coordinator Agreement.

1.3 Expansion. Nothing in this Agreement is intended to prevent the ITO from entering into other agreements with one or more third party transmission providers or operators to perform functions for such transmission providers or operators that are the same or similar to the Functions performed hereunder; provided, however, that the ITO does not breach any of its obligations under this Agreement (including its obligations with respect to Confidential Information in Section 10) by entering into or performing any of its obligations under such other agreements; provided, further, that any such other agreements shall provide for LG&E/KU to be reimbursed in an equitable manner for any capital expenditures made pursuant to this Agreement as well as for LG&E/KU’s ongoing operations and maintenance expenditures to the extent such capital expenditures and operations and maintenance expenditures are used by the ITO in performing functions under such other agreements as determined by the ITO in its sole discretion.

### 1.4 ITO Performance; Compliance.

1.4.1 Performance. The ITO, the ITO Personnel and any ITO Designee (as defined in Section 17.4) shall perform the ITO’s obligations (including the Functions) under this Agreement: (a) in accordance with (i) Good Utility Practice (as defined in the OATT), (ii) LG&E/KU’s specific requirements and operating guidelines, including the Compliance and Operating Procedures, as defined in Section 1.5.2, to the extent these requirements and operating guidelines are not inconsistent with other requirements

specified in this Section 1.4, (iii) the OATT, and (iv) all applicable laws and the requirements of federal and state regulatory authorities; and (b) in an independent, fair, and nondiscriminatory manner.

1.4.2 Compliance. If requested by LG&E/KU, and subject to Section 3.1(e), the ITO agrees to undertake Direct Activities or outsource Third Party Activities, as provided for in Section 3.1(e). To the extent the ITO undertakes such Direct Activities or outsources Third Party Activities, the ITO shall, subject to LG&E/KU review and consent, take reasonable measures to ensure such Direct Activities or Third Party Activities comply with (i) FERC Order Nos. 676 *et seq.*, Standards for Business Practices and Communication Protocols for Public Utilities, and FERC Order Nos. 729 *et seq.*, Mandatory Reliability Standards for the Calculation of Available Transfer Capacity, Capacity Benefit Margins et al. for the Bulk Power System (ii) Statement of Auditing Standards (SAS) 70; and (iii) any applicable new NERC Mandatory Reliability Standard or any modification to an existing NERC Mandatory Reliability Standard.

1.4.3 Assistance to LG&E/KU. Upon request from LG&E/KU, the ITO agrees to assist LG&E/KU in the preparation and submission of any applications, filings, reports or responses to information requests to FERC, NERC, SERC Reliability Corporation (“SERC”), or any governmental authority.

## 1.5 LG&E/KU Performance; Compliance.

1.5.1 Performance. LG&E/KU shall perform its obligations under this Agreement in accordance with Good Utility Practice and all applicable laws and the requirements of federal and state regulatory authorities.

1.5.2 Compliance. LG&E/KU expressly acknowledges its obligation to develop, approve and maintain all methodologies, processes or procedures relating to the Functions and which are necessary for LG&E/KU to ensure safe and reliable system operations and compliance with regulatory requirements, provided such obligation does not conflict with the division of responsibilities as outlined and approved in Attachment P of the OATT. For purposes of this Section 1.5.2, the foregoing obligation extends to: (i) OATT requirements and Business Practices; (ii) Capacity Benefit Margin and Transmission Reliability Margin methodologies; (iii) Planning Guidelines; (iv) System Operating Limits methodology; (v) any applicable new NERC or SERC requirement or any modification to an existing NERC or SERC requirement; and (vi) criteria for notification of network customer load changes (collectively, “Compliance and Operating Procedures”). The Parties shall promptly discuss any proposed or actual change in law or regulation that may impact the Compliance and Operating Procedures, or the Functions relating thereto, and shall use commercially reasonable efforts in connection with any change in methodologies or other actions necessary for LG&E/KU to assure its compliance with any such changes in law or regulation. Except as required by the OATT, nothing in this Agreement is intended to impose on the ITO any obligation or liability with respect to LG&E/KU’s Compliance and Operating Procedures, including determining whether such Compliance and Operating Procedures conform with

applicable law or regulation; provided however that nothing in this section is intended to diminish the ITO's independent oversight as provided in the OATT.

## **Section 2 - Independence.**

2.1 ITO Personnel. All Functions shall be performed by employees of the ITO (the "ITO Personnel") or ITO Designees. To the extent required by law, regulation, or order, a list of such ITO Personnel and ITO Designees shall be publicly posted on the ITO's internet website. No ITO Personnel or ITO Designee of the ITO shall also be employed by LG&E/KU or any of its Affiliates (as defined in 18 C.F.R. § 35.34(b) (3) of FERC's regulations). The ITO, the ITO Employees, and the ITO Designees shall (i) be Independent of and (ii) shall not discriminate against the LG&E/KU, any of its Affiliates and any Tariff Participant. For purposes of this Agreement: (a) "Independent" shall mean that the ITO, the ITO Personnel, and any ITO Designees are not subject to the control of LG&E/KU, its Affiliates or any Tariff Participant, and have full decision-making authority to perform all Functions in accordance with the provisions of this Agreement. Any ITO Personnel or ITO Designee owning securities in LG&E/KU, its Affiliates or any Tariff Participant shall divest such securities within six (6) months of first being assigned to perform such Functions, provided that nothing in this Section 2.1 shall be interpreted or construed to preclude any such ITO Personnel or ITO Designee from indirectly owning securities issued by LG&E/KU, its Affiliates or any Tariff Participant through a mutual fund or similar arrangement (other than a fund or arrangement specifically targeted toward the electric industry or the electric utility industry or any segment thereof) under which the ITO Personnel or ITO Designee does not control the purchase or sale of such securities. Participation by any ITO Personnel or ITO Designee in a pension plan of LG&E/KU, its Affiliates or any Tariff Participant shall not be deemed to be a direct financial interest if the plan is a defined-benefit plan that does not involve the ITO Personnel's or ITO Designee's ownership of the securities; (b) "Tariff Participant" shall mean LG&E/KU Transmission System customers, interconnection customers, wholesale customers, affected transmission providers, any Market Participant (as defined in 18 C.F.R. § 35.34(b)(2) of FERC's regulations) and similarly qualified third parties within the LG&E/KU Control Area. For the avoidance of doubt, LG&E/KU shall have no veto authority over the selection of ITO Personnel or ITO Personnel matters, including the ITO's appointment of the ITO Contract Manager (as provided in Section 8.2).

2.2 Standards of Conduct Treatment. All ITO Personnel and ITO Designees shall be treated, for purposes of the FERC's Standards of Conduct, as transmission employees. All restrictions relating to information sharing and other relationships between merchant employees and transmission employees shall apply to the ITO Personnel or ITO Designees.

## **Section 3 - Compensation, Billing and Payment.**

### 3.1 Compensation.

(a) Fixed Compensation. During the Term, LG&E/KU shall pay the ITO: (1) a one-time payment of \$3,000,000.00 US Dollars on or before September 1, 2010; (2) a one-time payment of \$3,000,000.00 US Dollars on or before September 1, 2011; and, (3) a monthly payment of \$416,667.00 US Dollars, for each month during the Term of the Agreement (collectively, "Fixed Compensation").

