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Rocco D'Ascenzo
Associate General Counsel

VIA OVERNIGHT DELIVERY

November 16, 2011

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: ***Case No. 2011-_____***
The Application of Duke Energy Kentucky, Inc. Regarding the Acquisition of Generation Step-Up Transformers and for a Declaratory Order that it is an Ordinary Extension in the Usual Course of Business

Dear Mr. Derouen:

Enclosed please find an original and twelve copies of *The Application of Duke Energy Kentucky, Inc. Regarding the Acquisition of Generation Step-Up Transformers and for a Declaratory Order that it is an Ordinary Extension in the Usual Course of Business* for filing in the above referenced matter.

Please date-stamp the two copies of the letter and the filing and return to me in the enclosed envelope.

Sincerely,

Rocco D'Ascenzo

cc: Larry Cook

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

In The Matter of:

The Application of Duke Energy Kentucky, Inc.	)	
Regarding the Acquisition	)	Case No. 2011-_____
Of Generation Step-Up Transformers	)	
and for a Declaratory Order that it	)	
is an Ordinary Extension in the	)	
Usual Course of Business	)	

APPLICATION OF DUKE ENERGY KENTUCKY, INC. REGARDING THE ACQUISITION OF GENERATION STEP-UP TRANSFORMERS AND FOR A DECLARATORY ORDER THAT IT IS AN ORDINARY EXTENSION IN THE USUAL COURSE OF BUSINESS

Now comes Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), pursuant to KRS 278.020 and 807 KAR 5:001 Section 8, and hereby respectfully requests the Kentucky Public Service Commission (Commission) to issue an Order declaring that the acquisition of five generation step-up transformers (GSUs) connected to Duke Energy Kentucky's three generating stations, East Bend, Woodsdale, and Miami Fort Unit 6 (collectively the Stations) constitutes an ordinary extension of the Company's existing system in the usual course of business. In the alternative, Duke Energy Kentucky requests that the Commission grant a certificate of public convenience and necessity (CPCN) for the acquisition of the GSUs used at the Stations.

On or about January 1, 2006, Duke Energy Kentucky completed the acquisition of the Stations from Duke Energy Ohio, Inc. (Duke Energy Ohio). At the time of that acquisition, only the actual generating facilities were transferred to Duke Energy

Kentucky. Duke Energy Ohio retained ownership of all facilities at those stations considered to be transmission, including the GSUs. Currently, the GSUs are owned and operated by Duke Energy Ohio on behalf of Duke Energy Kentucky pursuant to the terms of a Facilities Operation Agreement (the Agreement).[1] According to the terms of the Agreement, Duke Energy Ohio provides the necessary step-up voltage services to Duke Energy Kentucky at the Stations, using the GSUs. Duke Energy Kentucky pays a monthly fee for the services and is also responsible for any additions, modifications or replacement costs that may be required. Significantly, the GSUs at issue are used solely to transform the electric power originating at the Stations to transmission-level voltage for ultimate delivery to Duke Energy Kentucky's customers.

Duke Energy Kentucky now wishes to acquire the GSUs and take over the operation, maintenance and repair responsibilities for those facilities. The transfer is in the best interests of Duke Energy Kentucky and its customers. These GSUs are only used to serve Duke Energy Kentucky Stations. Consolidating the ownership of the Stations and the GSUs within Duke Energy Kentucky reduces administrative costs, and simplifies accounting for the facilities by eliminating the need for inter-company charges for the costs of ownership, operation, and maintenance of the GSUs under the Agreement.

Transferring ownership of the GSUs will result in Duke Energy Kentucky being solely responsible for the ongoing maintenance and operation of said facilities, which is consistent with the Company's obligation to provide its customers with safe, reliable and economic utility service. Further, upon such a transfer to the Company, ongoing maintenance and operation would be without regard to any divestitures or acquisitions

[1] Attachment 1.

undertaken by affiliates.[2]

A similar application requesting approval to transfer the GSUs is being filed with the Federal Energy Regulatory Commission (FERC) pursuant to Section 203 of the Federal Power Act.[3]

Introduction

1. Duke Energy Kentucky is a Kentucky corporation with its principal office and principal place of business at 139 East Fourth Street Cincinnati, Ohio, 45202. The Company's local office in Kentucky is Duke Energy Envision Center, 4580 Olympic Boulevard Erlanger, Kentucky 41018.

2. Duke Energy Kentucky is a utility engaged in the gas and electric business. Duke Energy Kentucky purchases, sells, stores and transports natural gas in Boone, Campbell, Gallatin, Grant, Kenton and Pendleton Counties, Kentucky. Duke Energy Kentucky also generates electricity, which it distributes and sells in Boone, Campbell, Grant, Kenton and Pendleton Counties.

3. A copy of Duke Energy Kentucky's Articles of Incorporation is on file with this Commission in Case Number 2009-00202 and is hereby incorporated herein by reference.

Background

4. On or about December 5, 2003, in Case No. 2003-00252, the Commission approved Duke Energy Kentucky's acquisition of three generating stations East Bend, Miami Fort Unit 6 and Woodsdale, from Duke Energy Ohio. Effective January 1, 2006,

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[2] *See e.g.* *In re: Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer*, Case No. 11-3549-EL-SSO et al., (Stipulation)(October 24, 2011); In a settlement resolving its standard service offer for retail generation service, Duke Energy Ohio committed to transfer ownership of its legacy generation fleet to an affiliate by December 31, 2014. This stipulation is pending approval by the Public Utilities Commission of Ohio.

[3] Attachment 2.

Duke Energy Kentucky completed the acquisition of these Stations.

5. The Woodsdale station, located in Butler County Ohio, consists of six combustion turbine generators that operate using natural gas or propane. Woodsdale has a closed loop cooling system and special features to reduce nitrogen oxide emissions. The Woodsdale station is served by three 240 MVA step-up transformer banks.

6. The East Bend Generating station, located in Rabbit Hash Kentucky, consists of a single unit coal-fired generator. East Bend is co-owned by the Dayton Power and Light Company. The East Bend station is served by a single 700 MVA step-up transformer bank.

7. Miami Fort Unit 6, located in North Bend, Ohio, is a single unit coal-fired generator. Duke Energy Ohio currently owns and operates the other units at the station. Miami Fort Unit 6 is served by a single 180 MVA transformer bank.

8. At the time the Stations were transferred, Duke Energy Kentucky only acquired the Stations themselves. Duke Energy Ohio retained ownership of the bulk transmission system connected to the Station, including the five GSU banks that provide the step-up transformation from the generators to the bulk transmission system.

9. Duke Energy Kentucky wishes to acquire ownership of these GSUs so that it may terminate the Agreement and take responsibility for the maintenance and operation of these GSUs.

10. Duke Energy Kentucky and its parent, Duke Energy Ohio must receive approval from the Federal Energy Regulatory Commission (FERC) to accomplish this transfer of the GSUs. The Companies recently filed a joint application pursuant to Section 203 of the Federal Power Act with the FERC.

Request for Declaratory Order that the GSU acquisition is an Ordinary Extension of an Existing System in the Ordinary Course

11. Duke Energy Kentucky states that the GSU acquisition represents an ordinary extension of existing systems in the usual course of business and does not require a CPCN pursuant to KRS 278.020 and 807 KAR 5:001 Section 9(3).

12. KRS 278.020(1) provides an exemption from the requirement of a CPCN for the construction of new facilities for furnishing regulated utility services to the public, if such new facilities are ordinary extensions of existing systems in the usual course of business. As defined by 807 KAR 5:001 Section 9 (3), such ordinary extensions must not "create wasteful duplication of plant, equipment, property, or facilities," must not "conflict with the existing certificates or service of other utilities operating in the area...," and must "not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers." Duke Energy Kentucky submits that this transaction constitutes an ordinary extension of an existing system in the usual course of business because:

a. There is no actual construction or extension of a system involved in the transaction. The transaction is merely an acquisition of existing facilitates that are already used and useful in serving Duke Energy Kentucky's customers. The transaction merely changes the line of demarcation for purposes of ownership for these facilities.

b. The GSUs will not represent a wasteful duplication of plant, equipment, property, or facilities because the transaction involves facilities that are already in place and used to serve Duke Energy

Kentucky's customers. Duke Energy Kentucky will acquire the ownership of these facilities and take over the operation, maintenance, repair, and replacement responsibilities of these facilities, thereby eliminating the need for the affiliate transaction where Duke Energy Ohio currently provides this service.

c. The acquisition of the GSUs will not require an investment sufficient to materially affect Duke Energy Kentucky's financial condition because the GSUs for Woodsdale and Miami Fort Unit 6 will be transferred at the net book value as of the date of the closing and the East Bend GSU, which has reached the end of its useful life, will be transferred at its salvage value. In sum, as of September 30, 2011, the total net book value of the Woodsdale and Miami Fort Unit 6 GSUs is $7,828,001. The salvage value of the East Bend GSU is $270,000 based on an independent third party evaluation. At the time of closing, the net book value of the Woodsdale and Miami Fort Unit 6 GSUs will be lower than the September 30th value. The transfer of the GSUs at net book value/salvage value is consistent with KRS 278.2207(b), which requires services and products provided to the utility by an affiliate shall be priced at the affiliate's fully distributed cost but in no event greater than market...[4] The original cost for the GSUs is $14,627,898.

d. In addition, the acquisition of the GSUs will not compete with or conflict with the existing certificates or services of any other

[4] KRS 278.2207

jurisdictional utilities in the area. The GSUs are located on land owned by Duke Energy Kentucky and in close proximity to the Stations. Duke Energy Kentucky will acquire control over the GSUs, thereby eliminating the need for its affiliate Duke Energy Ohio to provide and charge a fee for these services.

13. The GSU transfer will allow Duke Energy Kentucky to continue to provide stable and reasonably priced retail electric service to its customers by eliminating the need to continue to pay monthly fees to Duke Energy Ohio for the step-up transmission service necessary to serve Duke Energy Kentucky's customers. Under the terms of the Agreement, Duke Energy Kentucky pays Duke Energy Ohio a monthly fee of $161,148 or just under $2 million per year for the step-up transformation service. In addition Duke Energy Kentucky is responsible for any replacement costs associated with the GSUs. Although once the transfer is complete, Duke Energy Kentucky will continue to rely upon Duke Energy Ohio's bulk transmission system to deliver power to its Kentucky load, Duke Energy Kentucky will provide its own step-up transformation and will no longer be obligated to pay the monthly fee. Based upon recent market inquiries, the costs of Duke Energy Kentucky acquiring step-up transformers in a similar condition for Woodsdale and Miami Fort Unit 6, which include installation and transportation costs, is $11,430,000. Because the East Bend GSU has reached the end of its useful life, the companies have agreed to transfer the GSU at salvage value as discussed above.

14. The GSUs will be owned and operated by Duke Energy Kentucky, thereby eliminating the monthly costs of the Agreement. Duke Energy Kentucky already has the personnel and expertise in place to maintain and operate the GSUs. The acquisition of

the GSUs is a more economic solution than continuing the terms of the Agreement, which would require Duke Energy Kentucky to bear responsibility for all replacement costs of the GSUs as well as continuing to pay a monthly operation fee.

15. The original (fully loaded) cost of the GSUs to be transferred to Duke Energy Kentucky transfer is approximately $14,627,898. Duke Energy Kentucky will have fully benefitted from the elimination of the monthly fee in just over four years once the Agreement is terminated.[5] As of September 30, 2011, the net book value of the Miami Fort Unit 6 GSU is $53,503 and the net book value of the three Woodsdale GSU banks is $7,774,498.[6] The acquisition of the East Bend GSU at salvage value is approximately $270,000. This GSU has reached the end of its useful life and for reliability purposes, is in need of replacement. The acquisition of the GSU at East Bend at scrap value is a benefit to Duke Energy Kentucky in that it allows the Company to acquire a piece of equipment at a very reasonable price, that will serve as an emergency spare step-up transformer going forward. The cost of replacement of the GSU at Eastbend with a new step-up transformer is approximately $6,000,000. Duke Energy Kentucky will procure the replacement step-up transformer at its own cost and will maintain the new transformer once the Agreement is terminated. Pursuant to the terms of the Agreement, Duke Energy Kentucky is responsible for the replacement costs of the East Bend GSU regardless of the transfer of the GSU ownership. Terminating the Agreement allows Duke Energy Kentucky to be responsible to maintain the GSU going forward.

[5] The value associated with the GSU ownership and/or the termination of the Agreement will be reflected in the Company's next base rate case. In settlement of Case No., 2011-124, the Company has committed to a two year base rate case stay out.

[6] The original cost of the Miami Fort 6 GSU is $884,615 and the original cost for the Woodsdale units is $10,592,322.

16. Attachment 3 is a copy of the Asset Transfer Agreement between Duke Energy Ohio and Duke Energy Kentucky.

Alternative Request for Certificate of Public Convenience and Necessity

17. In the alternative, if the Commission finds that the GSU acquisition requires a CPCN, Duke Energy Kentucky respectfully requests this Commission grant such a certificate.

18. 807 KAR 5:001, Section 9 sets forth the requirements to receive a CPCN.

a. In accordance with Section 9(2)(a), the application herein describes the facts relied upon to show the GSUs are required by public convenience or necessity in that the GSUs will allow Duke Energy Kentucky to continue to provide reasonable electric service to customers by not having to continue to rely upon its affiliate Duke Energy Ohio for those services. The transfer of the GSU facilities will ultimately result in a lower cost for Duke Energy Kentucky who would otherwise continue to pay the monthly service fee under the Agreement as well as any necessary replacement costs. The acquisition will eliminate the need for internal accounting adjustment associated with the affiliate transactions for the step-up transformation service Duke Energy Ohio provides Duke Energy Kentucky so it may continue to serve its customers.

b. In accordance with Section 9(2)(b), the Company has previously filed with the Commission the applicable franchises from the proper public authorities.

c. In accordance with Section 9(2)(c) and (d), the GSUs are located at the sites of the three generating stations owned by Duke Energy Kentucky, namely East Bend, Miami Fort Unit 6, and the Woodsdale station. The East Bend station is located in Rabbit Hash, Kentucky and is interconnected with the Duke Energy Ohio bulk transmission system through a single step-up transformer. Miami Fort Unit 6 is located in North Bend, Ohio and is interconnected to the Duke Energy Ohio bulk transmission system through a single step-up transformer. The Woodsdale generating station is located in Butler County, Ohio and is connected to the Duke Energy Ohio bulk transmission system through three GSU banks. The GSU acquisition will not have any competitive impact on any other public utilities or corporations. As this acquisition involves assets that are already located upon the respective campuses of the Company's three generating stations rather than new construction, there are no maps to be submitted.

d. In accordance with Section 9(2)(e), the Company states that it proposes to finance the GSU acquisition through continuing operations and debt instruments, as necessary. The transfer will occur through an accounting entry and immediately upon completion of the transfer and upon receiving all necessary regulatory approvals, Duke Energy Kentucky and Duke Energy Ohio will terminate the Agreement.

e. In accordance with Section 9(2)(f), the total estimated cost of the acquisition and operation of all GSUs is approximately $8,098,001. The replacement of the East Bend GSU is estimated to be approximately $6,000,000. The acquisition will allow Duke Energy Kentucky to cease paying the $161,148 monthly service fee under the Agreement. The termination of the Agreement eliminates an annual expense of nearly $2 million.