(b) Variable Compensation. During the Term, LG&E/KU shall pay the ITO all actual invoiced costs reasonably incurred by the ITO for services in the following categories (collectively, “Variable Compensation”): (i) legal fees related to: (a) carrying out the Functions; (b) activities undertaken at LG&E/KU’s request pursuant to this Agreement; or (c) developing positions or preparing filings before regulatory or judicial bodies in support of the Functions; (ii) payments for meetings with transmission customers, eligible customers under the OATT, or LG&E/KU, including meeting facilities and out-of-pocket costs for administering such meetings; (iii) outsourced consulting for system impact studies and/or software development related to carrying out the ITO’s obligations under this Agreement; (iv) ITO employee training related to carrying out the ITO’s obligations under this Agreement; (v) ITO employee travel expenses related to carrying out the ITO’s obligations under this Agreement, provided that any chartered air or ground transportation, or travel expenses for ITO Personnel or ITO Designees in excess of those who usually travel in order to carry out the ITO’s obligations under this Agreement, shall be subject to LG&E/KU review and pre-approval; and (vi) telecommunication expenses related to carrying out the ITO’s obligations under this Agreement. LG&E/KU shall pay such Variable Compensation if: (i) the ITO provides actual invoices for all Variable Compensation, together with a brief description of how the costs are related to the ITO’s Functions or performance of its obligations under this Agreement, as applicable; and (ii) LG&E/KU are allocated only a *pro rata* share of any Variable Compensation costs that the ITO incurs on behalf of other entities in addition to LG&E/KU. In no event shall the ITO’s request for Variable Compensation under this Section 3.1(b) duplicate a request for Other Compensation under Section 3.1(e), such that LG&E/KU would make a duplicative payment for the same services.

(c) The ITO agrees that if at any time during the Term (as defined in Section 4.1) it provides services similar to the Functions provided for herein to another entity, and relies on existing ITO resources to perform these services, then the compensation rate in Section 3.1(a) shall be renegotiated based on the use of the ITO systems and in accordance with Section 3.4(a).

(d) In the event the ITO asserts a claim for Substantial Incremental Burdens, the ITO will (1) separately track all incremental employee time and other costs incurred for any claimed Substantial Incremental Burdens, and (2) notify LG&E/KU within thirty (30) days after incurring such charges for Substantial Incremental Burdens.

(e) Other Compensation. Subject to the provisions of Sections 1.1, 1.3, 3.3(c), 3.4, 7 and 12.3 of this Agreement, LG&E/KU further agrees that LG&E/KU shall compensate the ITO for all costs necessarily and reasonably incurred for the ITO’s activities undertaken at LG&E/KU’s request, whether undertaken directly (“Direct Activities”) or outsourced to third parties (“Third Party Activities”) (such compensation for Direct Activities and Third Party Activities being referred to, collectively, as “Other Compensation”) on behalf of LG&E/KU related to LG&E/KU’s compliance with: (i) FERC Order Nos. 676 *et seq.*, Standards for Business Practices and Communication Protocols for Public Utilities, and FERC Order Nos. 729 *et seq.*, Mandatory Reliability Standards for the Calculation of Available Transfer Capacity, Capacity Benefit Margins

et al. for the Bulk Power System (ii) Statement of Auditing Standards (SAS) 70; and (iii) any applicable new NERC Mandatory Reliability Standard or any modification to an existing NERC Mandatory Reliability Standard, including ITO review and implementation of North American Energy Standards Board standards development and implementation activities, during the Term of this Agreement. Payments due under this Section 3.1(e) for Direct Activities shall be determined based on tracked ITO time and shall reflect the weighted hourly rate of all ITO staff dedicated to such Direct Activities. Payments due under this Section 3.1(e) for Third Party Activities shall be determined on the basis of actual invoices provided by third party vendors in performing such Third Party Activities. If the ITO undertakes Direct Activities or outsources Third Party Activities on behalf of other entities in addition LG&E/KU, LG&E/KU shall only be allocated a *pro rata* share of the full cost incurred by the ITO. In no event shall the ITO's request for Other Compensation under this Section 3.1(e) duplicate a request for Variable Compensation under Section 3.1(b), such that LG&E/KU would make a duplicative payment for the same services.

### 3.2 Compensation After Termination.

(a) If LG&E/KU terminates this Agreement before the end of the Term, unless such termination is for cause pursuant to Section 4.4, all Fixed Compensation, Variable Compensation, and Other Compensation shall become immediately due and payable by LG&E/KU to the ITO; provided that, other than contracts that the ITO has entered into on LG&E/KU's behalf that extend beyond any early termination date, in no event shall LG&E/KU pay the ITO for Variable Compensation or Other Compensation for any services rendered by any party after termination; and provided further, that unless Hold Over Services have commenced pursuant to Section 4.8, under no circumstances shall LG&E/KU have any compensation obligations to the ITO beyond August 31, 2012.

(b) If LG&E/KU terminates this Agreement before the end of the Term, and such termination is for cause pursuant to Section 4.4, then other than contracts that the ITO has entered into on LG&E/KU's behalf that extend beyond any early termination date, LG&E/KU shall pay only the Fixed Compensation owed for the time period up to the termination, and pay any Variable Compensation or Other Compensation for only those services rendered prior to termination; provided that unless Hold Over Services have commenced pursuant to Section 4.8, under no circumstances shall LG&E/KU have any compensation obligations to the ITO beyond August 31, 2012.

### 3.3 Payments.

(a) The ITO shall render to LG&E/KU monthly invoices for Fixed Compensation, Variable Compensation and Other Compensation by regular mail, facsimile, electronic mail or other acceptable means. Such invoices shall set forth any costs as described in Sections 3.1(b), and 3.1(e) incurred during the month represented. LG&E/KU shall make payment of the amount invoiced by wire transfer to an account specified by the ITO not later than the twentieth (20<sup>th</sup>) day after receipt of the invoice, unless such day is not a business day, in which case on the next business day. All such payments shall be deemed made when said wire transfer is received by the ITO. Overdue

payments shall accrue interest calculated at the U.S. Prime Rate, plus 100 basis points. For the purposes of this Agreement, the U.S. Prime Rate means the U.S. Prime Rate as quoted in the “Money Rates” section of The Wall Street Journal on the first business day of the applicable month, prorated to a monthly rate and compounded monthly.

(b) Claims for Substantial Incremental Burdens shall be invoiced separately from the invoices provided in 3.3(a) provided that LG&E/KU shall make payment of the amount invoiced in accordance with the provisions of this section.

(c) The ITO shall provide LG&E/KU with one or more contact persons for payment purposes and shall update such list of contact persons as necessary.

#### 3.4 Compensation Disputes Regarding Renegotiation of Fees and Substantial Incremental Burdens.

(a) Fee Renegotiation Disputes. Notwithstanding the dispute resolution provisions in Section 8.3, for any Disputes regarding the re-negotiation of fees under Section 3.1(c), LG&E/KU will timely file notice of such Dispute with FERC. The ITO retains the authority to file notice with FERC of any such Dispute if it so desires. Pending resolution of any dispute under this Section 3.4(a), LG&E/KU shall continue to make full payment of the amounts specified in Section 3.1(a). The difference between the amount paid under Section 3.4(a) and the amount claimed by LG&E/KU to be owed based on application of Section 3.1(c) shall be referred to as “Disputed Renegotiation Amount.” The ITO will hold the Disputed Renegotiated Amount in escrow until such resolution of the Dispute.

(b) Substantial Incremental Burden Disputes. Notwithstanding the dispute resolution provisions in Section 8.3, in the event LG&E/KU disputes a claim by the ITO for compensation for Substantial Incremental Burdens under Section 3.1(d), LG&E/KU must, prior to pursuing resolution of any such Dispute, first pay the ITO the ITO’s estimated cost associated with fulfilling such Substantial Incremental Burdens for the remaining Term of this Agreement. The ITO’s estimate of the cost of fulfilling any such Substantial Incremental Burdens shall be referred to as “Disputed SIB Amounts.” The ITO shall hold all Disputed SIB Amounts paid by LG&E/KU in escrow until resolution of the Dispute.

(c) Resolution of Fee Renegotiation and Substantial Incremental Burden Disputes. For purposes of obtaining timely resolution of any disputes arising under Section 3.4(a) and/or Section 3.4(b), the Parties agree to resolve all such disputes exclusively through FERC’s Alternative Dispute Resolution Services (“ADR”) and to agree to the appointment of a FERC Settlement Judge whose decision regarding any such Dispute shall be deemed binding, final and non-appealable. The Parties shall confer regarding the selection of the FERC Settlement Judge and, upon mutual agreement, may request appointment of a particular Settlement Judge; *provided, however*, that failing such mutual agreement, the Parties will request the random appointment of a Settlement Judge from the pool of Settlement Judges then available.

**Section 4 - Effective Date; Term; Termination; Termination Fees; Transition Assistance Services.**

4.1 Term; Effective Date. Subject to the following conditions, the Term of this Agreement shall run from September 1, 2010 (“Effective Date”) to August 31, 2012:

(a) The Parties’ representations and warranties in Section 17.8 shall be true and correct in all material respects as of the Effective Date; and

(b) FERC shall have issued a final order approving or accepting for filing this Agreement without modification on or before the Effective Date, unless both Parties agree to such modification.

4.2 Termination by LG&E/KU. Subject to Section 3.2 and Section 4.5 herein this Agreement may be terminated by LG&E/KU at any time during the Term upon one hundred eighty (180) days prior written notice to the ITO.

4.3 Termination at End of Term. Unless previously terminated in accordance with this Section 4, and subject to Section 4.5, this Agreement shall terminate effective August 31, 2012.

4.4 Termination for Cause.

4.4.1 Termination by Either Party. Subject to Section 4.5, either Party may terminate this Agreement effective immediately upon prior written notice thereof to the other Party if:

(a) Material Failure or Default. The other Party fails, in any material respect, to comply with, observe or perform, or defaults, in any material respect, in the performance of the terms and conditions of this Agreement, and such failure or default remains uncured for thirty (30) days after notice thereof, provided that such failure or default is susceptible to cure and the other Party is exercising reasonable diligence to cure such failure or default;

(b) Pattern of Failure. It determines, in its reasonable discretion, that there has been a pattern of failure by the other Party to comply with the standards of performance required under this Agreement;

(c) Gross Negligence, Willful Misconduct or Fraud. The other Party commits gross negligence, willful misconduct or fraud in the performance of its obligations under this Agreement;

(d) Material Misrepresentation. Any representation made by the other Party hereunder shall be false or incorrect in any material respect when made and such misrepresentation is not cured within thirty (30) days of such discovery or is incapable of cure;

(e) Bankruptcy. The other Party: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due; or

(f) Dissolution. The other Party dissolves or is dissolved or its legal existence is otherwise terminated.

(g) Failure to Negotiate Amendment. The Parties are unsuccessful in negotiating an amendment or amendments to this Agreement pursuant to Section 17.7;

(h) Regulatory Changes/Modifications. FERC makes any material changes, modifications, additions, or deletions to this Agreement, unless both Parties agree to such changes, modifications, additions, or deletions; or

(i) Extended Force Majeure. A Party is excused because of Force Majeure (as defined in Section 11) for more than thirty (30) days from performing any of its material obligations under this Agreement.

4.4.2 Termination for Lack of Independence. Subject to Section 4.5, LG&E/KU may terminate this Agreement effective immediately upon prior written notice thereof to the ITO if FERC issues a final order that declares that the ITO lacks independence from LG&E/KU and the ITO cannot obtain independence in a reasonable manner or time period.

4.5 FERC Approval. No termination of this Agreement shall be effective until approved by FERC.

4.6 Return of Materials. Upon any termination of this Agreement the ITO shall timely and orderly turn over to LG&E/KU all materials that were prepared or developed prior thereto pursuant to this Agreement, and return or destroy, at the option of LG&E/KU, all Data and other information supplied by LG&E/KU to the ITO or created by the ITO on behalf of LG&E/KU.

4.7 Survival. All provisions of this Agreement which are by their nature or terms intended to survive the termination of this Agreement, including the obligations set forth in Section 7 and Section 10, shall survive termination of this Agreement.

4.8 Hold-Over Services. In order to facilitate the termination of this Agreement in accordance with Section 4.5, LG&E/KU agrees to submit appropriate applications to FERC, on or before September 1, 2011, requesting termination of this Agreement effective as of August 31, 2012, and approval of proposed replacement arrangements, effective as of September 1, 2012,



that will succeed the ITO arrangements provided for under this Agreement. In the event that the FERC, or any other regulatory authority asserting jurisdiction, does not issue the required authorizations to allow the termination of this Agreement as of August 31, 2012, the Parties agree that the following terms and conditions shall govern the rendition of services provided by the ITO until such time as FERC (or any other regulatory authority asserting jurisdiction) approves the termination of this Agreement, such services herein referred to as “Hold-Over Services.”

4.8.1 Hold-Over Services Period. The Hold-Over Services Period shall commence on September 1, 2012 and continue until the effective date of a FERC order (or an order of any other regulatory authority asserting jurisdiction) approving the termination of this Agreement. During the Hold-Over Services Period, the ITO shall continue to provide the Functions (and any replacements thereof or substitutions therefor), and cooperate with LG&E/KU in the transfer of the Functions to any successor entity approved by FERC (or any other regulatory authority asserting jurisdiction).

4.8.2 Hold-Over Services Compensation. In the event that the ITO is required to provide any Hold-Over Services, regardless of the duration of such requirement, then on or before September 15, 2012, LG&E/KU shall make an additional, one-time, payment of \$3,000,000. In addition, LG&E/KU shall pay the ITO \$435,000 per month for each month in which the ITO provides Hold-Over Services. (Partial month Hold-Over services shall be charged *pro rata* based on the agreed-to monthly amount of \$435,000.) In the event Hold-Over Services are performed on September 1 of any subsequent year, LG&E/KU shall pay the ITO a one-time payment of \$3,000,000 on that same date. The quality and level of performance of the Functions by the ITO during the Hold-Over Services Period shall not be degraded. After the expiration of the Hold-Over Services Period, the ITO shall answer questions from LG&E/KU regarding the Functions on an “as needed” basis at the ITO’s then-standard billing rates. The Parties agree to cooperate with each other to ensure a smooth transition for both the parties and for LG&E/KU’s customers.

## **Section 5 - Data Management.**

5.1 Supply of Data. During the Term, LG&E/KU shall supply to the ITO, and/or grant the ITO access to all Data that the ITO requests and that the ITO believes is necessary to perform its duties and obligations under this Agreement, including the Functions. The Parties shall agree upon the initial format and manner in which such Data shall be provided. For purposes of this Agreement, “Data” means all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium and which (a) are supplied or in respect of which access is granted to the ITO by LG&E/KU under this Agreement, which shall be LG&E/KU’s Data, (b) are prepared, stored or transmitted by the ITO solely on behalf of LG&E/KU, which shall be LG&E/KU’s Data; or (c) are compiled by the ITO by aggregating Data owned by LG&E/KU and Data owned by third parties, which shall be ITO’s Data.

5.2 Property of Each Party. Each Party acknowledges that the other Party’s Data and the other Party’s software, base data models and operating procedures for software or base data models (“Processes”) are the property of such other Party and agrees that it will do nothing

inconsistent with such ownership, including preserving all intellectual property and/or proprietary rights in such other Party's Data and Processes as provided in Section 6.

5.3 Data Integrity. Each Party shall reasonably assist the other Party in establishing measures to preserve the integrity and prevent any corruption or loss of Data, and the Parties shall reasonably assist each other in the recovery of any corrupted or lost Data. Each Party shall reasonably retain and preserve any of the other Party's Essential Data that are supplied to it during the Term. "Essential Data" means any Data that is reasonably required to perform the Functions under this Agreement and that must be retained and preserved according to any applicable law, regulation, reliability criteria, or Good Utility Practice. Each Party shall exercise commercially reasonable efforts to preserve the integrity of the other Party's Data that are supplied to it during the Term, in order to prevent any corruption or loss of the other Party's Data.

5.4 Confidentiality. Each Party's Data shall be treated as Confidential Information in accordance with the provisions of Section 10.