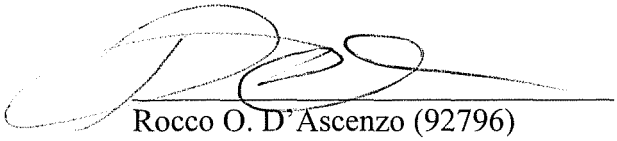
Requested Relief

19. Duke Energy Kentucky respectfully requests that the Commission grant the relief requested herein expeditiously.

WHEREFORE, Duke Energy Kentucky respectfully requests that the Commission issue an Order declaring that the acquisition of the GSUs described herein results in an ordinary extension in the usual course of business. In the alternative, Duke Energy Kentucky respectfully requests the Commission issue an Order granting the Company a certificate of public convenience and necessity for the acquisition of the GSUs.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Application of Duke Energy Kentucky, Inc. has been served via overnight mail to the following party on this _____ day of November 2011:

Rocco O. D'Ascenzo

Hon. Larry Cook
Office of the Attorney General
Utility Intervention and Rate Division
1024 Capital Center Drive
Frankfort, Kentucky 40601

The Cincinnati Gas & Electric Company
Rate Schedule FERC No. 60

Original Sheet No. 1

FACILITIES OPERATION AGREEMENT

Between

THE CINCINNATI GAS & ELECTRIC COMPANY

and

THE UNION LIGHT, HEAT AND POWER COMPANY

Dated September 27, 2004

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
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February 23, 2006

ER06-548-001

FILED
OFFICE OF THE
SECRETARY
2006 FEB 23 A 11:31
FEDERAL ENERGY
REGULATORY COMMISSION

Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: The Cincinnati Gas & Electric Company, ~~ER04-1249-~~

Dear Secretary Salas:

On January 25, 2006, The Cincinnati Gas & Electric Company ("CG&E") submitted for filing an amended Facilities Operation Agreement ("Agreement") between CG&E and The Union Light, Heat and Power Company ("ULH&P"). It has come to our attention that this Agreement was inadvertently submitted as Rate Schedule No. 58. This designation, however, was already given to the Joint Transmission System Planning and Operating Agreement between CG&E and PSI Energy, Inc.[1] Therefore, in order to correct this inadvertent error, CG&E is resubmitting the Agreement as Rate Schedule No. 60. Accordingly, a clean copy and a blacklined copy of the Agreement are attached.

If you have any questions regarding this filing, please contact the undersigned.

Respectfully submitted,

Denise M. Buffington

Counsel for The Cincinnati Gas & Electric Co.

Enclosures

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[1] *See Cinergy Servs., Inc.*, 98 FERC ¶ 61,306 (2002).

FACILITIES OPERATION AGREEMENT

Between

THE CINCINNATI GAS & ELECTRIC COMPANY

and

THE UNION LIGHT, HEAT AND POWER COMPANY

Dated September 27, 2004

FACILITIES OPERATION AGREEMENT

Between

THE CINCINNATI GAS & ELECTRIC COMPANY

and

THE UNION LIGHT, HEAT AND POWER COMPANY

Dated September 27, 2004

THIS FACILITIES OPERATION AGREEMENT is dated this 27th day of September, 2004 by and between The Cincinnati Gas & Electric Company, an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio ("CG&E") and The Union Light, Heat and Power Company, a Kentucky corporation with offices at 139 East Fourth Street, Cincinnati, Ohio ("ULH&P) (each a "Party" and collectively the "Parties").

WITNESSETH:

WHEREAS, ULH&P desires to acquire CG&E's ownership interest in the East Bend Generating Station located in Rabbit Hash, Kentucky, Miami Fort Unit 6 electric generating facility located in North Bend, Ohio, and the Woodsdale Generating Station located in Butler County, Ohio (collectively, the "Plants") from CG&E; and

WHEREAS, CG&E desires to transfer its ownership interest in the Plants to ULH&P; and

WHEREAS, CG&E owns generation step-up transformers connecting the Plants (as

defined in Article 2 of this Agreement and collectively referred to hereinafter as the "CG&E Facilities") to the Transmission System; and

WHEREAS, ULH&P desires to utilize the CG&E Facilities to step up power from the Plants to the appropriate voltage level of the interconnected Transmission System; and

WHEREAS, CG&E's costs of owning, operating and maintaining the CG&E Facilities are not included in the rates assessed under the OATT.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein set forth, CG&E and ULH&P agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "Agreement" means this Facility Operations Agreement, including all exhibits attached hereto and any amendments thereto.

1.2 "CG&E" has the meaning given in the recitals to this Agreement, and includes CG&E's permitted successors and assigns.

1.3 "CG&E Facilities" means those facilities described as such in Article 2 of this Agreement.

1.4 "East Bend" shall mean the East Bend Generating Station located in Rabbit Hash, Kentucky.

1.5 "ECAR" means the East Central Area Reliability Council, or any successor organization.

1.6 "Effective Date" means the date of closing of the Transaction.

1.7 "Emergency" has the meaning customarily attributed to it in the electric utility

industry in the United States, including, without limitation, any condition on any of the Plants, CG&E Facilities, the Transmission System or the transmission system of other utilities which is likely to result in imminent significant disruption to service to consumers or is imminently likely to endanger life or property.

1.8 "Environmental Laws" means all federal, state, and local laws (including common laws), regulations, rules, ordinances, codes, decrees, judgments, binding directives, or judicial or administrative orders relating to the protection, preservation or restoration of human health, the environment, or natural resources, including, without limitation, laws relating to the Release, or threatened Release, of Hazardous Substances into any media (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use treatment, storage, Release, transport, or handling of Hazardous Substances.

1.9 "Event" has the meaning given in Article 26.3 of this Agreement.

1.10 "FERC" means the Federal Energy Regulatory Commission or any successor agency.

1.11 "Force Majeure" has the meaning set forth in Article 11 of this Agreement.

1.12 "Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the United States during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to

the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, method, or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, the Rules and Procedures.

1.13 "GSUs" means generation step-up transformers used to increase the voltage from the Plants to the compatible voltage of the interconnected Transmission System.

1.14 "Hazardous Substances" means:

(A) any petrochemical or petroleum products, oil, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid which may contain levels of polychlorinated biphenyls;

(B) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," or "pollutants," or words of similar meaning and regulatory effect; or

(C) any other chemical, material, or substance, exposure to which is prohibited, limited or regulated by applicable Environmental Laws.

1.15 "Miami Fort 6" means the Miami Fort Unit 6 electric generating facility located in North Bend, Ohio.

1.16 "MISO" means the Midwest Independent Transmission System Operator, Inc. or any successor organization.

1.17 "Monthly Fee" means the monthly charge for service under this Agreement, as defined in Article 3.2 of this Agreement.

1.18 "NERC" means the North American Electric Reliability Council or any successor organization.

1.19 "OATT" means the applicable open access transmission tariff, as filed with the FERC and as it may be amended from time to time, including any successor tariff, under which the applicable open access transmission service over the Transmission System is provided.

1.20 "Parties" means collectively, CG&E and ULH&P, and their permitted successors and assigns.

1.21 "Party" means either CG&E or ULH&P, and their permitted successors and assigns.

1.22 "Plants" has the meaning given in the recitals to this Agreement.

1.23 "PSI Energy" means PSI Energy, Inc. and its permitted successors and assigns.

1.24 "RTO" means the applicable regional transmission operator as certified and approved by FERC.

1.25 "Release" means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, dump, or allow to escape into or through the environment.

1.26 "Rules and Procedures" means the applicable rules and procedures that CG&E or ULH&P must follow and abide by and which shall govern the operational conditions of the Transmission System, including but not limited to such applicable criteria, rules, procedures and standards of MISO, the RTO, NERC, ECAR, and the National Electrical Safety Code, and any successor entity or organization, as they may be amended from time to time, including those of any entity or successor organization.

1.27 "Transaction" means ULH&P's acquisition of CG&E's ownership interest in the

Plants.

1.28 "Transmission System" means the transmission facilities owned, operated or controlled by PSI Energy, or CG&E, including conductors, circuit breakers, switches, transformers and other associated equipment used to control the transfer of energy from one place to another, and shall include any modifications, additions, or upgrades made to those facilities.

1.29 "ULH&P" has the meaning given in the recitals to this Agreement, and includes ULH&P's permitted successors and assigns.

1.30 "Woodsdale" means the Woodsdale Generating Station located in Butler County, Ohio.

ARTICLE 2

FACILITIES OPERATION AND MAINTENANCE

2.1 CG&E shall own, operate and maintain in conformance with Good Utility Practice, and permit ULH&P to utilize for the purpose for which they were utilized by CG&E on the date preceding the Effective Date, at ULH&P's expense as set forth in Article 3 hereof, the following described CG&E Facilities (transformer ratings specified as of Effective Date); viz.:

2.1.1 East Bend: the 700 MVA step-up transformer bank (TB) 2 located in or near Rabbit Hash, Kentucky and identified as such in Exhibit 1 of this Agreement;

2.1.2 Miami Fort 6: the 180 MVA step-up transformer bank (TB) 6 located in or

near North Bend Ohio as identified as such in Exhibit 2 of this Agreement;

2.1.3 Woodsdale: the three 240 MVA step-up transformer banks (TB) 39, 40, and 41 located in Butler County, Ohio, as identified in Exhibit 3 of this Agreement.

2.2 *Curtailment or Interruption of Operation of CG&E Facilities and Disconnection* of the Plants and CG&E Facilities.

2.2.1 (A)CG&E may not curtail or interrupt ULH&P's use of any of the CG&E Facilities, disconnect any of the Plants from the CG&E Facilities, or disconnect any of the CG&E Facilities from the Transmission System except when such curtailment, interruption or disconnection is necessary under Good Utility Practice, is required under the OATT, or is otherwise required by MISO or the RTO.

(B) With respect to any curtailment, interruption or disconnection permitted under Article 2.2.1(A) of this Agreement:

(1) CG&E agrees that:

(a) the curtailment, interruption or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice, as required under the OATT, or is otherwise required by MISO or the RTO;

(b) any such curtailment, interruption or disconnection shall be made on a not unduly discriminatory basis with respect to other generators interconnected to the Transmission System;

(c) when the curtailment, interruption or disconnection must be made under circumstances which do not allow for advance notice, CG&E will notify ULH&P or its agent as soon as practicable of the reasons for the curtailment, interruption or disconnection and, if known, its expected duration consistent with FERC Order No. 2004 and applicable standards of conduct thereafter; and

(d) when the curtailment, interruption or disconnection can be scheduled, CG&E will consult in advance with ULH&P regarding the timing of such scheduling, and notify ULH&P in advance of the expected duration of the curtailment, interruption or disconnection consistent with FERC Order No. 2004 and any applicable standards of conduct thereafter. CG&E agrees to use commercially reasonable efforts to schedule the curtailment, interruption or disconnection to coincide with the scheduled outages of the Plants.

(2) The Parties agree to cooperate and coordinate with each other to the extent necessary in order to restore the CG&E Facilities to their normal operating state, consistent with system conditions and Good Utility Practice.

2.3 Notwithstanding any other provision of this Agreement, this Agreement shall not be interpreted to or construed to, nor shall this Agreement, confer, transfer, convey or otherwise provide ULH&P an ownership, leasehold or any other property interest in the CG&E Facilities.

2.4 Consistent with the Rules and Procedures and applicable standards of conduct, and prior to development thereof, CG&E shall consult with ULH&P to develop a non-binding maintenance schedule in accordance with which CG&E shall perform scheduled maintenance on the CG&E Facilities. CG&E shall use commercially reasonable efforts to coordinate the scheduled maintenance of the CG&E Facilities with the scheduled outages of the Plants.

2.5 Unless otherwise agreed to by the Parties, or otherwise required by law or regulation, or Good Utility Practice, CG&E shall not be required at any time to upgrade or otherwise modify the CG&E Facilities; provided however, at ULH&P's sole expense, CG&E agrees to make any additions, modification, or replacements to the CG&E Facilities requested by ULH&P so long as such additions, modifications, or replacements are consistent with Good Utility Practice.

2.6 Inspections

2.6.1 Right to Inspect. Each Party, at its own cost and expense, has the right, but not the obligation, to inspect or observe the operation and maintenance activities, equipment tests, installation, construction, or other modifications to the other Party's equipment, systems or facilities which might reasonably be expected to affect the observing Party's operations. The Party desiring to inspect or observe must provide the other Party advance written notice of such inspection or observation.

2.6.2 Deficiencies and Defects. If the observing Party observes any deficiencies or defects which might reasonably be expected to adversely affect its operations, it may notify the other Party and said Party will be responsible

for making any corrections necessitated by Good Utility Practice. Notwithstanding the foregoing, the observing Party shall have no liability whatsoever for failure to give such notice, it being agreed that the Party owning such equipment, systems or facilities will be fully responsible and liable for all such activities, tests, installation, construction or modification.

2.7 Information and Recordkeeping Obligations and Audit Rights

2.7.1 Information Obligations

(A) Consistent with FERC Order No. 2004 and any applicable standards of conduct, either Party may request that the other Party, and that other Party will promptly provide, at the requesting Party's sole cost and expense, such information and data that the requesting Party may reasonably require to: (1) verify costs relating to, in CG&E's case, the Plants, and in ULH&P's case, the CG&E Facilities, including, but not limited to, costs relating to the procurement, operation, maintenance, construction, and installation of any modifications thereto; (2) carry out its responsibilities and enforce its rights under this Agreement; and (3) satisfy any required reporting obligations it may have to any organization issuing criteria, rules, procedures or standards included in the Rules and Procedures, or any agency to which it is required to report.

2.7.2 Recordkeeping Obligations

(A) Transaction Records. Each Party shall keep such records as may be needed to substantiate performance of its obligations under this Agreement.

Neither Party shall make use of the records or summary of transactions of the other Party without the express written consent of the other Party, unless such use is permitted by this Agreement or required by law.

(B) Record Retention. Each Party agrees to retain all records under Article 2.7.2(A) normally kept in the course of business and consistent with Good Utility Practice for a minimum of three (3) years from the date of such record.

2.7.3 Audit Rights. Either Party has the right to audit the other Party's accounts and records pertaining to this Agreement, within three (3) years following the calendar year in which such account entry or record is made, at that other Party's offices where such accounts and records are maintained, provided proper notice is given prior to any audit and such audit occurs during normal business hours, and provided further that the audit will be limited to those portions of such accounts and records that relate to services provided under this Agreement for that calendar year. All actual and reasonable non-labor related costs incurred by either Party in connection with an audit shall be borne by the Party undertaking the audit.

2.8 Environmental Compliance and Procedures. The Parties agree to comply with: (A) all applicable Environmental Laws which affect the ability of the Parties to meet their obligations under this Agreement; and (B) all local notification and response procedures required for all applicable environmental and safety manners which affect the ability the Parties to meet their obligations under this Agreement.

ARTICLE 3.

FEES, BILLING AND PAYMENT

3.1 Cooperation. Each Party agrees to cooperate with the other Party in attempting to minimize costs under this Agreement. The Parties may agree to other billing/invoicing arrangements, in recognition of the fact that the Parties are affiliates and share an accounting system, and such arrangement shall not constitute an amendment to this Agreement.

3.2 Monthly Fee. During the Term of this Agreement, ULH&P shall pay to CG&E a monthly fee of $161,148 ("Monthly Fee") for use of the CG&E Facilities, such Monthly Fee being intended to enable CG&E to recover its full costs of owning, operating and maintaining the CG&E Facilities.

3.3 Billing Procedures.

3.3.1 Monthly Invoices. With respect to any costs and expenses for which a Party is entitled to be reimbursed under this Agreement, the Party (the "invoicing Party") must submit an invoice to the other Party at the start of each calendar month for the costs for which it is entitled to be reimbursed for the previous period under this Agreement. Each invoice must detail the work, equipment, or services for which the costs were incurred. The invoicing Party shall provide any supporting documentation requested during the course of an audit.

3.3.2 Payment. Payment of invoiced amounts will be due and payable within thirty (30) days of receipt of the invoice or such other time as the Parties mutually agree. If the payment falls on a Saturday, Sunday or federal or state legal holiday, payment shall be made on the next business day. All payments will be made in immediately available funds payable to the invoicing Party or by wire transfer to a bank named by the invoicing Party. If any undisputed portion of any invoice remains unpaid thirty (30) days after the

receipt of the invoice or such other time as the Parties mutually agree upon, the invoicing Party will apply to the unpaid balance, and the other Party will pay, a finance charge at the rate of one and one half percent (1.5%) per month but in no event more than the maximum allowed by the law governing the Agreement.

3.3.3 Disputes. If a Party disputes any portion of an invoice, that Party shall make payment of all amounts not in dispute and notify the invoicing Party in writing of any such dispute and the reasons therefor. No invoice may be disputed after such time as a Party's audit rights set forth in Article 2.7.3 of this Agreement have expired. Any billing disputes must be resolved in accordance with Article 8 of this Agreement. In the event of a billing dispute, each Party agrees to continue to perform its duties and obligations under this Agreement as long as the other Party continues to make all payments not in dispute and adheres to the dispute resolution procedures set forth in Article 8 of this Agreement, pending resolution of such dispute. If a Party fails to meet the requirements set forth in the prior sentence and fails to correct or cure such failure within thirty (30) days after receiving written notice from the other Party, then the other Party may, at its option, proceed in accordance with Article 6.5 of this Agreement. Upon the resolution of any billing dispute, any amounts that must be paid to a Party as a result shall be promptly paid, with a finance charge assessed from the date the payment was due to the date payment is made at the rate of one and one half percent (1.5%) per month but in no event more than the maximum allowed by the law governing this Agreement.