## **Section 6 - Intellectual Property.**

6.1 Pre-Existing Intellectual Property. Each Party shall own (and continue to own) all trade secrets, Processes and designs and other intellectual property that it owned prior to entering this Agreement, including any enhancements thereto ("Pre-Existing Intellectual Property"). Each Party acknowledges the ownership of the other Party's Pre-Existing Intellectual Property and agrees that it will do nothing inconsistent with such ownership. Each Party agrees that nothing in this Agreement shall give it any right, title or interest in the other Party's Pre-Existing Intellectual Property, other than the rights set forth in this Agreement. The ITO's Pre-Existing Intellectual Property shall include the ITO Retained Rights set forth in Section 6.3. LG&E/KU's Pre-Existing Intellectual Property shall include LG&E/KU Retained Rights set forth in Section 6.4.

6.1.1 Exclusion. Nothing in this Agreement shall prevent either Party from using general techniques, ideas, concepts and know-how gained by its employees during the performance of its obligations under this Agreement in the furtherance of its normal business, to the extent that it does not result in disclosure of the other Party's Data or any data generated from the other Party's Data or other Confidential Information or an infringement by LG&E/KU or the ITO of any intellectual property right. For the avoidance of doubt, the use by a Party of such general techniques, ideas, concepts and know-how gained by its employees during the performance of its obligations under this Agreement shall not be deemed to be an infringement of the other Party's intellectual property rights so long as such matters are retained in the unaided memories of such employees and any Confidential Information is treated in accordance with the provisions of Section 10.

6.2 Jointly-Owned Intellectual Property. Except for the Data described in Section 5.1, all deliverables, whether software or otherwise, to the extent originated and prepared by the ITO exclusively in connection with the performance of its obligations under this Agreement shall be, upon payment of all amounts that may be due from LG&E/KU to the ITO, jointly owned by

LG&E/KU and ITO (“Jointly-Owned Intellectual Property”). Each Party shall have the right to use the Jointly-Owned Intellectual Property without any right or duty or accounting to the other Party, except as provided in this Section 6.2. Upon the ITO using, transferring or licensing Jointly-Owned Intellectual Property for or to a third party, the ITO shall reimburse LG&E/KU in an equitable manner as determined by the Parties in good faith for the actual amounts paid by LG&E/KU to the ITO that relate to such Jointly-Owned Intellectual Property. Except as stated in the foregoing sentence, the ITO shall have no other obligation to account to LG&E/KU for any such use, transfer, license, disclosure, copying, modifying or enhancing of the Jointly-Owned Intellectual Property. Notwithstanding anything herein to the contrary, LG&E/KU may use the Jointly-Owned Intellectual Property for its internal business purposes, including licensing or transferring its interests therein to a third party for purposes of operating or performing functions in connection with LG&E/KU’s transmission business.

6.3 ITO Retained Rights. The ITO shall retain all right, title and interest in its proprietary know-how, concepts, techniques, processes, materials and information that were or are developed entirely independently of this Agreement (“ITO Retained Rights”), whether or not such ITO Retained Rights are embodied in a deliverable, whether software or otherwise originated and prepared by the ITO in connection with the performance of its obligations under this Agreement. With respect to the ITO Retained Rights embodied in any deliverable, whether software or otherwise originated and prepared by the ITO in connection with the performance of its obligations under this Agreement, LG&E/KU is hereby granted a nonexclusive, perpetual, worldwide, royalty-free, fully paid-up license under such ITO Retained Rights to use such deliverable for LG&E/KU’s internal business purposes only, including licensing or transferring its interests therein to an Affiliate of LG&E/KU or a third party for purposes of operating or performing functions in connection with LG&E/KU’s transmission business; provided that the ITO shall not be liable in any way for the use of or reliance on such ITO Retained Rights by LG&E/KU, its Affiliate(s) or a third party for any purpose whatsoever.

6.4 LG&E/KU Retained Rights. LG&E/KU shall retain all right, title and interest in its proprietary know-how, concepts, techniques, processes, materials and information that were or are developed entirely independently of this Agreement (“LG&E/KU Retained Rights”), whether or not such LG&E/KU Retained Rights are embodied in a deliverable, whether software or otherwise originated and prepared by LG&E/KU in connection with the performance of its obligations under this Agreement. With respect to LG&E/KU Retained Rights embodied in any deliverable, whether software or otherwise originated and prepared by LG&E/KU in connection with the performance of its obligations under this Agreement, the ITO is hereby granted a nonexclusive, worldwide, royalty-free, fully paid-up license under such LG&E/KU Retained Rights to use such deliverable for the ITO’s internal business purposes only, including licensing or transferring its interests therein to a third party for purposes of operating or performing functions in connection with the ITO’s transmission business; provided that LG&E/KU shall not be liable in any way for the use of or reliance on such ITO Retained Rights by the ITO’s Affiliate or third party for any purpose whatsoever.

6.5 ITO Non-Infringement; Indemnification. The ITO warrants to LG&E/KU that, to its knowledge, all ITO’s Data and Processes, ITO Pre-Existing Intellectual Property, ITO Retained Rights, and deliverables prepared, produced or first developed by the ITO in connection with the performance of its obligations under this Agreement shall not infringe on

any third party patent, copyright, trade secret or other third party proprietary rights. The ITO shall defend, hold harmless and indemnify LG&E/KU and its Affiliates and their respective employees, officers, directors, principals, owners, partners, shareholders, agents, representatives, consultants and subcontractors (collectively, "LG&E/KU Representatives") from and against all claims, lawsuits, penalties, awards, judgments, court arbitration costs, attorneys' fees, and other reasonable out-of-pocket costs incurred in connection with such claims or lawsuits based upon the actual or alleged infringement of any of the foregoing rights; provided that LG&E/KU gives prompt written notice of any such claim or action to the ITO, permits the ITO to control the defense of any such claim or action with counsel of its choice, and cooperates with the ITO in the defense thereof; and further provided that such claim or action is not based on any alteration, modification or combination of the deliverable with any item, information or process not provided by the ITO, where there would be no infringement in the absence of such alteration, modification or combination. If any infringement action results in a final injunction against LG&E/KU or the LG&E/KU Representatives with respect to ITO's Data and Processes, ITO Pre-Existing Intellectual Property, ITO Retained Rights or deliverables prepared, produced or first developed by the ITO in connection with the performance of its obligations under this Agreement or in the event the use of such matters or any part thereof, is, in such lawsuit, held to constitute infringement, the ITO agrees that it shall, at its option and sole expense and only to the extent that the infringing matter enables LG&E/KU and/or the ITO to perform their obligations under this Agreement, either (a) procure the right to continue using the infringing matter, or (b) replace the infringing matter with non-infringing items of equivalent functionality or modify the same so that it becomes non-infringing and retains its full functionality. If the ITO is unable to accomplish (a) or (b) above, the ITO shall reimburse LG&E/KU for all costs and fees paid by LG&E/KU to the ITO resulting from LG&E/KU's or the ITO's inability to perform its obligations under this Agreement without the infringing matter. The above constitutes the ITO's complete liability for claims of infringement relating to any of the ITO's Data and Processes, ITO Pre-Existing Intellectual Property, ITO Retained Rights and deliverables prepared, produced or first developed by the ITO in connection with the performance of its obligations under this Agreement.