3.3.4 Payment Not a Waiver. Payment of invoices by a Party will not relieve that Party from any responsibilities or obligations it has under this Agreement, nor will it

constitute a waiver of any claims that Party may have under this Agreement.

3.4 Limitations on ULH&P's Cost Responsibility Obligations. To the extent that the CG&E Facilities' costs for which ULH&P is responsible for under this Agreement are now or at any time in the future to be recovered by CG&E pursuant to the OATT, any other applicable tariff, or from a party other than ULH&P, ULH&P will not be responsible for such costs under this Agreement. If ULH&P has already paid CG&E for such costs, CG&E agrees to refund to ULH&P such amounts no later than thirty (30) days after CG&E rolls such costs in under the OATT, or any other applicable CG&E tariff, or is otherwise reimbursed for such costs by a party other than ULH&P. CG&E agrees to provide to ULH&P such documentation as ULH&P reasonably requires to determine the amounts of such refunds due to ULH&P.

ARTICLE 4.

CONFIDENTIALITY

4.1 General. Unless compelled to disclose by judicial or administrative process or other provisions of law or as otherwise provided for in this Agreement, any information provided by either Party to the other pursuant to this Agreement and either labeled "CONFIDENTIAL" or otherwise designed in writing as confidential will be utilized by the receiving Party solely in connection with the purposes of this Agreement and will not be disclosed by the receiving Party to any third party (or, in the case of CG&E, to any person engaged in the marketing or trading of electric power) other than as expressly contemplated herein and as necessary for the performance of such Party's obligations hereunder. Each Party will hold in confidence any and all such documents and information furnished by the other Party in connection with this Agreement. Notwithstanding the foregoing provisions of this Article 4.1, each Party may release or disclose

such information or documents if such disclosure is compelled by judicial or administrative process or other provisions of law, or to: (i) any organization issuing criteria, rules, procedures or standards included in the Rules and Procedures, to the extent consistent with Good Utility Practice; or (ii) the Party's employees, contractors, affiliates and agents (other than any such employees, contractors, affiliates or agents engaged in the marketing or trading of electric energy, capacity or ancillary services) on a need to know basis so long as the Party first advises them of the existence and content of such provisions.

4.2 Exempt Information and Documents. The Parties' confidentiality obligations set forth in Article 4.1 of this Agreement shall not apply to information or documents that are (A) generally available to the public other than as a result of disclosure by a Party (the "disclosing Party") to the other Party; (B) available to a Party on non-confidential basis prior to disclosure by the disclosing Party; or (C) available to a Party on a non-confidential basis from a source other than the disclosing Party, provided that the source is not known and, by reasonable effort, could not be known by the Party receiving such information or documents to be bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from transmitting the information to the Party receiving such information or documents by a contractual, legal or fiduciary obligation.

4.3 Notification. Each Party will promptly notify the other Party if it receives notice or otherwise concludes that the production of any information or documentation furnished by the disclosing Party and subject to Article 4.1 of this Agreement is being sought under any provision of law, but the notifying Party shall have no obligation to oppose or object to any attempt to obtain such production. If the disclosing Party desires to object or oppose such production, it

must do so at its own expense.

4.4 Use of Information or Documentation. Each Party may utilize information or documentation furnished by the disclosing Party and subject to Article 4.1 of this Agreement in any proceeding under Article 8 of this Agreement or in an administrative agency or court of competent jurisdiction addressing any dispute arising under this Agreement, subject to a confidentiality agreement with all participants (including, if applicable, any arbitrator) or a protective order.

4.5 Remedies Regarding Confidentiality. The Parties agree that monetary damages by themselves will be inadequate to compensate a Party for the other Party's breach of its obligations under this Article 4. Each Party accordingly agrees that the other Party is entitled to equitable relief, by way of injunction or otherwise, if it breaches or threatens to breach its obligations under this Article 4.

ARTICLE 5.

DAMAGE TO EQUIPMENT, FACILITIES, AND PROPERTY

5.1 ULH&P's Responsibility. Except to the extent caused by CG&E's negligence, intentional misconduct or failure to act in a manner consistent with Good Utility Practice, ULH&P will be responsible for all physical damage to or destruction of property, equipment, or facilities owned by ULH&P or its affiliates other than CG&E regardless of who brings the claim and regardless of who caused the damage, and ULH&P will not seek recovery or reimbursement from CG&E for the damage.

5.2 CG&E's Responsibility. Except to the extent caused by ULH&P's negligence, intentional misconduct, or failure to act in a manner consistent with Good Utility Practice,

CG&E will be responsible for all physical damage to or destruction of property, equipment, or facilities owned by CG&E or its affiliates other than ULH&P regardless of who brings the claim and regardless of who caused the damage, and CG&E will not seek recovery or reimbursement from ULH&P for the damage.

5.3 Insurance. The obligations under this Article 5 are not limited in any way by any limitation on either Party's insurance, and each Party waives any subrogation which any of its insurers may have against the other Party.

ARTICLE 6.

TERM, TERMINATION, AND DEFAULT

6.1 Term. This Agreement shall be effective on the date first written above, subject to its approval or acceptance for filing by the FERC as provided for in Article 26 of this Agreement, and subject to the transfer of CG&E's interest in the Plants to ULH&P, and shall continue in effect for thirty (30) years, and, thereafter, for successive one year periods until either Party terminates the Agreement after providing to the other Party at least twelve months' advance written notice of its intent to terminate this Agreement. Notwithstanding the above, this Agreement may be terminated earlier if (A) the Parties mutually agree; (B) this Agreement is terminated earlier as provided for in this Agreement; or (C) ULH&P terminates the Agreement after providing CG&E at least sixty (60) days' advance written notice of intent to terminate this Agreement.

6.2 Effect of Expiration or Termination of Agreement on Liabilities and Obligations. Expiration or termination of this Agreement shall not relieve ULH&P or CG&E of any of its liabilities and obligations arising hereunder prior to the date expiration or termination becomes

effective.

6.3 Effectiveness of Certain Provisions After Expiration or Termination of Agreement. The applicable provisions of this Agreement will continue in effect after expiration or early termination hereof to the extent necessary to provide for final billings, billing adjustments and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect. These provisions include, without limitation, Article 9 ("Insurance"), Article 12 ("Indemnification"), and Article 20 ("Limitation of Liability") of this Agreement.

6.4 Default. A Party will be in default under this Agreement if, at any time:

(A) the Party fails to make any payment due the other Party in accordance with this Agreement, and does not make such payment to the other Party within thirty (30) days after receiving written notice from the other Party of such failure;

(B) (1)(a) the Party fails in any material respect to comply with, observe or perform any term or condition of this Agreement; (b) any representation or warranty made herein by the Party fails to be true and correct in all material respects; (c) the Party abandons its work or the facilities contemplated in this Agreement; or (d) the Party fails to provide to the other Party reasonable written assurance of its ability to perform fully and completely any of its material duties and responsibilities under this Agreement within thirty (30) days after receiving any reasonable request for such assurances from the other Party; and

(2)(a) the Party fails to correct or cure the situation within thirty (30) days after receiving written notice thereof from the other Party; or (b) excluding those events set forth in Articles 6.4(A) and 6.4(C), if the situation cannot be completely corrected or cured within such thirty day

period, the Party fails to either (i) commence diligent efforts to correct or cure the situation within such thirty day period or (ii) completely correct or cure the situation within sixty (60) days after receiving written notice thereof from the other Party; or

(C) (1) a receiver or liquidator or trustee of the Party or of any of its property is appointed by a court of competent jurisdiction, and such receiver, liquidator or trustee is not discharged within sixty (60) days;

(2) by decree of such court, the Party is adjudicated bankrupt or insolvent or any substantial part of its property is sequestered, and such decree continues undischarged and unstayed for a period of sixty (60) days after the entry thereof;

(3) a petition to declare bankruptcy or to reorganize the Party pursuant to any provision of any federal or state bankruptcy law now in effect or as may hereafter be amended (collectively, "Bankruptcy Laws") is filed against the Party and is not dismissed within sixty (60) days after such filing;

(4) the Party files a voluntary petition in bankruptcy under any provision of any Bankruptcy Law;

(5) the Party consents to the filing of any bankruptcy or reorganization petition against it under any Bankruptcy Law;

(6) the Party makes an assignment for the benefit of its creditors; or

(7) the Party consents to the appointment of a receiver, trustee or liquidator of the Party or all or any part of its property.

6.5 Remedies of Parties Upon Default. Subject to Article 8 of this Agreement, if a Party defaults under this Agreement in accordance with Article 6.4 of this Agreement, the other

Party may, at its option, (A) act to terminate this Agreement by providing written notice of termination to the defaulting Party, or (B) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants under this Agreement. Any termination sought under this Article 6.5 shall not take effect until FERC either authorizes any request by either Party seeking termination of this Agreement or accepts any written notice of termination.

6.6 Performance of Other Party's Obligations. If either Party (the "defaulting Party") fails to carry out its obligations under this Agreement and such failure could reasonably be expected to have a material adverse impact on the Transmission System, the CG&E Facilities, the ULH&P Facilities, the Plants, or the regional network, the other Party, following at least ten (10) days' advance written notice (except in cases of Emergencies, in which case only such notice as is reasonably practicable in the circumstances is required), may, but will not be obligated to, perform the obligations of the defaulting Party (including, without limitation, maintenance obligations), in which case the defaulting Party will, upon presentation of an invoice therefor, reimburse the other Party for all actual and reasonable costs and expenses incurred by it in performing said obligations of the defaulting Party (including, without limitation, costs associated with its employees and the costs of appraisers, engineers, environmental consultants and other experts retained by said Party in connection with performance of the defaulting Party's obligations), together with a finance charge on all such amounts of one and one half percent (1.5%) per month but in no event more than the maximum allowed by the law governing this Agreement.

6.7 Remedies Cumulative. Subject to Article 8 of this Agreement, no remedy

conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

ARTICLE 7.

REPRESENTATIONS

7.1 Representations of CG&E. CG&E represents and warrants the following:

7.1.1 CG&E is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio, and it has the requisite corporate power and authority to own its properties, and to carry on its business as now being conducted.

7.1.2 CG&E has the requisite corporate power and authority to execute and deliver this Agreement and to carry out the actions required of it by this Agreement. The execution and delivery of this Agreement and the actions it contemplates have been duly and validly authorized by CG&E, and no other corporate proceedings on the part of CG&E are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by CG&E and constitutes a legal, valid and binding agreement of CG&E enforceable against CG&E in accordance with its terms, subject to the acceptance of this Agreement by the FERC.

7.1.3 The CG&E Facilities are owned by CG&E, and operated or controlled by CG&E. It is further acknowledged that CG&E has the authorization to grant ULH&P use of the CG&E Facilities consistent with Good Utility Practice or will obtain, with the assistance of ULH&P,

such authorization as necessary prior to the transfer of the Plants to ULH&P.

7.1.4 CG&E has obtained or will use its reasonable best efforts to timely obtain all approvals of, and has given or will use its reasonable best efforts to give all notices to, any public authority that are required for CG&E to execute, deliver and perform its obligations under this Agreement.

7.1.5 To CG&E's knowledge, it is not in violation of any applicable law, statute, order, rule or regulation promulgated by, or judgment, decree, writ, injunction, or award rendered by, any federal, state, or local governmental court or agency which, individually or in the aggregate, would adversely affect such entity's entering into or performance of its obligations under this Agreement. Such entity's entering into and performance of its obligations under this Agreement will not give rise to any default under any agreement to which either such entity is a party.

7.1.6 CG&E will comply with all applicable laws, rules, regulations, codes, and standards of all federal, state, and local governmental agencies having jurisdiction over either such entity or the transactions under this Agreement and with respect to which failure to comply could reasonably be expected to have a material adverse effect on either Party's performance under this Agreement.

7.1.7 CG&E shall do such other and further acts and things, and shall execute and deliver such instruments and documents, as ULH&P may reasonably request from time to time in furtherance of the purposes of this Agreement.

7.2 Representations of ULH&P. ULH&P represents and warrants the following:

7.2.1 ULH&P is corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky, and ULH&P has the requisite corporate

power and authority to own its properties, and to carry on its business as now being conducted.

7.2.2 ULH&P has the requisite corporate power and authority to execute and deliver this Agreement and to carry out the actions required of it by this Agreement. The execution and delivery of this Agreement and the actions it contemplates have been duly and validly authorized by ULH&P, and no other corporate proceedings on the part of ULH&P are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by ULH&P and constitutes a legal, valid and binding agreement of ULH&P enforceable against it in accordance with its terms, subject to the acceptance of this Agreement by the FERC.

7.2.3 ULH&P has obtained or will obtain all approvals of, and has given or will give all notices to, any public authority that are required for ULH&P to execute, deliver and perform its obligations under this Agreement.

7.2.4 To ULH&P's knowledge, it is not in violation of any applicable law, statute, order, rule, or regulation promulgated by, or judgment, decree, writ, injunction, or award rendered by, any federal, state, or local governmental court or agency which, individually or in the aggregate, would adversely affect ULH&P's entering into or performance of its obligations under this Agreement. ULH&P's entering into and performance of its obligations under this Agreement will not give rise to any default under any agreement to which it is a party.

7.2.5 ULH&P will comply with all applicable laws, rules, regulations, codes, and standards of all federal, state, and local governmental agencies having jurisdiction over ULH&P or the transactions under this Agreement and with respect to which failure to comply could reasonably be expected to have a material adverse effect on either Party's performance under this

Agreement.

7.2.6 ULH&P shall do such other and further acts and things, and shall execute and deliver such instruments and documents, as CG&E may reasonably request from time to time in furtherance of the purposes of this Agreement.

7.3 Representations of Both Parties. The representations in Articles 7.1 and 7.2 of this Agreement shall continue in full force and effect for the term of this Agreement.

ARTICLE 8.

DISPUTE RESOLUTION

8.1 Actions Prior to Arbitration

8.1.1 Parties to Address First. Any dispute, disagreement, or claim arising out of or concerning this Agreement must first be addressed by the Parties.

8.1.2 Notice of Dispute. When a Party believes that there is such a dispute, disagreement or claim, that Party may initiate the dispute resolution procedures by giving the other Party written notice of the dispute, disagreement or claim.

8.1.3 Good Faith Negotiations; Applicability of Arbitration. Representatives of the Parties must attempt to negotiate in good faith to resolve such dispute, disagreement or claim within ten (10) days after notice of the dispute, disagreement or claim has been given. If such representatives are unable to satisfactorily resolve such dispute, disagreement or claim, they must refer the matter to senior representatives of each Party with the authority to settle the dispute, disagreement or claim, which such senior representatives shall meet at a mutually acceptable time and place to attempt to resolve the dispute, disagreement or claim. If the senior representatives have not resolved such dispute, disagreement or claim within twenty (20) days

after notice of the dispute, disagreement or claim has been given, then the Parties may, upon mutual agreement, submit such dispute, disagreement or claim (including the issue of whether such dispute, disagreement or claim is arbitrable) to binding arbitration.

8.2 Arbitration Procedures. Any arbitration shall be conducted by a single neutral arbitrator appointed by the Parties under the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") in effect at the time a notice of arbitration is made. The arbitrator shall be selected pursuant to the Arbitration Rules. The arbitrator must be knowledgeable in matters that are the subject of the dispute. The arbitrator shall conduct the arbitration in accordance with the Arbitration Rules in effect at the time arbitration is initiated under this Article 8; provided, however, that, in the event of a conflict between the Arbitration Rules and the terms and provisions of this Article 8, the terms and provisions of this Article 8 shall govern.

8.3 Authority of Arbitrator

8.3.1 No Authority to Modify Agreement. The arbitrator shall have the authority only to interpret and apply the terms and conditions of this Agreement and shall have no power to modify or change any such terms or conditions.

8.3.2 Compliance with Law. The arbitrator shall be required to follow any and all applicable federal, state, or local laws and regulations.

8.3.3 Remedies

(A) The arbitrator may not award punitive damages, multiple damages, or any other damages which are not measured by the prevailing Party's actual damages.

(B) Any award of damages must be determined, limited and controlled by the

limitation of damages provision of this Agreement.

(C) The arbitrator may, in his or her discretion, award pre award and post award interest on any damages awarded; provided, however that the rate of interest may not exceed a rate equal to the lower of one and one half percent (1.5%) per month or the maximum rate allowed by the law governing this Agreement.

8.4 Timing and Nature of Decision

8.4.1 Timing. Unless otherwise agreed upon by the Parties, the arbitrator must render a decision as quickly as practicable under the circumstances.

8.4.2 Binding on Parties; Challenges. The decision must be in writing and contain the reasons for the decision. The decision and award of the arbitrator shall be final and binding upon the Parties, their successors, and assigns; provided, however, that such decision and award may be challenged solely on the grounds that the conduct of the arbitrator, or the decision and award itself, violated the standards set forth in the Federal Arbitration Act. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

8.4.3 Filing With FERC. The decision must also be filed with FERC if it affects FERC jurisdictional rates, terms and conditions of service or facilities.

8.5 Location of Arbitration. Any arbitration conducted hereunder must be conducted in Indianapolis, Indiana, unless the Parties mutually agree upon another location.

8.6 Costs. Each Party shall be responsible for its own costs and expenses, including attorneys' fees, incurred during the arbitration and for fifty percent (50%) of the cost of the arbitrator.

8.7 Confidentiality. The existence, contents, or results of any arbitration proceeding

conducted under this Article 8 may not be disclosed without the prior written consent of both Parties; provided, however, that either Party may (A) make such disclosures as may be necessary to (1) satisfy regulatory obligations to any regulatory authority having jurisdiction or (2) seek or obtain from a court of competent jurisdiction judgment on, confirmation or vacation of an arbitration award; (B) inform its lenders, affiliates, auditors, and insurers, as necessary, under pledge of confidentiality; and (C) consult with experts as required in connection with the arbitration proceeding under pledge of confidentiality. If either Party seeks preliminary injunctive relief from any court to preserve the status quo or avoid irreparable harm pending arbitration, the Parties agree to use commercially reasonable efforts to keep the court proceedings confidential, to the maximum extent permitted by the law.

8.8 FERC Jurisdiction Over Certain Disputes

8.8.1 Nothing in this Agreement shall preclude, or be construed as precluding, either Party from filing a petition or complaint with the FERC with respect to any arbitrable claim over which the FERC has jurisdiction; provided, however, that neither Party may file a petition or claim at FERC with respect to an issue which has been submitted to binding arbitration pursuant to Article 8.1.3 of this Agreement.

8.8.2 If the FERC determines that it has no jurisdiction or declines to resolve all or a portion of a claim, that portion of the claim may be resolved through arbitration as provided for in this Article 8. Any decision, finding of fact, or order of the FERC shall be final and binding, subject to the judicial review provided for under the Federal Power Act.

8.8.3 The arbitrator shall have no authority to modify, and shall be conclusively bound by, any decision, finding of fact, or order of the FERC; provided, however, that, to the extent that

a decision, finding of fact or order of the FERC does not provide a final or complete remedy to the Party seeking relief, such Party may proceed to arbitration under this Article 8, subject to the FERC decision, finding of fact, or order.

8.9 Preliminary Injunctive Relief. Nothing in this Article 8 precludes, or is to be construed as precluding, either Party from resorting to a court of competent jurisdiction for the purpose of securing a temporary or preliminary injunction to preserve the status quo or avoid irreparable harm pending the resolution of a dispute pursuant to this Article 8.

ARTICLE 9.

INSURANCE

9.1 General. Each Party agrees to maintain, at its own cost and expense, in full force and effect throughout the term of this Agreement, the types of and minimum dollar amounts of insurance or self insurance coverage as would be carried by similar companies in similar circumstances.

9.2 Certificates of Insurance; Copies of Policies. Each Party agrees to provide the other Party with certificates of insurance evidencing the insurance coverage or self insurance as set forth in Article 9.1 of this Agreement. Each Party agrees to provide the other copies of all policies or evidence of self insurance upon request.

9.3 Waiver of Subrogation. Each Party waives any right to subrogation under its respective insurance policies for any liability each has agreed to assume under this Agreement. Evidence of this requirement shall be noted on all certificates of insurance.

9.4 Failure to Comply. Failure of either Party to comply with the above insurance

terms and conditions, or the complete or partial failure of an insurance carrier to fully protect and indemnify the other Party or its affiliates, or the inadequacy of the insurance shall not in any way lessen or affect the obligations or liabilities of each Party to the other.

ARTICLE 10.

NOTICES

10.1 General. Except for notices of occurrences requiring prompt attention, all notices required or permitted to be given under this Agreement must be in writing and delivered by (A) hand; (B) registered or certified first class mail, postage prepaid, return receipt requested; (C) facsimile transmission; or (D) a reputable overnight courier which provides evidence of delivery or refusal. All such notices shall be addressed as follows:

To CG&E: Vice President
Electric System Operations
Cinergy Services, Inc.
139 East Fourth Street
Cincinnati, OH 45202
Tel: 513 287 3455
Fax: 513 287 3812

To ULH&P: In the case of notices pertaining to curtailment, interruption or disconnection, notice will be provided to the manager of the respective affected Plant, as follows:

East Bend:
Plant Manager
East Bend Electric Generating Station
139 East Fourth Street, EG373
Cincinnati, OH 45202
Tel: 513 467 4811
Fax: 513 419 5676

Miami Fort 6:
Plant Manager
Miami Fort Electric Generating Station

139 East Fourth Street, EG376
Cincinnati, OH 45202
Tel: 513 467 4936
Fax: 513 467 4931

Woodsdale:

Manager, CT Fleet Portfolio
Woodsdale Electric Generating Station
139 East Fourth Street, EG379
Cincinnati, OH 45202
Tel: 513 467 5351
Fax: 513 467 5399

All other notices to ULH&P shall be provided to:

Vice President
Power Generation
139 East Fourth Street, EM402
Cincinnati, OH 45201
Tel: 513 287 3485
Fax: 513 287 2823

10.2 Changes. Either Party may change its address for notices or the person(s) to whom notices should be given by notice to the other Party in the manner provided above.

10.3 Emergencies. Notwithstanding Article 10.1 of this Agreement, any notice concerning a system Emergency or other occurrence requiring prompt attention may be made by telephone or in person, provided that such notice is confirmed in writing promptly thereafter.

10.4 Authority of Party Representatives. The representatives noted in Article 10.1 of this Agreement, or their designees (including points of contact), shall be authorized to act on behalf of the Parties, and their instructions, requests, and decisions will be binding upon the Parties as to all matters pertaining to this Agreement and the performance of the Parties hereunder. Only these representatives shall have the authority to commit funds or make binding

obligations on behalf of the Parties. The representatives shall be responsible for tracking work, costs, schedules and all other matters related to this Agreement, and for the performance of any third parties.

10.5 Points of Contact. Each Party representative noted in Article 10.1 of this Agreement shall designate a person to act as a twenty four (24) hour point of contact, which such person shall have knowledge and control of that Party's facilities. The point of contact shall be the day to day method of communicating any and all changes in operational status and operational issues and concerns relating to each Party's facilities.

ARTICLE 11.

FORCE MAJEURE

11.1 General. Neither Party shall be considered to be in default or breach of this Agreement or liable in damages or otherwise responsible to the other Party for any delay in or failure to carry out any of its obligations under this Agreement if, and only to the extent that, the Party is unable to perform or is prevented from performing by an event of force majeure. Notwithstanding the foregoing sentence, neither Party may claim force majeure for any delay or failure to perform or carry out any provision of this Agreement to the extent that such Party has been negligent or engaged in intentional misconduct and such negligence or misconduct contributed to that Party's delay or failure to perform or carry out its duties and obligations under this Agreement. A Party's exemption from liability will extend for the period of time necessitated by the event of force majeure. All performance obligations affected by the event of force majeure will be extended for a period equal to the length of the resulting delay.

11.2 Force Majeure Defined. The term "force majeure" means those causes beyond the reasonable control of the Party claiming force majeure and which, through the exercise of Good Utility Practice and reasonable care, that Party could not have avoided, including, but not limited to, the following: flood; lightning strikes; earthquake; fire; epidemic; war; invasion; riot; civil disturbance; sabotage; explosion; insurrection; military or usurped power; strikes affecting more than one locality; labor dispute; action of any court or governmental authority, or any civil or military authority de facto or de jure; change in law; act of God or the public enemy; or any other event or cause of a similar nature beyond a Party's reasonable control. Mere economic hardship of either Party does not constitute Force Majeure.

11.3 Procedures. A Party claiming force majeure must:

(A) give written notice to the other Party of the occurrence of a force majeure event no later than three (3) business days after learning of the occurrence of such an event;

(B) use due diligence to resume performance or the provision of service hereunder as soon as practicable;

(C) take all commercially reasonable actions to correct or cure the force majeure event, provided, however, that settlement of strikes or other labor disputes are completely within the sole discretion of the Party affected by such strike or labor dispute;

(D) exercise all reasonable efforts to mitigate or limit damages to the other Party; and

(E) provide prompt written notice to the other Party of the cessation of the adverse effect of the force majeure event on its ability to perform under this Agreement.

ARTICLE 12.

INDEMNIFICATION

12.1 Indemnification. Subject to Articles 5.1, 5.2 and 20.1 of this Agreement, each Party agrees to indemnify, release and hold the other Party and its affiliates, trustees, officers, directors, agents, and employees harmless from and against any and all damages, costs (including attorneys' fees), suits, cause of action, fines, penalties or liabilities, in tort, contract or otherwise, of any kind and nature whatsoever brought by or associated with claims involving a third party, and any other obligation to third parties (collectively, "Liabilities") resulting from, or claimed to have arisen as a result of any act or omission of the indemnifying Party and/or its officers, directors, employees, agents and subcontractors arising out of or connected with the indemnifying Party's performance or breach of this Agreement or the indemnifying Party's exercise of its rights hereunder, except to the extent that such Liabilities resulted from the negligence, intentional wrongdoing, or willful misconduct of the Party seeking indemnification. Each Party hereby waives recourse against the other Party and its affiliates, trustees, officers, directors, agents, and employees for, and releases the other Party and affiliates, trustees, officers, directors, agents, and employees from, any and all Liabilities for or arising from damage to its property or from damage or injury to person(s) due to performance under this Agreement by such other Party, except to the extent such damage or injury resulted from the other Party's negligence, intentional wrongdoing, or willful misconduct.

12.2 Conditions. Each Party's obligations with respect to claims and suits covered by this Article 12 are subject to the conditions that (A) the Party seeking indemnification must give the indemnifying Party reasonably prompt notice of any such claim or suit; (B) the Party seeking indemnification must cooperate in the defense of any such claim or suit, the costs of which are to be borne by the indemnifying Party; and (C) the indemnifying Party has sole control of the

defense of such claim or suit to the extent of the indemnifying Party's liability for any such claim or suit.

12.3 Consent. Neither Party may settle, compromise, decline to appeal or otherwise dispose of any action, proceeding, or claim with respect to which indemnification is sought without the prior written consent of the other Party. In the event that any claim is settled, each Party agrees to not publicize the settlement and to make every effort to ensure that any settlement agreement contains a non-disclosure provision; provided, however, that, if required by law, either Party may disclose the existence or content of the settlement agreement.

12.4 Survival. Each Party's indemnification obligation will survive expiration or early termination of this Agreement.

ARTICLE 13.

INTEGRATION

13.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding of ULH&P and CG&E and supersedes all prior oral and written understandings and agreements, oral or written, between ULH&P and CG&E with respect to the specific subject matter addressed herein.

ARTICLE 14.

RELATIONSHIP OF PARTIES

14.1 Relationship of Parties. Nothing in this Agreement is to be construed or deemed to cause, create, constitute, give effect to, or otherwise recognize CG&E and ULH&P to be partners, joint venturers, employer and employee, principal and agent, or any other business association, with respect to any matter.

14.2 No Authority to Act for Other Party. Unless otherwise agreed to in writing signed by both Parties, neither Party shall have any authority to create or assume in the other Party's name or on its behalf any obligation, express or implied, or to act or purport to act as the other Party's agent or legally empowered representative for any purpose whatsoever.

14.3 No Liability for Acts of Other Party. Neither Party shall be liable to any third party in any way for any engagement, obligation, contract, representation, or for any negligent act or omission of the other Party, except as expressly provided for herein.

ARTICLE 15.

WAIVER

15.1 Waiver Permitted. Except as otherwise provided for in this Agreement, the failure of either Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver.

15.2 Limited Nature of Waivers. Any waiver granted by a Party may not operate as a waiver of any other failure of the Party granted a waiver to comply with any obligation, covenant, agreement, or condition herein.

ARTICLE 16.

AMENDMENT

16.1 CG&E Section 205 Rights. Notwithstanding any provision in this Agreement to the contrary, CG&E may unilaterally make application to the FERC under Section 205 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder for a change in any rate, term, condition, charge, classification of service, rule or regulation under or

related to this Agreement.

16.2 ULH&P Section 206 Rights. Notwithstanding any provision in this Agreement to the contrary, ULH&P may exercise its rights under Section 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder with respect to any rate, term, condition, charge, classification of service, rule or regulation for any services provided under this Agreement over which the FERC has jurisdiction.

16.3 Amendments. Except as provided for in Articles 16.1 and 16.2 of this Agreement, this Agreement may only be modified, amended, changed, or supplemented in writing signed by ULH&P and CG&E.

ARTICLE 17.

SUCCESSORS, ASSIGNS,

AND THIRD PARTY BENEFICIARIES

17.1 Binding On Parties, Successors, and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. No person or Party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.

17.2 Assignment. Neither Party shall voluntarily assign this Agreement, nor assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, which consent shall not be unreasonably withheld. Any such assignment or delegation made without such written consent shall be null and void;

provided, however, that such written consent shall not be required: (i) in connection with the sale, merger, or transfer of all or a substantial portion of the properties of a Party (and, in the case of CG&E, its transmission system and the CG&E Facilities), so long as the assignee in such a sale, merger, or transfer assumes directly all of the assignor's rights, duties, obligations and liabilities arising under this Agreement; (ii) for CG&E to assign this Agreement to any wholly-owned direct or indirect subsidiary of Cinergy Corp., a Delaware corporation, so long as such subsidiary assumes directly all of the assignor's rights, duties, obligations and liabilities arising under this Agreement; (iii) for CG&E to assign this Agreement to any purchaser of all or a substantial portion of the Transmission System, so long as the purchaser assumes directly all of the assignor's rights, duties, obligations and liabilities arising under this Agreement; or (iv) for ULH&P to assign this Agreement to any purchaser of all or a substantial portion of the Plants, so long as the purchaser assumes directly all of the assignor's rights, duties, obligations and liabilities arising under this Agreement.

17.3 Financing Parties. Notwithstanding the foregoing, ULH&P may assign this Agreement without CG&E's prior consent to any future owner of the Plants, as long as the future owner assumes directly all of ULH&P's rights, duties, obligations and liabilities under this Agreement. In addition and notwithstanding the foregoing, ULH&P or its assignee may assign this Agreement to the persons, entities or institutions providing financing or refinancing for the development, design, construction or operation of the Plants and, if ULH&P provides notice thereof to CG&E, CG&E shall provide notice and reasonable opportunity for such lenders to cure any default under this Agreement. CG&E shall, if requested by such lenders, execute its standard documents and certificates as may be requested with respect to the assignment and

status of this Agreement, provided such documents do not change the rights of CG&E under this Agreement except with respect to providing notice and a reasonable opportunity to cure defaults. In the event of any foreclosure by such lenders, the purchasers at such foreclosure or any subsequent purchaser shall, upon request, be entitled to the rights and benefits of (and be bound by) this Agreement so long as it is an entity entitled to interconnect with the Transmission System.