6.6 LG&E/KU Non-Infringement; Indemnification. LG&E/KU warrants to the ITO that, to its knowledge, all LG&E/KU's Data (except for Data created by the ITO on behalf of LG&E/KU) and Processes, LG&E/KU Pre-Existing Intellectual Property, and LG&E/KU Retained Rights shall not infringe on any third party patent, copyright, trade secret or other third party proprietary rights. LG&E/KU shall defend, hold harmless and indemnify the ITO and its Affiliates and their respective employees, officers, directors, principals, owners, partners, shareholders, agents, representatives, consultants and subcontractors ("ITO Representatives") against all claims, lawsuits, penalties, awards, judgments, court costs, and arbitration costs, attorneys' fees, and other reasonable out-of-pocket costs incurred in connection with such claims or lawsuits based upon the actual or alleged infringement of any of the foregoing rights; provided that the ITO gives prompt written notice of any such claim or action to LG&E/KU, permits LG&E/KU to control the defense of any such claim or action with counsel of its choice, and cooperates with LG&E/KU in the defense thereof; and further provided that such claim or action is not based on any alteration, modification or combination of the deliverable with any item, information or process not provided by LG&E/KU to the ITO, where there would be no infringement in the absence of such alteration, modification or combination. If any infringement action results in a final injunction against the ITO or the ITO Representatives with respect to

LG&E/KU Data and Processes, LG&E/KU Pre-existing Intellectual Property, LG&E/KU Retained Rights or deliverables prepared, produced, or first developed by LG&E/KU in connection with the performance of its or the ITO's obligations under this Agreement or in the event the use of such matters or any part thereof, is, in such lawsuit, held to constitute infringement, LG&E/KU agrees that it shall, at its option and sole expense, and only to the extent that the infringing matter enables LG&E/KU and/or the ITO to perform their obligations under this Agreement, either: (a) procure the rights to continue to use the infringing matter, or (b) replace the infringing matter with non-infringing items of equivalent functionality or modify the same so that it becomes non-infringing and retains its full functionality. If LG&E/KU is unable to accomplish (a) or (b), above, LG&E/KU shall release the ITO of any obligations under this Agreement that rely exclusively on the infringing matter, without refund or other recourse. The above constitutes LG&E/KU's complete liability for claims of infringement relating to any of the LG&E/KU's Data and Processes, LG&E/KU Pre-Existing Intellectual Property and LG&E/KU Retained Rights.

### **Section 7 - Indemnification.**

7.1 LG&E/KU Indemnification. LG&E/KU shall indemnify, release, defend, reimburse and hold harmless the ITO and its directors, officers, employees, principals, representatives and agents (collectively, the "ITO Indemnified Parties") from and against any and all claims (including claims of bodily injury or death of any person or damage to real and/or tangible personal property), demands, liabilities, losses, causes of action, awards, fines, penalties, litigation, administrative proceedings and investigations, costs and expenses, and attorney fees (each, an "Indemnifiable Loss") asserted against or incurred by any of the ITO Indemnified Parties arising out of, resulting from or based upon the ITO performing its obligations pursuant to this Agreement, provided, however, that in no event shall LG&E/KU be obligated to indemnify, release, defend, reimburse or hold harmless the ITO Indemnified Parties from and against any Indemnified Loss which is caused by the gross negligence or willful misconduct of an ITO Indemnified Party.

7.2 ITO Indemnification. ITO shall indemnify, release, defend, reimburse and hold harmless LG&E/KU and its directors, officers, employees, principals, representatives and agents (collectively, the "LG&E/KU Indemnified Parties") from and against any and all Indemnifiable Losses asserted against or incurred by any of the LG&E/KU Indemnified Parties arising out of, resulting from or based upon the gross negligence or willful misconduct of an ITO Indemnified Party.

7.3 No Consequential Damages. Neither Party shall be liable to the other Party under this Agreement (by way of indemnification, damages or otherwise) for any indirect, incidental, exemplary, punitive, special or consequential damages, except in the case of its gross negligence or willful misconduct.

7.4 Cooperation Regarding Claims. If an Indemnified Party (which for purposes of this Section 7.4 shall mean an ITO Indemnified Party or a LG&E/KU Indemnified Party) receives notice or has knowledge of any Indemnifiable Loss that may result in a claim for indemnification by such Indemnified Party against an Indemnifying Party (which for purposes of this Section 7.4 shall mean LG&E/KU or the ITO) pursuant to this Section 7, such Indemnified

Party shall as promptly as possible give the Indemnifying Party notice of such Indemnifiable Loss, including a reasonably detailed description of the facts and circumstances relating to such Indemnifiable Loss, a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its claim for indemnification with respect thereto. Failure to promptly give such notice or to provide such information and documents shall not relieve the Indemnifying Party from the obligation hereunder to respond to or defend the Indemnified Party against such Indemnifiable Loss unless such failure shall materially diminish the ability of the Indemnifying Party to respond to or to defend the Indemnified Party against such Indemnifiable Loss. The Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party in accordance with this Section 7 and subject to Section 7.5, shall be entitled to assume the defense or to represent the interest of the Indemnified Party with respect to such Indemnifiable Loss, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost. If and to the extent that any such settlement is reasonably likely to involve injunctive, equitable or prospective relief or materially and adversely affect the Indemnified Party's business or operations other than as a result of money damages or other money payments, then such settlement will be subject to the reasonable approval of the Indemnified Party. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants and participating in its own defense at its own cost and expense.

7.5 Stakeholders Management Meetings. Within ten (10) business days after the ITO provides notice to LG&E/KU of an Indemnifiable Loss (which, for purposes of this Section 7.5, shall not include Indemnifiable Losses solely involving monetary damages) pursuant to Section 7.4, the ITO shall hold a meeting ("Stakeholders Management Meeting") with all interested stakeholders (including LG&E/KU) to discuss and solicit input and recommendations from all interested stakeholders on how the ITO should respond to the Indemnifiable Loss. The ITO may consider but shall not be obligated to adopt or follow the recommendations of the interested stakeholders.

## **Section 8 - Contract Managers; Dispute Resolution.**

8.1 LG&E/KU Contract Manager. LG&E/KU shall appoint an individual (the "LG&E/KU Contract Manager") who shall serve as the primary LG&E/KU representative under this Agreement. The LG&E/KU Contract Manager shall (a) have overall responsibility for managing and coordinating the performance of LG&E/KU's obligations under this Agreement, and (b) be authorized to act for and on behalf of LG&E/KU with respect to all matters relating to this Agreement. Notwithstanding the foregoing, the LG&E/KU Contract Manager may, upon notice to the ITO, delegate such of his or her responsibilities to other LG&E/KU employees, as the LG&E/KU Contract Manager deems appropriate.

8.2 ITO Contract Manager. The ITO shall appoint, among the ITO Personnel, an individual (the "ITO Contract Manager") who shall serve as the primary ITO representative under this Agreement. The ITO Contract Manager shall (a) have overall responsibility for managing and coordinating the performance of ITO obligations under this Agreement, and (b) be authorized to act for and on behalf of the ITO with respect to all matters relating to this Agreement. Notwithstanding the foregoing, the ITO Contract Manager may, upon notice to

LG&E/KU, delegate such of his or her responsibilities to other ITO Personnel, as the ITO Contract Manager deems appropriate.

8.3 Resolution of Disputes. Any dispute, claim or controversy between the Parties arising out of or relating to this Agreement (each, a “Dispute”) shall be resolved in accordance with the procedures set forth in this Section 8.3; provided, however, that this Section 8.3 shall not apply to Disputes arising from or relating to (a) the amount of compensation to be paid by LG&E/KU pursuant to Section 3.1, which shall be resolved pursuant to Section 3.4, (b) confidentiality or intellectual property rights, in which case either Party shall be free to seek available legal or equitable remedies, or (c) alleged violations of the OATT, in which case either Party shall be free to bring the Dispute to FERC.

8.3.1 Notice of Dispute. Each Party shall provide written notice to the other party of any Dispute, including a description of the nature of the Dispute.

8.3.2 Dispute Resolution by Contract Managers. Any Dispute shall first be referred to the LG&E/KU Contract Manager and the ITO Contract Manager, who shall negotiate in good faith to resolve the Dispute.

8.3.3 Dispute Resolution by Executive Management Representatives. If the Dispute is not resolved within fifteen (15) days of being referred to the LG&E/KU Contract Manager and the ITO Contract Manager pursuant to Section 8.3.2, then each Party shall have five (5) days to appoint an executive management representative who shall negotiate in good faith to resolve the Dispute.

8.3.4 Dispute Resolution by Mediation. If the Parties’ executive management representatives are unable to resolve the Dispute within thirty (30) days of their appointment, the Parties shall proceed in good faith to submit the matter to a mediator mutually acceptable to the Parties. The Parties will share equally in the cost of such mediation, which will be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association and any applicable FERC regulations.