17.4 Release of Assigning Party. Any assignment authorized as provided in Article 17.2 or Article 17.3 of this Agreement will not operate to relieve the Party assigning this Agreement of any of its rights, interests, duties, obligations or liabilities hereunder or of the responsibility of full compliance with the requirements of this Agreement unless (A) the other Party consents, if such consent is required under such sections, in which case such consent shall not be unreasonably withheld, and (B) the assignee agrees in writing to be bound by all of the duties, obligations and liabilities of the assigning Party provided for in this Agreement.

ARTICLE 18.

SUBCONTRACTORS

18.1 Use of Subcontractors or Agents Permitted. Nothing in this Agreement will prevent either Party from utilizing the services of subcontractors or agents as it deems appropriate; provided, however, that all such subcontractors and agents comply with the terms and conditions of this Agreement.

18.2 Retaining Party to Remain Responsible. The creation of any subcontract or agency relationship shall not relieve the retaining Party of any of its obligations under this Agreement. Each Party shall be fully responsible to the other Party for the acts or omissions of

any subcontractor or agent it hires as if no subcontract or agency relationship had been made. Any obligation imposed by this Agreement upon either Party, where applicable, shall be equally binding upon and construed as having application to any subcontractor or agent.

18.3 Liability for Subcontractors or Agents. Each Party will be liable for, indemnify, and hold harmless the other Party, its affiliates, and their officers, directors, employees, agents, and assigns from and against any and all claims, demands, or actions from its subcontractors or agents; and will be responsible for all costs, expenses, and legal fees associated therewith and all judgments, decrees, and awards rendered therein.

18.4 No Third Party Beneficiary. No subcontractor or agent is intended to be or will be deemed a third party beneficiary of this Agreement.

18.5 No Limitation by Insurance. The obligations under this Article 18 are not limited in any way by any limitation on subcontractor's or agent's insurance.

ARTICLE 19.

LABOR DISPUTES

19.1 Notice. Each Party agrees to promptly notify the other, orally and then in writing, of any labor dispute which may reasonably be expected to affect the operations of the other Party.

ARTICLE 20.

LIMITATION OF LIABILITY

20.1 No Consequential Damages. Neither Party shall be liable to the other Party or its parent, subsidiaries, affiliates, officers, directors, agents, employees, successors, or assigns for incidental, punitive, special, indirect, multiple, or consequential damages (including attorneys'

fees, litigation costs, and claims for lost profits) connected with or resulting from performance or non-performance of this Agreement.

20.2 Application; Survival. The limitation of liability provided for in this Article 20 will apply regardless of fault, and will survive expiration or early termination of this Agreement.

ARTICLE 21.

GOVERNING LAW AND INTERPRETATION

21.1 Applicable Law. This Agreement and all rights, obligations, and performances hereunder are subject to all applicable federal and state laws and to all duly promulgated orders and other duly authorized action of any governmental authority with competent jurisdiction.

21.2 Governing Law. This Agreement is to be governed by federal law where applicable, and when not in conflict with or preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its conflict of laws principles. Except for those matters which are brought to the FERC or which are resolved through arbitration, any action arising out of or concerning this Agreement must be brought in the courts of the State of Ohio.

21.3 No Presumption. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.

21.4 Conflicts Between Main Body of Agreement and Exhibits. In the event of a conflict between the main body of this Agreement and any exhibit hereto, the terms of the main body of this Agreement shall govern.

ARTICLE 22.

HEADINGS AND CAPTIONS

22.1 No Effect on Interpretation. The headings and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

ARTICLE 23.

COUNTERPARTS

23.1 Counterpart Execution Permitted. This Agreement may be executed in separate or multiple counterparts, all of which shall evidence a single agreement.

ARTICLE 24.

SEVERABILITY

24.1 Severable Nature of Agreement. If any provision of this Agreement or the application thereof to any person or circumstances is, to any extent, held to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, will not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 25.

OPERATING COMMITTEE

25.1 Representatives. The Parties shall establish a committee of authorized representatives to be known as the Operating Committee. Each of the Parties shall designate, in writing delivered to the other Party, the person who is to act as its representative on said committee (and the person or persons who may serve as alternate or alternates whenever such

representative is unable to act). Such representatives and alternate or alternates shall each be persons familiar with the facilities of the Party he or she represents, and each shall be fully authorized to cooperate on behalf of the Party they represent in performing the functions delegated to the Operating Committee.

25.2 Duties of Operating Committee. The Operating Committee shall perform the following:

(A) All functions pertaining to the coordination of maintenance of the Plants, the CG&E Facilities, and the Transmission System.

(B) All matters pertaining to the control of time, frequency, energy flow, kilovar exchange, power factor, voltage and other similar matters bearing on the satisfactory synchronous operations of the Plants, the CG&E Facilities, and the Transmission System.

(C) Such other functions not specifically provided for herein upon which cooperation, coordination, and agreement as to quantity, time, method, terms and conditions are necessary in order that the operation of the Plants, the CG&E Facilities, and the Transmission System may be coordinated to the fullest practicable extent as agreed upon by the Parties.

(D) Resolution of disputes and operating issues.

25.3 Right to Inspect. For the purpose of inspection, checking of records, and all other pertinent matters, said representatives and their alternates shall have the right to request any and all applicable documentation and shall have the right of entry to all property of the Parties used in connection with the performance of this Agreement.

CG&E shall have the right to enter and inspect the ULH&P facilities interconnected to

the CG&E Facilities at its discretion under non-Emergency operating conditions. ULH&P shall have the right to enter and inspect the CG&E Facilities at its discretion under non-Emergency operating conditions. Access shall be provided where the Party requesting access provides at least twenty-four (24) hours' advance notice of its desire to inspect and the facilities it desires to inspect.

25.4 Limit of Authority. The Operating Committee shall not have authority to modify any of the terms or conditions of this Agreement.

25.5 Unresolvable Disputes. If the Operating Committee is unable to take action on any matter to be acted upon by it under this Agreement because of a dispute between the representatives as to such matter, then dispute resolution shall proceed in compliance with Article 8 of this Agreement.

ARTICLE 26.

OTHER CONDITIONS

26.1 Filing of Agreement with FERC. CG&E agrees to file this Agreement with the FERC for approval under Section 205 of the Federal Power Act and with any other appropriate regulatory agency as soon as practicable after its execution by the Parties. ULH&P agrees to support such filing, to reasonably cooperate with CG&E with respect to the filing, and to provide any information, including the filing of testimony, reasonably required by CG&E to comply with applicable filing requirements.

26.2 Filing of Amendments. Promptly upon execution of any amendment to this Agreement by the Parties pursuant to Article 16.3 or Article 26.3 of this Agreement, CG&E

shall, if necessary, file such amendment with FERC and with any other appropriate regulatory agency. ULH&P agrees to support such filing, to reasonably cooperate with CG&E with respect to such filing, and to provide any information, including the filing of testimony, reasonably required by CG&E to comply with applicable filing requirements.

26.3 Good Faith Negotiations Upon Occurrence of Certain Events. If one of the following events (an "Event") takes place, the Parties agree to negotiate in good faith an amendment or amendments to this Agreement or to take other appropriate action so as to put each Party in as nearly the same position as the Parties would have been had the Event not occurred:

(A) this Agreement is not approved or accepted for filing by FERC without modification or condition; or

(B) FERC, the United States Congress, any state or state regulatory commission, any organization issuing criteria, rules, procedures or standards included in the Rules and Procedures or CG&E (upon approval of the FERC) implements any change in any law, regulation, rule, procedure, standard, criteria or practice which materially affects or is reasonably expected to materially affect either Party's ability to perform under this Agreement; or

(C) compliance with this Agreement causes CG&E or any other entity exercising control over the Transmission System, or ULH&P to be in non-compliance with any requirement of the FERC.

26.3.1 Amendments. Any amendment the Parties negotiate pursuant to this Article 26.3 must be executed by the Parties in writing in accordance with Article 16.3 of this Agreement and, if necessary, filed with the FERC or any other appropriate regulatory agency in accordance

with Article 26.2 of this Agreement.

26.3.2 Failure to Agree. If, within sixty (60) days after the occurrence of an Event, the Parties (A) are unable to reach agreement as to what, if any, amendments are necessary, and (B) fail to take other appropriate action so as to put each Party in as nearly the same position as the Parties would have been had the Event not occurred, the Parties may proceed under Article 8 of this Agreement to resolve any disputes related thereto.

26.3.3 Failure to Perform Due to Event. If either CG&E or ULH&P is unable to fully perform its obligations under this Agreement due to the occurrence of an Event, the affected Party will not be deemed to be in default of its obligations under this Agreement to the extent that (A) the Party is unable to perform as a result of the Event and (B) the affected Party acts in accordance with its obligations under this Article 26.3.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their duly authorized officers and their respective corporate seals to be hereunto affixed as of the date first above mentioned.

THE CINCINNATI GAS & ELECTRIC COMPANY

By: _____
John C. Procario
Senior Vice President

THE UNION LIGHT, HEAT AND POWER COMPANY

By: _____
Gregory C. Ficke
President

The Cincinnati Gas & Electric Company
Rate Schedule FERC No. ~~5~~860

Original Sheet No. 1

FACILITIES OPERATION AGREEMENT

Between

THE CINCINNATI GAS & ELECTRIC COMPANY

and

THE UNION LIGHT, HEAT AND POWER COMPANY

Dated September 27, 2004

FACILITIES OPERATION AGREEMENT

Between

THE CINCINNATI GAS & ELECTRIC COMPANY

and

THE UNION LIGHT, HEAT AND POWER COMPANY

Dated September 27, 2004

THIS FACILITIES OPERATION AGREEMENT is dated this 27th day of September, 2004 by and between The Cincinnati Gas & Electric Company, an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio ("CG&E") and The Union Light, Heat and Power Company, a Kentucky corporation with offices at 139 East Fourth Street, Cincinnati, Ohio ("ULH&P) (each a "Party" and collectively the "Parties").

WITNESSETH:

WHEREAS, ULH&P desires to acquire CG&E's ownership interest in the East Bend Generating Station located in Rabbit Hash, Kentucky, Miami Fort Unit 6 electric generating facility located in North Bend, Ohio, and the Woodsdale Generating Station located in Butler County, Ohio (collectively, the "Plants") from CG&E; and

WHEREAS, CG&E desires to transfer its ownership interest in the Plants to ULH&P; and

WHEREAS, CG&E owns generation step-up transformers connecting the Plants (as

defined in Article 2 of this Agreement and collectively referred to hereinafter as the "CG&E Facilities") to the Transmission System; and

WHEREAS, ULH&P desires to utilize the CG&E Facilities to step up power from the Plants to the appropriate voltage level of the interconnected Transmission System; and

WHEREAS, CG&E's costs of owning, operating and maintaining the CG&E Facilities are not included in the rates assessed under the OATT.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein set forth, CG&E and ULH&P agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "Agreement" means this Facility Operations Agreement, including all exhibits attached hereto and any amendments thereto.

1.2 "CG&E" has the meaning given in the recitals to this Agreement, and includes CG&E's permitted successors and assigns.

1.3 "CG&E Facilities" means those facilities described as such in Article 2 of this Agreement.

1.4 "East Bend" shall mean the East Bend Generating Station located in Rabbit Hash, Kentucky.

1.5 "ECAR" means the East Central Area Reliability Council, or any successor organization.

1.6 "Effective Date" means the date of closing of the Transaction.

1.7 "Emergency" has the meaning customarily attributed to it in the electric utility

industry in the United States, including, without limitation, any condition on any of the Plants, CG&E Facilities, the Transmission System or the transmission system of other utilities which is likely to result in imminent significant disruption to service to consumers or is imminently likely to endanger life or property.

1.8 "Environmental Laws" means all federal, state, and local laws (including common laws), regulations, rules, ordinances, codes, decrees, judgments, binding directives, or judicial or administrative orders relating to the protection, preservation or restoration of human health, the environment, or natural resources, including, without limitation, laws relating to the Release, or threatened Release, of Hazardous Substances into any media (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use treatment, storage, Release, transport, or handling of Hazardous Substances.

1.9 "Event" has the meaning given in Article 26.3 of this Agreement.

1.10 "FERC" means the Federal Energy Regulatory Commission or any successor agency.

1.11 "Force Majeure" has the meaning set forth in Article 11 of this Agreement.

1.12 "Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the United States during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to

the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, method, or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, the Rules and Procedures.

1.13 "GSUs" means generation step-up transformers used to increase the voltage from the Plants to the compatible voltage of the interconnected Transmission System.

1.14 "Hazardous Substances" means:

(A) any petrochemical or petroleum products, oil, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid which may contain levels of polychlorinated biphenyls;

(B) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," or "pollutants," or words of similar meaning and regulatory effect; or

(C) any other chemical, material, or substance, exposure to which is prohibited, limited or regulated by applicable Environmental Laws.

1.15 "Miami Fort 6" means the Miami Fort Unit 6 electric generating facility located in North Bend, Ohio.

1.16 "MISO" means the Midwest Independent Transmission System Operator, Inc. or any successor organization.

1.17 "Monthly Fee" means the monthly charge for service under this Agreement, as defined in Article 3.2 of this Agreement.

1.18 "NERC" means the North American Electric Reliability Council or any successor organization.

1.19 "OATT" means the applicable open access transmission tariff, as filed with the FERC and as it may be amended from time to time, including any successor tariff, under which the applicable open access transmission service over the Transmission System is provided.

1.20 "Parties" means collectively, CG&E and ULH&P, and their permitted successors and assigns.

1.21 "Party" means either CG&E or ULH&P, and their permitted successors and assigns.

1.22 "Plants" has the meaning given in the recitals to this Agreement.

1.23 "PSI Energy" means PSI Energy, Inc. and its permitted successors and assigns.

1.24 "RTO" means the applicable regional transmission operator as certified and approved by FERC.

1.25 "Release" means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, dump, or allow to escape into or through the environment.

1.26 "Rules and Procedures" means the applicable rules and procedures that CG&E or ULH&P must follow and abide by and which shall govern the operational conditions of the Transmission System, including but not limited to such applicable criteria, rules, procedures and standards of MISO, the RTO, NERC, ECAR, and the National Electrical Safety Code, and any successor entity or organization, as they may be amended from time to time, including those of any entity or successor organization.

1.27 "Transaction" means ULH&P's acquisition of CG&E's ownership interest in the

Plants.

1.28 "Transmission System" means the transmission facilities owned, operated or controlled by PSI Energy, or CG&E, including conductors, circuit breakers, switches, transformers and other associated equipment used to control the transfer of energy from one place to another, and shall include any modifications, additions, or upgrades made to those facilities.

1.29 "ULH&P" has the meaning given in the recitals to this Agreement, and includes ULH&P's permitted successors and assigns.

1.30 "Woodsdale" means the Woodsdale Generating Station located in Butler County, Ohio.

ARTICLE 2

FACILITIES OPERATION AND MAINTENANCE

2.1 CG&E shall own, operate and maintain in conformance with Good Utility Practice, and permit ULH&P to utilize for the purpose for which they were utilized by CG&E on the date preceding the Effective Date, at ULH&P's expense as set forth in Article 3 hereof, the following described CG&E Facilities (transformer ratings specified as of Effective Date); viz.:

2.1.1 East Bend: the 700 MVA step-up transformer bank (TB) 2 located in or near Rabbit Hash, Kentucky and identified as such in Exhibit 1 of this Agreement;

2.1.2 Miami Fort 6: the 180 MVA step-up transformer bank (TB) 6 located in or

near North Bend Ohio as identified as such in Exhibit 2 of this Agreement;

2.1.3 Woodsdale: the three 240 MVA step-up transformer banks (TB) 39, 40, and 41 located in Butler County, Ohio, as identified in Exhibit 3 of this Agreement.

2.2 Curtailment or Interruption of Operation of CG&E Facilities and Disconnection of the Plants and CG&E Facilities.

2.2.1 (A) CG&E may not curtail or interrupt ULH&P's use of any of the CG&E Facilities, disconnect any of the Plants from the CG&E Facilities, or disconnect any of the CG&E Facilities from the Transmission System except when such curtailment, interruption or disconnection is necessary under Good Utility Practice, is required under the OATT, or is otherwise required by MISO or the RTO.

(B) With respect to any curtailment, interruption or disconnection permitted under Article 2.2.1(A) of this Agreement:

(1) CG&E agrees that:

(a) the curtailment, interruption or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice, as required under the OATT, or is otherwise required by MISO or the RTO;

(b) any such curtailment, interruption or disconnection shall be made on a not unduly discriminatory basis with respect to other generators interconnected to the Transmission System;

(c) when the curtailment, interruption or disconnection must be made under circumstances which do not allow for advance notice, CG&E will notify ULH&P or its agent as soon as practicable of the reasons for the curtailment, interruption or disconnection and, if known, its expected duration consistent with FERC Order No. 2004 and applicable standards of conduct thereafter; and

(d) when the curtailment, interruption or disconnection can be scheduled, CG&E will consult in advance with ULH&P regarding the timing of such scheduling, and notify ULH&P in advance of the expected duration of the curtailment, interruption or disconnection consistent with FERC Order No. 2004 and any applicable standards of conduct thereafter. CG&E agrees to use commercially reasonable efforts to schedule the curtailment, interruption or disconnection to coincide with the scheduled outages of the Plants.

(2) The Parties agree to cooperate and coordinate with each other to the extent necessary in order to restore the CG&E Facilities to their normal operating state, consistent with system conditions and Good Utility Practice.

2.3 Notwithstanding any other provision of this Agreement, this Agreement shall not be interpreted to or construed to, nor shall this Agreement, confer, transfer, convey or otherwise provide ULH&P an ownership, leasehold or any other property interest in the CG&E Facilities.

2.4 Consistent with the Rules and Procedures and applicable standards of conduct, and prior to development thereof, CG&E shall consult with ULH&P to develop a non-binding maintenance schedule in accordance with which CG&E shall perform scheduled maintenance on the CG&E Facilities. CG&E shall use commercially reasonable efforts to coordinate the scheduled maintenance of the CG&E Facilities with the scheduled outages of the Plants.

2.5 Unless otherwise agreed to by the Parties, or otherwise required by law or regulation, or Good Utility Practice, CG&E shall not be required at any time to upgrade or otherwise modify the CG&E Facilities; provided however, at ULH&P's sole expense, CG&E agrees to make any additions, modification, or replacements to the CG&E Facilities requested by ULH&P so long as such additions, modifications, or replacements are consistent with Good Utility Practice.

2.6 Inspections

2.6.1 Right to Inspect. Each Party, at its own cost and expense, has the right, but not the obligation, to inspect or observe the operation and maintenance activities, equipment tests, installation, construction, or other modifications to the other Party's equipment, systems or facilities which might reasonably be expected to affect the observing Party's operations. The Party desiring to inspect or observe must provide the other Party advance written notice of such inspection or observation.

2.6.2 Deficiencies and Defects. If the observing Party observes any deficiencies or defects which might reasonably be expected to adversely affect its operations, it may notify the other Party and said Party will be responsible

for making any corrections necessitated by Good Utility Practice. Notwithstanding the foregoing, the observing Party shall have no liability whatsoever for failure to give such notice, it being agreed that the Party owning such equipment, systems or facilities will be fully responsible and liable for all such activities, tests, installation, construction or modification.

2.7 Information and Recordkeeping Obligations and Audit Rights

2.7.1 Information Obligations

(A) Consistent with FERC Order No. 2004 and any applicable standards of conduct, either Party may request that the other Party, and that other Party will promptly provide, at the requesting Party's sole cost and expense, such information and data that the requesting Party may reasonably require to: (1) verify costs relating to, in CG&E's case, the Plants, and in ULH&P's case, the CG&E Facilities, including, but not limited to, costs relating to the procurement, operation, maintenance, construction, and installation of any modifications thereto; (2) carry out its responsibilities and enforce its rights under this Agreement; and (3) satisfy any required reporting obligations it may have to any organization issuing criteria, rules, procedures or standards included in the Rules and Procedures, or any agency to which it is required to report.

2.7.2 Recordkeeping Obligations

(A) Transaction Records. Each Party shall keep such records as may be needed to substantiate performance of its obligations under this Agreement.

Neither Party shall make use of the records or summary of transactions of the other Party without the express written consent of the other Party, unless such use is permitted by this Agreement or required by law.

(B) Record Retention. Each Party agrees to retain all records under Article 2.7.2(A) normally kept in the course of business and consistent with Good Utility Practice for a minimum of three (3) years from the date of such record.

2.7.3 Audit Rights. Either Party has the right to audit the other Party's accounts and records pertaining to this Agreement, within three (3) years following the calendar year in which such account entry or record is made, at that other Party's offices where such accounts and records are maintained, provided proper notice is given prior to any audit and such audit occurs during normal business hours, and provided further that the audit will be limited to those portions of such accounts and records that relate to services provided under this Agreement for that calendar year. All actual and reasonable non-labor related costs incurred by either Party in connection with an audit shall be borne by the Party undertaking the audit.

2.8 Environmental Compliance and Procedures. The Parties agree to comply with: (A) all applicable Environmental Laws which affect the ability of the Parties to meet their obligations under this Agreement; and (B) all local notification and response procedures required for all applicable environmental and safety manners which affect the ability the Parties to meet their obligations under this Agreement.

ARTICLE 3.

FEES, BILLING AND PAYMENT

3.1 Cooperation. Each Party agrees to cooperate with the other Party in attempting to minimize costs under this Agreement. The Parties may agree to other billing/invoicing arrangements, in recognition of the fact that the Parties are affiliates and share an accounting system, and such arrangement shall not constitute an amendment to this Agreement.

3.2 Monthly Fee. During the Term of this Agreement, ULH&P shall pay to CG&E a monthly fee of $161,148 ("Monthly Fee") for use of the CG&E Facilities, such Monthly Fee being intended to enable CG&E to recover its full costs of owning, operating and maintaining the CG&E Facilities.

3.3 Billing Procedures.

3.3.1 Monthly Invoices. With respect to any costs and expenses for which a Party is entitled to be reimbursed under this Agreement, the Party (the "invoicing Party") must submit an invoice to the other Party at the start of each calendar month for the costs for which it is entitled to be reimbursed for the previous period under this Agreement. Each invoice must detail the work, equipment, or services for which the costs were incurred. The invoicing Party shall provide any supporting documentation requested during the course of an audit.

3.3.2 Payment. Payment of invoiced amounts will be due and payable within thirty (30) days of receipt of the invoice or such other time as the Parties mutually agree. If the payment falls on a Saturday, Sunday or federal or state legal holiday, payment shall be made on the next business day. All payments will be made in immediately available funds payable to the invoicing Party or by wire transfer to a bank named by the invoicing Party. If any undisputed portion of any invoice remains unpaid thirty (30) days after the

receipt of the invoice or such other time as the Parties mutually agree upon, the invoicing Party will apply to the unpaid balance, and the other Party will pay, a finance charge at the rate of one and one half percent (1.5%) per month but in no event more than the maximum allowed by the law governing the Agreement.

3.3.3 Disputes. If a Party disputes any portion of an invoice, that Party shall make payment of all amounts not in dispute and notify the invoicing Party in writing of any such dispute and the reasons therefor. No invoice may be disputed after such time as a Party's audit rights set forth in Article 2.7.3 of this Agreement have expired. Any billing disputes must be resolved in accordance with Article 8 of this Agreement. In the event of a billing dispute, each Party agrees to continue to perform its duties and obligations under this Agreement as long as the other Party continues to make all payments not in dispute and adheres to the dispute resolution procedures set forth in Article 8 of this Agreement, pending resolution of such dispute. If a Party fails to meet the requirements set forth in the prior sentence and fails to correct or cure such failure within thirty (30) days after receiving written notice from the other Party, then the other Party may, at its option, proceed in accordance with Article 6.5 of this Agreement. Upon the resolution of any billing dispute, any amounts that must be paid to a Party as a result shall be promptly paid, with a finance charge assessed from the date the payment was due to the date payment is made at the rate of one and one half percent (1.5%) per month but in no event more than the maximum allowed by the law governing this Agreement.

3.3.4 Payment Not a Waiver. Payment of invoices by a Party will not relieve that Party from any responsibilities or obligations it has under this Agreement, nor will it

constitute a waiver of any claims that Party may have under this Agreement.

3.4 Limitations on ULH&P's Cost Responsibility Obligations. To the extent that the CG&E Facilities' costs for which ULH&P is responsible for under this Agreement are now or at any time in the future to be recovered by CG&E pursuant to the OATT, any other applicable tariff, or from a party other than ULH&P, ULH&P will not be responsible for such costs under this Agreement. If ULH&P has already paid CG&E for such costs, CG&E agrees to refund to ULH&P such amounts no later than thirty (30) days after CG&E rolls such costs in under the OATT, or any other applicable CG&E tariff, or is otherwise reimbursed for such costs by a party other than ULH&P. CG&E agrees to provide to ULH&P such documentation as ULH&P reasonably requires to determine the amounts of such refunds due to ULH&P.

ARTICLE 4.

CONFIDENTIALITY

4.1 General. Unless compelled to disclose by judicial or administrative process or other provisions of law or as otherwise provided for in this Agreement, any information provided by either Party to the other pursuant to this Agreement and either labeled "CONFIDENTIAL" or otherwise designed in writing as confidential will be utilized by the receiving Party solely in connection with the purposes of this Agreement and will not be disclosed by the receiving Party to any third party (or, in the case of CG&E, to any person engaged in the marketing or trading of electric power) other than as expressly contemplated herein and as necessary for the performance of such Party's obligations hereunder. Each Party will hold in confidence any and all such documents and information furnished by the other Party in connection with this Agreement. Notwithstanding the foregoing provisions of this Article 4.1, each Party may release or disclose

such information or documents if such disclosure is compelled by judicial or administrative process or other provisions of law, or to: (i) any organization issuing criteria, rules, procedures or standards included in the Rules and Procedures, to the extent consistent with Good Utility Practice; or (ii) the Party's employees, contractors, affiliates and agents (other than any such employees, contractors, affiliates or agents engaged in the marketing or trading of electric energy, capacity or ancillary services) on a need to know basis so long as the Party first advises them of the existence and content of such provisions.

4.2 Exempt Information and Documents. The Parties' confidentiality obligations set forth in Article 4.1 of this Agreement shall not apply to information or documents that are (A) generally available to the public other than as a result of disclosure by a Party (the "disclosing Party") to the other Party; (B) available to a Party on non-confidential basis prior to disclosure by the disclosing Party; or (C) available to a Party on a non-confidential basis from a source other than the disclosing Party, provided that the source is not known and, by reasonable effort, could not be known by the Party receiving such information or documents to be bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from transmitting the information to the Party receiving such information or documents by a contractual, legal or fiduciary obligation.

4.3 Notification. Each Party will promptly notify the other Party if it receives notice or otherwise concludes that the production of any information or documentation furnished by the disclosing Party and subject to Article 4.1 of this Agreement is being sought under any provision of law, but the notifying Party shall have no obligation to oppose or object to any attempt to obtain such production. If the disclosing Party desires to object or oppose such production, it

must do so at its own expense.

4.4 Use of Information or Documentation. Each Party may utilize information or documentation furnished by the disclosing Party and subject to Article 4.1 of this Agreement in any proceeding under Article 8 of this Agreement or in an administrative agency or court of competent jurisdiction addressing any dispute arising under this Agreement, subject to a confidentiality agreement with all participants (including, if applicable, any arbitrator) or a protective order.

4.5 Remedies Regarding Confidentiality. The Parties agree that monetary damages by themselves will be inadequate to compensate a Party for the other Party's breach of its obligations under this Article 4. Each Party accordingly agrees that the other Party is entitled to equitable relief, by way of injunction or otherwise, if it breaches or threatens to breach its obligations under this Article 4.

ARTICLE 5.

DAMAGE TO EQUIPMENT, FACILITIES, AND PROPERTY

5.1 ULH&P's Responsibility. Except to the extent caused by CG&E's negligence, intentional misconduct or failure to act in a manner consistent with Good Utility Practice, ULH&P will be responsible for all physical damage to or destruction of property, equipment, or facilities owned by ULH&P or its affiliates other than CG&E regardless of who brings the claim and regardless of who caused the damage, and ULH&P will not seek recovery or reimbursement from CG&E for the damage.

5.2 CG&E's Responsibility. Except to the extent caused by ULH&P's negligence, intentional misconduct, or failure to act in a manner consistent with Good Utility Practice,

CG&E will be responsible for all physical damage to or destruction of property, equipment, or facilities owned by CG&E or its affiliates other than ULH&P regardless of who brings the claim and regardless of who caused the damage, and CG&E will not seek recovery or reimbursement from ULH&P for the damage.

5.3 Insurance. The obligations under this Article 5 are not limited in any way by any limitation on either Party's insurance, and each Party waives any subrogation which any of its insurers may have against the other Party.

ARTICLE 6.

TERM, TERMINATION, AND DEFAULT

6.1 Term. This Agreement shall be effective on the date first written above, subject to its approval or acceptance for filing by the FERC as provided for in Article 26 of this Agreement, and subject to the transfer of CG&E's interest in the Plants to ULH&P, and shall continue in effect for thirty (30) years, and, thereafter, for successive one year periods until either Party terminates the Agreement after providing to the other Party at least twelve months' advance written notice of its intent to terminate this Agreement. Notwithstanding the above, this Agreement may be terminated earlier if (A) the Parties mutually agree; (B) this Agreement is terminated earlier as provided for in this Agreement; or (C) ULH&P terminates the Agreement after providing CG&E at least sixty (60) days' advance written notice of intent to terminate this Agreement.

6.2 Effect of Expiration or Termination of Agreement on Liabilities and Obligations. Expiration or termination of this Agreement shall not relieve ULH&P or CG&E of any of its liabilities and obligations arising hereunder prior to the date expiration or termination becomes

effective.

6.3 Effectiveness of Certain Provisions After Expiration or Termination of Agreement. The applicable provisions of this Agreement will continue in effect after expiration or early termination hereof to the extent necessary to provide for final billings, billing adjustments and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect. These provisions include, without limitation, Article 9 ("Insurance"), Article 12 ("Indemnification"), and Article 20 ("Limitation of Liability") of this Agreement.

6.4 Default. A Party will be in default under this Agreement if, at any time:

(A) the Party fails to make any payment due the other Party in accordance with this Agreement, and does not make such payment to the other Party within thirty (30) days after receiving written notice from the other Party of such failure;

(B) (1)(a) the Party fails in any material respect to comply with, observe or perform any term or condition of this Agreement; (b) any representation or warranty made herein by the Party fails to be true and correct in all material respects; (c) the Party abandons its work or the facilities contemplated in this Agreement; or (d) the Party fails to provide to the other Party reasonable written assurance of its ability to perform fully and completely any of its material duties and responsibilities under this Agreement within thirty (30) days after receiving any reasonable request for such assurances from the other Party; and

(2)(a) the Party fails to correct or cure the situation within thirty (30) days after receiving written notice thereof from the other Party; or (b) excluding those events set forth in Articles 6.4(A) and 6.4(C), if the situation cannot be completely corrected or cured within such thirty day

period, the Party fails to either (i) commence diligent efforts to correct or cure the situation within such thirty day period or (ii) completely correct or cure the situation within sixty (60) days after receiving written notice thereof from the other Party; or

(C) (1) a receiver or liquidator or trustee of the Party or of any of its property is appointed by a court of competent jurisdiction, and such receiver, liquidator or trustee is not discharged within sixty (60) days;

(2) by decree of such court, the Party is adjudicated bankrupt or insolvent or any substantial part of its property is sequestered, and such decree continues undischarged and unstayed for a period of sixty (60) days after the entry thereof;

(3) a petition to declare bankruptcy or to reorganize the Party pursuant to any provision of any federal or state bankruptcy law now in effect or as may hereafter be amended (collectively, "Bankruptcy Laws") is filed against the Party and is not dismissed within sixty (60) days after such filing;

(4) the Party files a voluntary petition in bankruptcy under any provision of any Bankruptcy Law;

(5) the Party consents to the filing of any bankruptcy or reorganization petition against it under any Bankruptcy Law;

(6) the Party makes an assignment for the benefit of its creditors; or

(7) the Party consents to the appointment of a receiver, trustee or liquidator of the Party or all or any part of its property.