8.3.5 Exercise of Remedies at Law or in Equity. If the Parties are unable to resolve the Dispute within thirty (30) days after the appointment of a mediator pursuant to Section 8.3.4, then each Party shall be free to pursue any remedies available to it and to take any action in law or equity that it believes necessary or convenient in order to enforce its rights or cause to be fulfilled any of the obligations or agreements of the other Party.

8.4 Rights Under FPA Unaffected. Except as provided in Section 17.3 relating to the variation or amendment of this Agreement, nothing in this Agreement is intended to limit or abridge any rights that LG&E/KU may have to file or make application before FERC under Section 205 of the Federal Power Act to revise any rates, terms or conditions of the OATT.

8.5 Statute of Limitations; Continued Performance. The Parties agree to waive the applicable statute of limitations during the period of time that the Parties are seeking to resolve a Dispute pursuant to Section 8.3, and the statute of limitations shall be tolled for such period. The

Parties shall continue to perform their obligations under this Agreement during the resolution of a Dispute.

## **Section 9 - Insurance.**

9.1 Requirements. The ITO shall provide and maintain during the Term insurance coverage in the form and with minimum limits of liability as specified below, unless otherwise agreed to by the Parties.

9.1.1 Worker's compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$1,000,000.

9.1.2 Commercial general liability or equivalent insurance with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include products/completed operations liability, owners protective, blanket contractual liability, personal injury liability and broad form property damage.

9.1.3 Comprehensive automobile liability insurance with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles, and contractual liability.

9.1.4 Errors & Omissions Insurance in the amount of \$5,000,000.

9.2 Insurance Matters. All insurance coverages required pursuant to Section 9.1 shall (a) be provided by insurance companies that have a Best Rating of A or higher, (b) provide that LG&E/KU is an additional insured (other than the workers' compensation insurance), (c) provide that LG&E/KU will receive at least thirty (30) days written notice from the ITO prior to the cancellation or termination of or any material change in any such insurance coverages, and (d) include waivers of any right of subrogation of the insurers thereunder against LG&E/KU. Certificates of insurance evidencing that the insurance required by Section 9.1 is in force shall be delivered by the ITO to LG&E/KU prior to the Effective Date.

9.3 Compliance with Section 9. The ITO shall not commence performance of any Functions until all of the insurance required pursuant to Section 9.1 is in force, and the necessary documents have been received by LG&E/KU pursuant to Section 9.2. Compliance with the insurance provisions in Section 9 is expressly made a condition precedent to the obligation of LG&E/KU to make payment for any Functions performed by the ITO under this Agreement. The minimum insurance requirements set forth above shall not vary, limit or waive the ITO's legal or contractual responsibilities or liabilities under this Agreement.

## **Section 10 - Confidentiality.**

10.1 Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean, in respect of each Party, all information and documentation of such Party, whether disclosed to or accessed by the other Party in connection with this Agreement; provided, however, that the term "Confidential information" shall not include information that: (a) is independently developed by the recipient, as demonstrated by the recipient's written records, without violating the disclosing Party's proprietary rights; (b) is or



becomes publicly known (other than through unauthorized disclosure); (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality; (d) is already known by the recipient at the time of disclosure, as demonstrated by the recipient's written records, and the recipient has no obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements between the Parties entered into before the Effective Date; or (e) is rightfully received by a Party free of any obligation of confidentiality.

10.2 Protection of Confidential Information. All Confidential Information shall be held in confidence by the recipient to the same extent and in at least the same manner as the recipient protects its own confidential information, and such Confidential Information shall be used only for purposes of performing obligations under this Agreement. Except as otherwise provided in Section 10.3, neither Party shall disclose, publish, release, transfer or otherwise make available Confidential Information of, or obtained from, the other Party in any form to, or for the use or benefit of, any person or entity without the disclosing Party's prior written consent. Each Party shall be permitted to disclose relevant aspects of the other Party's Confidential Information to its officers, directors, agents, professional advisors, contractors, subcontractors and employees and to the officers, directors, agents, professional advisors, contractors, subcontractors and employees of its Affiliates, to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations or the determination, preservation or exercise of its rights and remedies under this Agreement; provided, however, that the recipient shall take all reasonable measures to ensure that Confidential Information of the disclosing Party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, directors, agents, professional advisors, contractors, subcontractors and employees. The obligations in this Section 10 shall not restrict any disclosure pursuant to any local, state or federal governmental agency or authority if such release is necessary to comply with valid laws, governmental regulations or final orders of regulatory bodies or courts; provided that, other than in respect of disclosures pursuant to Section 10.3, the recipient shall give prompt notice to the disclosing Party in reasonable time to exercise whatever legal rights the disclosing Party may have to prevent or limit such disclosure. Further, the recipient shall cooperate with the disclosing Party in preventing or limiting such disclosure.

10.3 FERC Requests for Confidential Information. Notwithstanding anything in this Section 10 to the contrary, if FERC or its staff, during the course of an investigation or otherwise, requests information from the ITO that the ITO is otherwise required to maintain in confidence pursuant to this Agreement, the ITO shall provide the requested information to FERC or its staff within the time provided for in the request for information. In providing the information to FERC or its staff, the ITO shall, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. The ITO shall notify LG&E/KU when it is notified by FERC or its staff that a request for public disclosure of, or decision to publicly disclose, confidential information has been received, at which time either the ITO or LG&E/KU may respond before such information is made public, pursuant to 18 C.F.R. § 388.112.

## **Section 11 - Force Majeure.**

11.1 Force Majeure. Neither Party shall be liable to the other Party for any failure or delay of performance hereunder due to causes beyond such Party's reasonable control, which by

the exercise of reasonable due diligence such Party is unable, in whole or in part, to prevent or overcome (a “Force Majeure”), including acts of God, act of the public enemy, fire, explosion, vandalism, cable cut, storm or other catastrophes, weather impediments, national emergency, insurrections, riots, wars or any law, order, regulation, direction, action or request of any government or authority or instrumentality thereof. Neither Party shall be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure, except for the obligation to pay any amount when due, provided that the affected Party:

11.1.1 gives notice to the other Party of the event or circumstance giving rise to the event of Force Majeure;

11.1.2 affords the other Party reasonable access to information about the event or circumstances giving rise to the event of Force Majeure;

11.1.3 takes commercially reasonable steps to restore its ability to perform its obligations hereunder as soon as reasonably practicable, provided that the affected Party shall not be obligated to take any steps that are not otherwise in accordance with Good Utility Practice; and

11.1.4 exercises commercially reasonable efforts to perform its obligations hereunder.

## **Section 12 - Reporting; Audit.**

### 12.1 Reporting.

12.1.1 The ITO shall report in writing to FERC in respect of any Dispute which the ITO has with LG&E/KU as soon as practicable.

12.1.2 The ITO shall report in writing to FERC every six (6) months (commencing on the six (6) month anniversary of the Effective Date and every six (6) months thereafter during the Term) in respect of (a) any concerns expressed by stakeholders and the ITO’s response to same and (b) any issues or OATT provisions that hinder the ITO from performing its duties and obligations under this Agreement and the OATT.

12.1.3 In addition to the reports provided for above, the ITO shall make such other reports to FERC and LG&E/KU’s retail regulators as may be required by applicable law and regulations or as may be requested by such authorities.