6.5 Remedies of Parties Upon Default. Subject to Article 8 of this Agreement, if a Party defaults under this Agreement in accordance with Article 6.4 of this Agreement, the other

Party may, at its option, (A) act to terminate this Agreement by providing written notice of termination to the defaulting Party, or (B) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants under this Agreement. Any termination sought under this Article 6.5 shall not take effect until FERC either authorizes any request by either Party seeking termination of this Agreement or accepts any written notice of termination.

6.6 Performance of Other Party's Obligations. If either Party (the "defaulting Party") fails to carry out its obligations under this Agreement and such failure could reasonably be expected to have a material adverse impact on the Transmission System, the CG&E Facilities, the ULH&P Facilities, the Plants, or the regional network, the other Party, following at least ten (10) days' advance written notice (except in cases of Emergencies, in which case only such notice as is reasonably practicable in the circumstances is required), may, but will not be obligated to, perform the obligations of the defaulting Party (including, without limitation, maintenance obligations), in which case the defaulting Party will, upon presentation of an invoice therefor, reimburse the other Party for all actual and reasonable costs and expenses incurred by it in performing said obligations of the defaulting Party (including, without limitation, costs associated with its employees and the costs of appraisers, engineers, environmental consultants and other experts retained by said Party in connection with performance of the defaulting Party's obligations), together with a finance charge on all such amounts of one and one half percent (1.5%) per month but in no event more than the maximum allowed by the law governing this Agreement.

6.7 Remedies Cumulative. Subject to Article 8 of this Agreement, no remedy

conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

ARTICLE 7.

REPRESENTATIONS

7.1 Representations of CG&E. CG&E represents and warrants the following:

7.1.1 CG&E is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio, and it has the requisite corporate power and authority to own its properties, and to carry on its business as now being conducted.

7.1.2 CG&E has the requisite corporate power and authority to execute and deliver this Agreement and to carry out the actions required of it by this Agreement. The execution and delivery of this Agreement and the actions it contemplates have been duly and validly authorized by CG&E, and no other corporate proceedings on the part of CG&E are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by CG&E and constitutes a legal, valid and binding agreement of CG&E enforceable against CG&E in accordance with its terms, subject to the acceptance of this Agreement by the FERC.

7.1.3 The CG&E Facilities are owned by CG&E, and operated or controlled by CG&E. It is further acknowledged that CG&E has the authorization to grant ULH&P use of the CG&E Facilities consistent with Good Utility Practice or will obtain, with the assistance of ULH&P,

such authorization as necessary prior to the transfer of the Plants to ULH&P.

7.1.4 CG&E has obtained or will use its reasonable best efforts to timely obtain all approvals of, and has given or will use its reasonable best efforts to give all notices to, any public authority that are required for CG&E to execute, deliver and perform its obligations under this Agreement.

7.1.5 To CG&E's knowledge, it is not in violation of any applicable law, statute, order, rule or regulation promulgated by, or judgment, decree, writ, injunction, or award rendered by, any federal, state, or local governmental court or agency which, individually or in the aggregate, would adversely affect such entity's entering into or performance of its obligations under this Agreement. Such entity's entering into and performance of its obligations under this Agreement will not give rise to any default under any agreement to which either such entity is a party.

7.1.6 CG&E will comply with all applicable laws, rules, regulations, codes, and standards of all federal, state, and local governmental agencies having jurisdiction over either such entity or the transactions under this Agreement and with respect to which failure to comply could reasonably be expected to have a material adverse effect on either Party's performance under this Agreement.

7.1.7 CG&E shall do such other and further acts and things, and shall execute and deliver such instruments and documents, as ULH&P may reasonably request from time to time in furtherance of the purposes of this Agreement.

7.2 Representations of ULH&P. ULH&P represents and warrants the following:

7.2.1 ULH&P is corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky, and ULH&P has the requisite corporate

power and authority to own its properties, and to carry on its business as now being conducted.

7.2.2 ULH&P has the requisite corporate power and authority to execute and deliver this Agreement and to carry out the actions required of it by this Agreement. The execution and delivery of this Agreement and the actions it contemplates have been duly and validly authorized by ULH&P, and no other corporate proceedings on the part of ULH&P are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by ULH&P and constitutes a legal, valid and binding agreement of ULH&P enforceable against it in accordance with its terms, subject to the acceptance of this Agreement by the FERC.

7.2.3 ULH&P has obtained or will obtain all approvals of, and has given or will give all notices to, any public authority that are required for ULH&P to execute, deliver and perform its obligations under this Agreement.

7.2.4 To ULH&P's knowledge, it is not in violation of any applicable law, statute, order, rule, or regulation promulgated by, or judgment, decree, writ, injunction, or award rendered by, any federal, state, or local governmental court or agency which, individually or in the aggregate, would adversely affect ULH&P's entering into or performance of its obligations under this Agreement. ULH&P's entering into and performance of its obligations under this Agreement will not give rise to any default under any agreement to which it is a party.

7.2.5 ULH&P will comply with all applicable laws, rules, regulations, codes, and standards of all federal, state, and local governmental agencies having jurisdiction over ULH&P or the transactions under this Agreement and with respect to which failure to comply could reasonably be expected to have a material adverse effect on either Party's performance under this

Agreement.

7.2.6 ULH&P shall do such other and further acts and things, and shall execute and deliver such instruments and documents, as CG&E may reasonably request from time to time in furtherance of the purposes of this Agreement.

7.3 Representations of Both Parties. The representations in Articles 7.1 and 7.2 of this Agreement shall continue in full force and effect for the term of this Agreement.

ARTICLE 8.

DISPUTE RESOLUTION

8.1 Actions Prior to Arbitration

8.1.1 Parties to Address First. Any dispute, disagreement, or claim arising out of or concerning this Agreement must first be addressed by the Parties.

8.1.2 Notice of Dispute. When a Party believes that there is such a dispute, disagreement or claim, that Party may initiate the dispute resolution procedures by giving the other Party written notice of the dispute, disagreement or claim.

8.1.3 Good Faith Negotiations; Applicability of Arbitration. Representatives of the Parties must attempt to negotiate in good faith to resolve such dispute, disagreement or claim within ten (10) days after notice of the dispute, disagreement or claim has been given. If such representatives are unable to satisfactorily resolve such dispute, disagreement or claim, they must refer the matter to senior representatives of each Party with the authority to settle the dispute, disagreement or claim, which such senior representatives shall meet at a mutually acceptable time and place to attempt to resolve the dispute, disagreement or claim. If the senior representatives have not resolved such dispute, disagreement or claim within twenty (20) days

after notice of the dispute, disagreement or claim has been given, then the Parties may, upon mutual agreement, submit such dispute, disagreement or claim (including the issue of whether such dispute, disagreement or claim is arbitrable) to binding arbitration.

8.2 Arbitration Procedures. Any arbitration shall be conducted by a single neutral arbitrator appointed by the Parties under the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") in effect at the time a notice of arbitration is made. The arbitrator shall be selected pursuant to the Arbitration Rules. The arbitrator must be knowledgeable in matters that are the subject of the dispute. The arbitrator shall conduct the arbitration in accordance with the Arbitration Rules in effect at the time arbitration is initiated under this Article 8; provided, however, that, in the event of a conflict between the Arbitration Rules and the terms and provisions of this Article 8, the terms and provisions of this Article 8 shall govern.

8.3 Authority of Arbitrator

8.3.1 No Authority to Modify Agreement. The arbitrator shall have the authority only to interpret and apply the terms and conditions of this Agreement and shall have no power to modify or change any such terms or conditions.

8.3.2 Compliance with Law. The arbitrator shall be required to follow any and all applicable federal, state, or local laws and regulations.

8.3.3 Remedies

(A) The arbitrator may not award punitive damages, multiple damages, or any other damages which are not measured by the prevailing Party's actual damages.

(B) Any award of damages must be determined, limited and controlled by the

limitation of damages provision of this Agreement.

(C) The arbitrator may, in his or her discretion, award pre award and post award interest on any damages awarded; provided, however that the rate of interest may not exceed a rate equal to the lower of one and one half percent (1.5%) per month or the maximum rate allowed by the law governing this Agreement.

8.4 Timing and Nature of Decision

8.4.1 Timing. Unless otherwise agreed upon by the Parties, the arbitrator must render a decision as quickly as practicable under the circumstances.

8.4.2 Binding on Parties; Challenges. The decision must be in writing and contain the reasons for the decision. The decision and award of the arbitrator shall be final and binding upon the Parties, their successors, and assigns; provided, however, that such decision and award may be challenged solely on the grounds that the conduct of the arbitrator, or the decision and award itself, violated the standards set forth in the Federal Arbitration Act. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

8.4.3 Filing With FERC. The decision must also be filed with FERC if it affects FERC jurisdictional rates, terms and conditions of service or facilities.

8.5 Location of Arbitration. Any arbitration conducted hereunder must be conducted in Indianapolis, Indiana, unless the Parties mutually agree upon another location.

8.6 Costs. Each Party shall be responsible for its own costs and expenses, including attorneys' fees, incurred during the arbitration and for fifty percent (50%) of the cost of the arbitrator.

8.7 Confidentiality. The existence, contents, or results of any arbitration proceeding

conducted under this Article 8 may not be disclosed without the prior written consent of both Parties; provided, however, that either Party may (A) make such disclosures as may be necessary to (1) satisfy regulatory obligations to any regulatory authority having jurisdiction or (2) seek or obtain from a court of competent jurisdiction judgment on, confirmation or vacation of an arbitration award; (B) inform its lenders, affiliates, auditors, and insurers, as necessary, under pledge of confidentiality; and (C) consult with experts as required in connection with the arbitration proceeding under pledge of confidentiality. If either Party seeks preliminary injunctive relief from any court to preserve the status quo or avoid irreparable harm pending arbitration, the Parties agree to use commercially reasonable efforts to keep the court proceedings confidential, to the maximum extent permitted by the law.

8.8 FERC Jurisdiction Over Certain Disputes

8.8.1 Nothing in this Agreement shall preclude, or be construed as precluding, either Party from filing a petition or complaint with the FERC with respect to any arbitrable claim over which the FERC has jurisdiction; provided, however, that neither Party may file a petition or claim at FERC with respect to an issue which has been submitted to binding arbitration pursuant to Article 8.1.3 of this Agreement.

8.8.2 If the FERC determines that it has no jurisdiction or declines to resolve all or a portion of a claim, that portion of the claim may be resolved through arbitration as provided for in this Article 8. Any decision, finding of fact, or order of the FERC shall be final and binding, subject to the judicial review provided for under the Federal Power Act.

8.8.3 The arbitrator shall have no authority to modify, and shall be conclusively bound by, any decision, finding of fact, or order of the FERC; provided, however, that, to the extent that

a decision, finding of fact or order of the FERC does not provide a final or complete remedy to the Party seeking relief, such Party may proceed to arbitration under this Article 8, subject to the FERC decision, finding of fact, or order.

8.9 Preliminary Injunctive Relief. Nothing in this Article 8 precludes, or is to be construed as precluding, either Party from resorting to a court of competent jurisdiction for the purpose of securing a temporary or preliminary injunction to preserve the status quo or avoid irreparable harm pending the resolution of a dispute pursuant to this Article 8.

ARTICLE 9.

INSURANCE

9.1 General. Each Party agrees to maintain, at its own cost and expense, in full force and effect throughout the term of this Agreement, the types of and minimum dollar amounts of insurance or self insurance coverage as would be carried by similar companies in similar circumstances.

9.2 Certificates of Insurance; Copies of Policies. Each Party agrees to provide the other Party with certificates of insurance evidencing the insurance coverage or self insurance as set forth in Article 9.1 of this Agreement. Each Party agrees to provide the other copies of all policies or evidence of self insurance upon request.

9.3 Waiver of Subrogation. Each Party waives any right to subrogation under its respective insurance policies for any liability each has agreed to assume under this Agreement. Evidence of this requirement shall be noted on all certificates of insurance.

9.4 Failure to Comply. Failure of either Party to comply with the above insurance

terms and conditions, or the complete or partial failure of an insurance carrier to fully protect and indemnify the other Party or its affiliates, or the inadequacy of the insurance shall not in any way lessen or affect the obligations or liabilities of each Party to the other.

ARTICLE 10.

NOTICES

10.1 General. Except for notices of occurrences requiring prompt attention, all notices required or permitted to be given under this Agreement must be in writing and delivered by (A) hand; (B) registered or certified first class mail, postage prepaid, return receipt requested; (C) facsimile transmission; or (D) a reputable overnight courier which provides evidence of delivery or refusal. All such notices shall be addressed as follows:

To CG&E: Vice President
Electric System Operations
Cinergy Services, Inc.
139 East Fourth Street
Cincinnati, OH 45202
Tel: 513 287 3455
Fax: 513 287 3812

To ULH&P: In the case of notices pertaining to curtailment, interruption or disconnection, notice will be provided to the manager of the respective affected Plant, as follows:

East Bend:

Plant Manager
East Bend Electric Generating Station
139 East Fourth Street, EG373
Cincinnati, OH 45202
Tel: 513 467 4811
Fax: 513 419 5676

Miami Fort 6:

Plant Manager
Miami Fort Electric Generating Station

139 East Fourth Street, EG376
Cincinnati, OH 45202
Tel: 513 467 4936
Fax: 513 467 4931

Woodsdale:

Manager, CT Fleet Portfolio
Woodsdale Electric Generating Station
139 East Fourth Street, EG379
Cincinnati, OH 45202
Tel: 513 467 5351
Fax: 513 467 5399

All other notices to ULH&P shall be provided to:

Vice President
Power Generation
139 East Fourth Street, EM402
Cincinnati, OH 45201
Tel: 513 287 3485
Fax: 513 287 2823

10.2 Changes. Either Party may change its address for notices or the person(s) to whom notices should be given by notice to the other Party in the manner provided above.

10.3 Emergencies. Notwithstanding Article 10.1 of this Agreement, any notice concerning a system Emergency or other occurrence requiring prompt attention may be made by telephone or in person, provided that such notice is confirmed in writing promptly thereafter.

10.4 Authority of Party Representatives. The representatives noted in Article 10.1 of this Agreement, or their designees (including points of contact), shall be authorized to act on behalf of the Parties, and their instructions, requests, and decisions will be binding upon the Parties as to all matters pertaining to this Agreement and the performance of the Parties hereunder. Only these representatives shall have the authority to commit funds or make binding

obligations on behalf of the Parties. The representatives shall be responsible for tracking work, costs, schedules and all other matters related to this Agreement, and for the performance of any third parties.

10.5 Points of Contact. Each Party representative noted in Article 10.1 of this Agreement shall designate a person to act as a twenty four (24) hour point of contact, which such person shall have knowledge and control of that Party's facilities. The point of contact shall be the day to day method of communicating any and all changes in operational status and operational issues and concerns relating to each Party's facilities.

ARTICLE 11.

FORCE MAJEURE

11.1 General. Neither Party shall be considered to be in default or breach of this Agreement or liable in damages or otherwise responsible to the other Party for any delay in or failure to carry out any of its obligations under this Agreement if, and only to the extent that, the Party is unable to perform or is prevented from performing by an event of force majeure. Notwithstanding the foregoing sentence, neither Party may claim force majeure for any delay or failure to perform or carry out any provision of this Agreement to the extent that such Party has been negligent or engaged in intentional misconduct and such negligence or misconduct contributed to that Party's delay or failure to perform or carry out its duties and obligations under this Agreement. A Party's exemption from liability will extend for the period of time necessitated by the event of force majeure. All performance obligations affected by the event of force majeure will be extended for a period equal to the length of the resulting delay.

11.2 Force Majeure Defined. The term "force majeure" means those causes beyond the reasonable control of the Party claiming force majeure and which, through the exercise of Good Utility Practice and reasonable care, that Party could not have avoided, including, but not limited to, the following: flood; lightning strikes; earthquake; fire; epidemic; war; invasion; riot; civil disturbance; sabotage; explosion; insurrection; military or usurped power; strikes affecting more than one locality; labor dispute; action of any court or governmental authority, or any civil or military authority de facto or de jure; change in law; act of God or the public enemy; or any other event or cause of a similar nature beyond a Party's reasonable control. Mere economic hardship of either Party does not constitute Force Majeure.

11.3 Procedures. A Party claiming force majeure must:

(A) give written notice to the other Party of the occurrence of a force majeure event no later than three (3) business days after learning of the occurrence of such an event;

(B) use due diligence to resume performance or the provision of service hereunder as soon as practicable;

(C) take all commercially reasonable actions to correct or cure the force majeure event, provided, however, that settlement of strikes or other labor disputes are completely within the sole discretion of the Party affected by such strike or labor dispute;

(D) exercise all reasonable efforts to mitigate or limit damages to the other Party; and

(E) provide prompt written notice to the other Party of the cessation of the adverse effect of the force majeure event on its ability to perform under this Agreement.

ARTICLE 12.

INDEMNIFICATION

12.1 Indemnification. Subject to Articles 5.1, 5.2 and 20.1 of this Agreement, each Party agrees to indemnify, release and hold the other Party and its affiliates, trustees, officers, directors, agents, and employees harmless from and against any and all damages, costs (including attorneys' fees), suits, cause of action, fines, penalties or liabilities, in tort, contract or otherwise, of any kind and nature whatsoever brought by or associated with claims involving a third party, and any other obligation to third parties (collectively, "Liabilities") resulting from, or claimed to have arisen as a result of any act or omission of the indemnifying Party and/or its officers, directors, employees, agents and subcontractors arising out of or connected with the indemnifying Party's performance or breach of this Agreement or the indemnifying Party's exercise of its rights hereunder, except to the extent that such Liabilities resulted from the negligence, intentional wrongdoing, or willful misconduct of the Party seeking indemnification. Each Party hereby waives recourse against the other Party and its affiliates, trustees, officers, directors, agents, and employees for, and releases the other Party and affiliates, trustees, officers, directors, agents, and employees from, any and all Liabilities for or arising from damage to its property or from damage or injury to person(s) due to performance under this Agreement by such other Party, except to the extent such damage or injury resulted from the other Party's negligence, intentional wrongdoing, or willful misconduct.

12.2 Conditions. Each Party's obligations with respect to claims and suits covered by this Article 12 are subject to the conditions that (A) the Party seeking indemnification must give the indemnifying Party reasonably prompt notice of any such claim or suit; (B) the Party seeking indemnification must cooperate in the defense of any such claim or suit, the costs of which are to be borne by the indemnifying Party; and (C) the indemnifying Party has sole control of the

defense of such claim or suit to the extent of the indemnifying Party's liability for any such claim or suit.

12.3 Consent. Neither Party may settle, compromise, decline to appeal or otherwise dispose of any action, proceeding, or claim with respect to which indemnification is sought without the prior written consent of the other Party. In the event that any claim is settled, each Party agrees to not publicize the settlement and to make every effort to ensure that any settlement agreement contains a non-disclosure provision; provided, however, that, if required by law, either Party may disclose the existence or content of the settlement agreement.

12.4 Survival. Each Party's indemnification obligation will survive expiration or early termination of this Agreement.

ARTICLE 13.

INTEGRATION

13.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding of ULH&P and CG&E and supersedes all prior oral and written understandings and agreements, oral or written, between ULH&P and CG&E with respect to the specific subject matter addressed herein.

ARTICLE 14.

RELATIONSHIP OF PARTIES

14.1 Relationship of Parties. Nothing in this Agreement is to be construed or deemed to cause, create, constitute, give effect to, or otherwise recognize CG&E and ULH&P to be partners, joint venturers, employer and employee, principal and agent, or any other business association, with respect to any matter.

14.2 No Authority to Act for Other Party. Unless otherwise agreed to in writing signed by both Parties, neither Party shall have any authority to create or assume in the other Party's name or on its behalf any obligation, express or implied, or to act or purport to act as the other Party's agent or legally empowered representative for any purpose whatsoever.

14.3 No Liability for Acts of Other Party. Neither Party shall be liable to any third party in any way for any engagement, obligation, contract, representation, or for any negligent act or omission of the other Party, except as expressly provided for herein.

ARTICLE 15.

WAIVER

15.1 Waiver Permitted. Except as otherwise provided for in this Agreement, the failure of either Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver.

15.2 Limited Nature of Waivers. Any waiver granted by a Party may not operate as a waiver of any other failure of the Party granted a waiver to comply with any obligation, covenant, agreement, or condition herein.

ARTICLE 16.

AMENDMENT

16.1 CG&E Section 205 Rights. Notwithstanding any provision in this Agreement to the contrary, CG&E may unilaterally make application to the FERC under Section 205 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder for a change in any rate, term, condition, charge, classification of service, rule or regulation under or

related to this Agreement.

16.2 ULH&P Section 206 Rights. Notwithstanding any provision in this Agreement to the contrary, ULH&P may exercise its rights under Section 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder with respect to any rate, term, condition, charge, classification of service, rule or regulation for any services provided under this Agreement over which the FERC has jurisdiction.

16.3 Amendments. Except as provided for in Articles 16.1 and 16.2 of this Agreement, this Agreement may only be modified, amended, changed, or supplemented in writing signed by ULH&P and CG&E.

ARTICLE 17.

SUCCESSORS, ASSIGNS,

AND THIRD PARTY BENEFICIARIES

17.1 Binding On Parties, Successors, and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. No person or Party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.

17.2 Assignment. Neither Party shall voluntarily assign this Agreement, nor assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, which consent shall not be unreasonably withheld. Any such assignment or delegation made without such written consent shall be null and void;

provided, however, that such written consent shall not be required: (i) in connection with the sale, merger, or transfer of all or a substantial portion of the properties of a Party (and, in the case of CG&E, its transmission system and the CG&E Facilities), so long as the assignee in such a sale, merger, or transfer assumes directly all of the assignor's rights, duties, obligations and liabilities arising under this Agreement; (ii) for CG&E to assign this Agreement to any wholly-owned direct or indirect subsidiary of Cinergy Corp., a Delaware corporation, so long as such subsidiary assumes directly all of the assignor's rights, duties, obligations and liabilities arising under this Agreement; (iii) for CG&E to assign this Agreement to any purchaser of all or a substantial portion of the Transmission System, so long as the purchaser assumes directly all of the assignor's rights, duties, obligations and liabilities arising under this Agreement; or (iv) for ULH&P to assign this Agreement to any purchaser of all or a substantial portion of the Plants, so long as the purchaser assumes directly all of the assignor's rights, duties, obligations and liabilities arising under this Agreement.

17.3 Financing Parties. Notwithstanding the foregoing, ULH&P may assign this Agreement without CG&E's prior consent to any future owner of the Plants, as long as the future owner assumes directly all of ULH&P's rights, duties, obligations and liabilities under this Agreement. In addition and notwithstanding the foregoing, ULH&P or its assignee may assign this Agreement to the persons, entities or institutions providing financing or refinancing for the development, design, construction or operation of the Plants and, if ULH&P provides notice thereof to CG&E, CG&E shall provide notice and reasonable opportunity for such lenders to cure any default under this Agreement. CG&E shall, if requested by such lenders, execute its standard documents and certificates as may be requested with respect to the assignment and

status of this Agreement, provided such documents do not change the rights of CG&E under this Agreement except with respect to providing notice and a reasonable opportunity to cure defaults. In the event of any foreclosure by such lenders, the purchasers at such foreclosure or any subsequent purchaser shall, upon request, be entitled to the rights and benefits of (and be bound by) this Agreement so long as it is an entity entitled to interconnect with the Transmission System.

17.4 Release of Assigning Party. Any assignment authorized as provided in Article 17.2 or Article 17.3 of this Agreement will not operate to relieve the Party assigning this Agreement of any of its rights, interests, duties, obligations or liabilities hereunder or of the responsibility of full compliance with the requirements of this Agreement unless (A) the other Party consents, if such consent is required under such sections, in which case such consent shall not be unreasonably withheld, and (B) the assignee agrees in writing to be bound by all of the duties, obligations and liabilities of the assigning Party provided for in this Agreement.

ARTICLE 18.

SUBCONTRACTORS

18.1 Use of Subcontractors or Agents Permitted. Nothing in this Agreement will prevent either Party from utilizing the services of subcontractors or agents as it deems appropriate; provided, however, that all such subcontractors and agents comply with the terms and conditions of this Agreement.

18.2 Retaining Party to Remain Responsible. The creation of any subcontract or agency relationship shall not relieve the retaining Party of any of its obligations under this Agreement. Each Party shall be fully responsible to the other Party for the acts or omissions of

any subcontractor or agent it hires as if no subcontract or agency relationship had been made. Any obligation imposed by this Agreement upon either Party, where applicable, shall be equally binding upon and construed as having application to any subcontractor or agent.

18.3 Liability for Subcontractors or Agents. Each Party will be liable for, indemnify, and hold harmless the other Party, its affiliates, and their officers, directors, employees, agents, and assigns from and against any and all claims, demands, or actions from its subcontractors or agents; and will be responsible for all costs, expenses, and legal fees associated therewith and all judgments, decrees, and awards rendered therein.

18.4 No Third Party Beneficiary. No subcontractor or agent is intended to be or will be deemed a third party beneficiary of this Agreement.

18.5 No Limitation by Insurance. The obligations under this Article 18 are not limited in any way by any limitation on subcontractor's or agent's insurance.

ARTICLE 19.

LABOR DISPUTES

19.1 Notice. Each Party agrees to promptly notify the other, orally and then in writing, of any labor dispute which may reasonably be expected to affect the operations of the other Party.

ARTICLE 20.

LIMITATION OF LIABILITY

20.1 No Consequential Damages. Neither Party shall be liable to the other Party or its parent, subsidiaries, affiliates, officers, directors, agents, employees, successors, or assigns for incidental, punitive, special, indirect, multiple, or consequential damages (including attorneys'

fees, litigation costs, and claims for lost profits) connected with or resulting from performance or non-performance of this Agreement.

20.2 Application; Survival. The limitation of liability provided for in this Article 20 will apply regardless of fault, and will survive expiration or early termination of this Agreement.

ARTICLE 21.

GOVERNING LAW AND INTERPRETATION

21.1 Applicable Law. This Agreement and all rights, obligations, and performances hereunder are subject to all applicable federal and state laws and to all duly promulgated orders and other duly authorized action of any governmental authority with competent jurisdiction.

21.2 Governing Law. This Agreement is to be governed by federal law where applicable, and when not in conflict with or preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its conflict of laws principles. Except for those matters which are brought to the FERC or which are resolved through arbitration, any action arising out of or concerning this Agreement must be brought in the courts of the State of Ohio.

21.3 No Presumption. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.

21.4 Conflicts Between Main Body of Agreement and Exhibits. In the event of a conflict between the main body of this Agreement and any exhibit hereto, the terms of the main body of this Agreement shall govern.

ARTICLE 22.

HEADINGS AND CAPTIONS

22.1 No Effect on Interpretation. The headings and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

ARTICLE 23.

COUNTERPARTS

23.1 Counterpart Execution Permitted. This Agreement may be executed in separate or multiple counterparts, all of which shall evidence a single agreement.

ARTICLE 24.

SEVERABILITY

24.1 Severable Nature of Agreement. If any provision of this Agreement or the application thereof to any person or circumstances is, to any extent, held to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, will not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 25.

OPERATING COMMITTEE

25.1 Representatives. The Parties shall establish a committee of authorized representatives to be known as the Operating Committee. Each of the Parties shall designate, in writing delivered to the other Party, the person who is to act as its representative on said committee (and the person or persons who may serve as alternate or alternates whenever such

representative is unable to act). Such representatives and alternate or alternates shall each be persons familiar with the facilities of the Party he or she represents, and each shall be fully authorized to cooperate on behalf of the Party they represent in performing the functions delegated to the Operating Committee.

25.2 Duties of Operating Committee. The Operating Committee shall perform the following:

(A) All functions pertaining to the coordination of maintenance of the Plants, the CG&E Facilities, and the Transmission System.

(B) All matters pertaining to the control of time, frequency, energy flow, kilovar exchange, power factor, voltage and other similar matters bearing on the satisfactory synchronous operations of the Plants, the CG&E Facilities, and the Transmission System.

(C) Such other functions not specifically provided for herein upon which cooperation, coordination, and agreement as to quantity, time, method, terms and conditions are necessary in order that the operation of the Plants, the CG&E Facilities, and the Transmission System may be coordinated to the fullest practicable extent as agreed upon by the Parties.

(D) Resolution of disputes and operating issues.

25.3 Right to Inspect. For the purpose of inspection, checking of records, and all other pertinent matters, said representatives and their alternates shall have the right to request any and all applicable documentation and shall have the right of entry to all property of the Parties used in connection with the performance of this Agreement.

CG&E shall have the right to enter and inspect the ULH&P facilities interconnected to

the CG&E Facilities at its discretion under non-Emergency operating conditions. ULH&P shall have the right to enter and inspect the CG&E Facilities at its discretion under non-Emergency operating conditions. Access shall be provided where the Party requesting access provides at least twenty-four (24) hours' advance notice of its desire to inspect and the facilities it desires to inspect.

25.4 Limit of Authority. The Operating Committee shall not have authority to modify any of the terms or conditions of this Agreement.

25.5 Unresolvable Disputes. If the Operating Committee is unable to take action on any matter to be acted upon by it under this Agreement because of a dispute between the representatives as to such matter, then dispute resolution shall proceed in compliance with Article 8 of this Agreement.

ARTICLE 26.

OTHER CONDITIONS

26.1 Filing of Agreement with FERC. CG&E agrees to file this Agreement with the FERC for approval under Section 205 of the Federal Power Act and with any other appropriate regulatory agency as soon as practicable after its execution by the Parties. ULH&P agrees to support such filing, to reasonably cooperate with CG&E with respect to the filing, and to provide any information, including the filing of testimony, reasonably required by CG&E to comply with applicable filing requirements.

26.2 Filing of Amendments. Promptly upon execution of any amendment to this Agreement by the Parties pursuant to Article 16.3 or Article 26.3 of this Agreement, CG&E

shall, if necessary, file such amendment with FERC and with any other appropriate regulatory agency. ULH&P agrees to support such filing, to reasonably cooperate with CG&E with respect to such filing, and to provide any information, including the filing of testimony, reasonably required by CG&E to comply with applicable filing requirements.

26.3 Good Faith Negotiations Upon Occurrence of Certain Events. If one of the following events (an "Event") takes place, the Parties agree to negotiate in good faith an amendment or amendments to this Agreement or to take other appropriate action so as to put each Party in as nearly the same position as the Parties would have been had the Event not occurred:

(A) this Agreement is not approved or accepted for filing by FERC without modification or condition; or

(B) FERC, the United States Congress, any state or state regulatory commission, any organization issuing criteria, rules, procedures or standards included in the Rules and Procedures or CG&E (upon approval of the FERC) implements any change in any law, regulation, rule, procedure, standard, criteria or practice which materially affects or is reasonably expected to materially affect either Party's ability to perform under this Agreement; or

(C) compliance with this Agreement causes CG&E or any other entity exercising control over the Transmission System, or ULH&P to be in non-compliance with any requirement of the FERC.

26.3.1 Amendments. Any amendment the Parties negotiate pursuant to this Article 26.3 must be executed by the Parties in writing in accordance with Article 16.3 of this Agreement and, if necessary, filed with the FERC or any other appropriate regulatory agency in accordance

with Article 26.2 of this Agreement.

26.3.2 Failure to Agree. If, within sixty (60) days after the occurrence of an Event, the Parties (A) are unable to reach agreement as to what, if any, amendments are necessary, and (B) fail to take other appropriate action so as to put each Party in as nearly the same position as the Parties would have been had the Event not occurred, the Parties may proceed under Article 8 of this Agreement to resolve any disputes related thereto.

26.3.3 Failure to Perform Due to Event. If either CG&E or ULH&P is unable to fully perform its obligations under this Agreement due to the occurrence of an Event, the affected Party will not be deemed to be in default of its obligations under this Agreement to the extent that (A) the Party is unable to perform as a result of the Event and (B) the affected Party acts in accordance with its obligations under this Article 26.3.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their duly authorized officers and their respective corporate seals to be hereunto affixed as of the date first above mentioned.

THE CINCINNATI GAS & ELECTRIC COMPANY

By: _____
John C. Procario
Senior Vice President

THE UNION LIGHT, HEAT AND POWER COMPANY

By: _____
Gregory C. Ficke
President

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon all parties on the service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Denise M. Buffington
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7463
dbuffing@skadden.com

Dated: February 23, 2006