12.2 Books and Records. The ITO shall maintain full and accurate books and records pertinent to this Agreement, and the ITO shall maintain such books and records for three (3) years following the expiration or early termination of this Agreement or longer if necessary to resolve a pending Dispute. LG&E/KU will have the right, at reasonable times and under reasonable conditions, to inspect and audit, or have an independent third party inspect and audit, the ITO’s operations and books to (a) ensure compliance with this Agreement, (b) verify any cost claims or other amounts due hereunder, and (c) validate the ITO’s internal controls with respect

to the performance of the Functions. The ITO shall maintain an audit trail, including all original transaction records, of all financial and non-financial transactions resulting from or arising in connection with this Agreement as may be necessary to enable LG&E/KU or the independent third party, as applicable, to perform the foregoing activities. LG&E/KU shall be responsible for any costs and expenses incurred in connection with any such inspection or audit, unless such inspection or audit discovers that LG&E/KU was charged inappropriate or incorrect costs and expenses, in which case, the ITO shall be responsible for a percentage of the costs and expenses incurred in connection with such inspection or audit equal to the percentage variance by which LG&E/KU was charged inappropriate or incorrect costs and expenses. The ITO shall provide reasonable assistance necessary to enable LG&E/KU or an independent third party, as applicable, and shall not be entitled to charge LG&E/KU for any such assistance. Amounts incorrectly or inappropriately invoiced by the ITO to LG&E/KU, whether discovered prior to or subsequent to payment by LG&E/KU, shall be adjusted or reimbursed to LG&E/KU by the ITO within twenty (20) days of notification by LG&E/KU to the ITO of the error in the invoice.

12.3 Regulatory Compliance. The ITO shall comply with all requests by LG&E/KU to the extent considered reasonably necessary by LG&E/KU to comply with the Sarbanes-Oxley Act or other regulatory requirements. Inasmuch as Southwest Power Pool, Inc. (“SPP”), in its role as a Regional Transmission Organization, currently performs an audit of its controls with regard to the Sarbanes-Oxley Act, no additional audit will be necessary to satisfy the requirements of the Sarbanes-Oxley Act. SPP, in its function as the ITO, will include all ITO processes and procedures in its current audit. However, it is noted that the audit performed by SPP is currently based on procedures and processes found in the SPP Open Access Transmission Tariff. If an additional audit or material changes to the current audit are requested, then the ITO will perform such additional audit or include such material changes under a separate contractual arrangement with LG&E/KU. In addition, the ITO expressly agrees that prior to or at the time of any significant or material change to any internal process or financial control of the ITO that would or might impact the Functions performed for or on behalf of LG&E/KU or that would, or might, have a significant or material effect on such process’s mitigation of risk or upon the integrity of LG&E/KU’s financial reporting or disclosures, it shall notify LG&E/KU and provide full details of the change so as to enable LG&E/KU to review the change and evaluate its impact on its internal controls and financial reporting. LG&E/KU shall have the right to provide all such reports, opinions and certifications which are produced during the SPP audit and delivered hereunder to LG&E/KU’s attorneys, accountants and other advisors, who shall be entitled to rely thereon.

### **Section 13 - Independent Contractor.**

The ITO shall be and remain during the Term an independent contractor with respect to LG&E/KU, and nothing contained in this Agreement shall be (a) construed as inconsistent with that status, or (b) deemed or construed to create the relationship of principal and agent or employer and employee, between the ITO and LG&E/KU or to make either the ITO or LG&E/KU partners, joint ventures, principals, fiduciaries, agents or employees of the other Party for any purpose. Neither Party shall represent itself to be an agent, partner or representative of the other Party. Neither Party shall commit or bind, nor be authorized to commit or bind, the other Party in any manner, without such other Party’s prior written consent. Personnel employed, provided or used by any Party in connection herewith will not be employees of the

other Party in any respect. Each Party shall have full responsibility for the actions or omissions of its employees and shall be responsible for their supervision, direction and control.

**Section 14 - Taxes.**

Each Party shall be responsible for the payment of its own taxes, including taxes based on its net income, employment taxes of its employees, taxes on any property it owns or leases, and sales, use, gross receipts, excise, value-added or other transaction taxes.

**Section 15 - Notices.**

15.1 Notices. All notices, requests, consents and other communications hereunder shall be in writing, signed by the Party giving such notice or communication, and shall be hand-delivered or sent by certified mail, postage prepaid, return receipt requested, by nationally recognized courier, to the other Party at the address set forth below, and shall be deemed given upon the earlier of the date delivered or the date delivery is refused.

If to LG&E/KU:

Ed Staton  
Director, Transmission  
E.ON U.S. LLC  
220 West Main Street  
Louisville, Kentucky 40202  
Facsimile: (502) 627-3844

If to the ITO:

Southwest Power Pool, Inc.  
Mr. Bruce Rew  
Vice President, Engineering  
415 N. McKinley, Suite 140  
Little Rock, Arkansas 72205  
Facsimile: (501) 664-9553

15.2 Changes. Either Party may, from time to time, change the names, addresses, facsimile numbers or other notice information set out in Section 15.1 by notice to the other Party in accordance with the requirements of Section 15.1.

**Section 16 - ITO Personnel; Work Conditions.**

16.1 ITO Personnel. All ITO Personnel and ITO Designees shall be properly certified and licensed, if required by law or regulation, and be qualified and competent to perform the Functions.

16.2 Conduct of ITO Personnel and Reporting. The ITO agrees to require that the ITO Personnel and ITO Designees comply with the ITO's employee code of conduct, a current copy of which has been provided to LG&E/KU. The ITO may amend its employee code of conduct at

any time, provided that the ITO shall promptly provide the LG&E/KU Contract Manager with a copy of the amended employee code of conduct. If any ITO Personnel or ITO Designee commits fraud or engages in material violation of the ITO's employee code of conduct, the ITO shall promptly notify LG&E/KU as provided above and promptly remove any such ITO Personnel or ITO Designee from the performance of the Functions.

16.3 Personnel Screening. The ITO shall be responsible for conducting, in accordance with applicable law (including the Fair Credit Reporting Act, The Fair and Accurate Credit Transactions Act, and Title VII of the Civil Rights Act of 1964), adequate pre-deployment screening of the ITO Personnel or ITO Designee prior to commencing performance of the Functions. By deploying ITO Personnel or ITO Designee under this Agreement, the ITO represents that it has completed the Screening Measures (as defined below) with respect to such ITO Personnel or ITO Designees. To the extent permitted by applicable law, the term "Screening Measures" shall include, at a minimum, a background check including: (a) a Terrorist Watch Database Search; (b) a Social Security Number trace; and (c) a criminal history check, including, a criminal record check for each county/city and state/country in the employee's residence history for the maximum number of years permitted by law, up to seven (7) years. Unless prohibited by law, if, prior to or after assigning a ITO Personnel or ITO Designee to perform the Functions, the ITO learns of any information that the ITO considers would adversely affect such ITO Personnel's or ITO Designee's suitability for the performance of the Functions (including based on information discovered from the Screening Measures), the ITO shall not assign the ITO Personnel or ITO Designee to the Functions or, if already assigned, promptly remove such ITO Personnel or ITO Designee from performing the Functions and immediately notify LG&E/KU of such action.

16.4 Security. Each Party shall have the option of barring from that Party's property any LG&E/KU or ITO Personnel or ITO Designee whom the Party determines is not suitable in accordance with the applicable laws pursuant to Sections 16.1 through 16.3.

#### **Section 17 - Miscellaneous Provisions.**

17.1 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of Kentucky, without giving effect to its conflicts of law rules.

17.2 Consent to Jurisdiction. All Disputes by any Party in connection with or relating to this Agreement or any matters described or contemplated in this Agreement shall be instituted in the courts of the Commonwealth of Kentucky or of the United States sitting in the Commonwealth of Kentucky. Each Party irrevocably submits, for itself and its properties, to the exclusive jurisdiction of the courts of the Commonwealth of Kentucky and of the United States sitting in the Commonwealth of Kentucky in connection with any such Dispute. Each Party irrevocably and unconditionally waives any objection or defense that it may have based on improper venue or *forum non conveniens* to the conduct of any proceeding in any such courts. This provision does not adversely affect FERC's jurisdiction of this Agreement.

17.3 Amendment. This Agreement shall not be varied or amended unless such variation or amendment is agreed to by the Parties in writing and accepted by FERC. The Parties

explicitly agree that neither Party shall unilaterally petition to FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act to amend this Agreement or to request that FERC initiate its own proceeding to amend this Agreement, except as provided under Section 3.4. Nothing in this Section 17.3 shall be construed to limit or affect any other rights that the Parties may have as set forth in Section 8.4, the OATT or otherwise.

17.4 Assignment. Any assignment of this Agreement or any interest herein or delegation of all or any portion of a Party's obligations, by operation of law or otherwise, by either Party without the other Party's prior written consent shall be void and of no effect; provided, however, that the ITO's consent will not be required for LG&E/KU to assign this Agreement to (a) an affiliate or (b) a successor entity that acquires all or substantially all of LG&E/KU's Transmission System whether by merger, consolidation, reorganization, sale, spin-off or foreclosure; provided, further, that such successor entity (a) agrees to assume all of LG&E/KU's obligations hereunder from and after the date of such assignment and (b) has the legal authority and operational ability to satisfy the obligations under this Agreement. As a condition to the effectiveness of such assignment (i) LG&E/KU shall promptly notify the ITO of such assignment, (ii) the successor entity shall provide a confirmation to the ITO of its assumption of LG&E/KU's obligations hereunder, and (iii) LG&E/KU shall promptly reimburse the ITO, upon receipt of an invoice from the ITO, for any one-time incremental costs reasonably incurred by the ITO as a result of such assignment. For the avoidance of doubt, nothing herein shall preclude LG&E/KU from transferring any or all of its transmission facilities to another entity or disposing of or acquiring any other transmission assets. Notwithstanding anything to the contrary contained in this Section 17.4, the ITO shall be entitled to contract with one or more Persons (each, an "ITO Designee") to perform only those Functions which the OATT expressly provides for being performed by a "designee" of the ITO (as opposed to the ITO or ITO Personnel), provided that the ITO shall not be relieved of any of its obligations, responsibilities or liabilities under this Agreement as a result of contracting with one or more ITO Designees in accordance with this Section 17.4.

17.5 No Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, this Agreement is made solely for the benefit of the Parties and their successors and permitted assigns and no other person shall have any rights, interest or claims hereunder or otherwise be entitled to any benefits under or on account of this Agreement as third party beneficiary or otherwise.

17.6 Waivers. No waiver of any provision of this Agreement shall be effective unless it is signed by the Party against which it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

17.7 Severability; Renegotiation. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision herein. If any provision of this Agreement is found to be invalid, illegal or otherwise unenforceable, the same shall not affect the other provisions hereof or the whole of this Agreement and shall not render invalid, illegal or unenforceable this Agreement or any of

the remaining provisions of this Agreement. If any provision of this Agreement or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, or if a modification or condition to this Agreement is imposed by such court or regulatory authority, the Parties shall in good faith negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligation of the Parties immediately prior to such holding, modification or condition.

17.8 Representations and Warranties. Each Party represents and warrants to the other Party as of the date hereof as follows:

17.8.1 Organization. It is duly organized, validly existing and in good standing under the laws of the State in which it was organized, and has all the requisite power and authority to own and operate its material assets and properties and to carry on its business as now being conducted and as proposed to be conducted under this Agreement.

17.8.2 Authority. It has the requisite power and authority to execute and deliver this Agreement and, subject to the procurement of applicable regulatory approvals, to perform its obligations under this Agreement. The execution and delivery of this Agreement by it and the performance of its obligations under this Agreement have been duly authorized by all necessary corporate action required on its part.

17.8.3 Binding Effect. Assuming the due authorization, execution and delivery of this Agreement by the other Party, this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar applicable laws affecting creditors' rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

17.8.4 Regulatory Approval. It has obtained or will obtain by the Effective Date, any and all approvals of, and acceptances for filing by, and has given or will give any notices to, any applicable federal or state authority, including FERC, that are required for it to execute, deliver, and perform its obligations under this Agreement.

17.8.5 No Litigation. There are no actions at law, suits in equity, proceedings, or claims pending or, to its knowledge, threatened against it before or by any federal, state, foreign or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.

17.8.6 No Violation or Breach. The execution, delivery and performance by it of its obligations under this Agreement do not and shall not: (a) violate its organizational documents; (b) violate any applicable law, statute, order, rule, regulation or judgment promulgated or entered by any applicable federal or state authority, which violation could reasonably be expected to materially adversely affect the performance of its obligations under this Agreement; or (c) result in a breach of or constitute a default of any material agreement to which it is a party.

17.9 Further Assurances. Each Party agrees that it shall execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the purpose of this Agreement and are not inconsistent with the provisions of this Agreement.

17.10 Entire Agreement. This Agreement and the Attachments hereto set forth the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior agreements, whether oral or written, related to the subject matter of this Agreement. The terms of this Agreement and the Attachments hereto are controlling, and no parole or extrinsic evidence, including to prior drafts and drafts exchanged with any third parties, shall be used to vary, contradict or interpret the express terms, and conditions of this Agreement.

17.11 Good Faith Efforts. Each Party agrees that it shall in good faith take all reasonable actions necessary to permit it and the other Party to fulfill their obligations under this Agreement. Where the consent, agreement or approval of any Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, delayed or conditioned. Where a Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. To the extent that the jurisdiction of any federal or state authority applies to any part of this Agreement or the transactions or actions covered by this Agreement, each Party shall cooperate with the other Party to secure any necessary or desirable approval or acceptance of such authorities of such part of this Agreement or such transactions or actions.

17.12 Time of the Essence. With respect to all duties, obligations and rights of the Parties, time shall be of the essence in this Agreement.

17.13 Interpretation. Unless the context of this Agreement otherwise clearly requires:

17.13.1 all defined terms in the singular shall have the same meaning when used in the plural and vice versa;

17.13.2 the terms “hereof,” “herein,” “hereto” and similar words refer to this entire Agreement and not to any particular Section, Attachment or any other subdivision of this Agreement;

17.13.3 references to “Section” or “Attachment” refer to this Agreement, unless specified otherwise;

17.13.4 references to any law, statute, rule, regulation, notification or statutory provision shall be construed as a reference to the same as it applies to this Agreement and may have been, or may from time to time be, amended, modified or re-enacted;

17.13.5 references to “includes,” “including” and similar phrases shall mean “including, without limitation;”

17.13.6 the captions, section numbers and headings in this Agreement are included for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement;



17.13.7 “or” may not be mutually exclusive, and can be construed to mean “and” where the context requires there to be a multiple rather than an alternative obligation; and

17.13.8 references to a particular entity include such entity’s successors and assigns to the extent not prohibited by this Agreement.

17.14 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other and no provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provision. Each Party acknowledges that in executing this Agreement its has relied solely on its own judgment, belief and knowledge, and such advice as it may have received from its own counsel, and it has not been influenced by any representation or statement made by the other Party or its counsel not contained in this Agreement.

17.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, binding upon LG&E/KU and the ITO, notwithstanding that LG&E/KU and the ITO may not have executed the same counterpart.

The Parties have caused this Independent Transmission Organization Agreement to be executed by their duly authorized representatives as of the dates shown below.

**LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY**

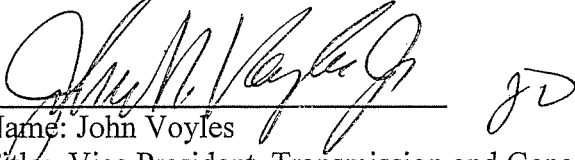
\_\_\_\_\_  
Name: John Voyles  
Title: Vice President, Transmission and Generation Services  
Date:

**SOUTHWEST POWER POOL, INC.**

*Slot* \_\_\_\_\_  
Name: Nicholas A. Brown  
Title: President and Chief Executive Officer  
Date:

The Parties have caused this Independent Transmission Organization Agreement to be executed by their duly authorized representatives as of the dates shown below.

**LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY**

  
Name: John Voyles  
Title: Vice President, Transmission and Generation Services  
Date:

**SOUTHWEST POWER POOL, INC.**

\_\_\_\_\_  
Name: Nicholas A. Brown  
Title: President and Chief Executive Officer  
Date: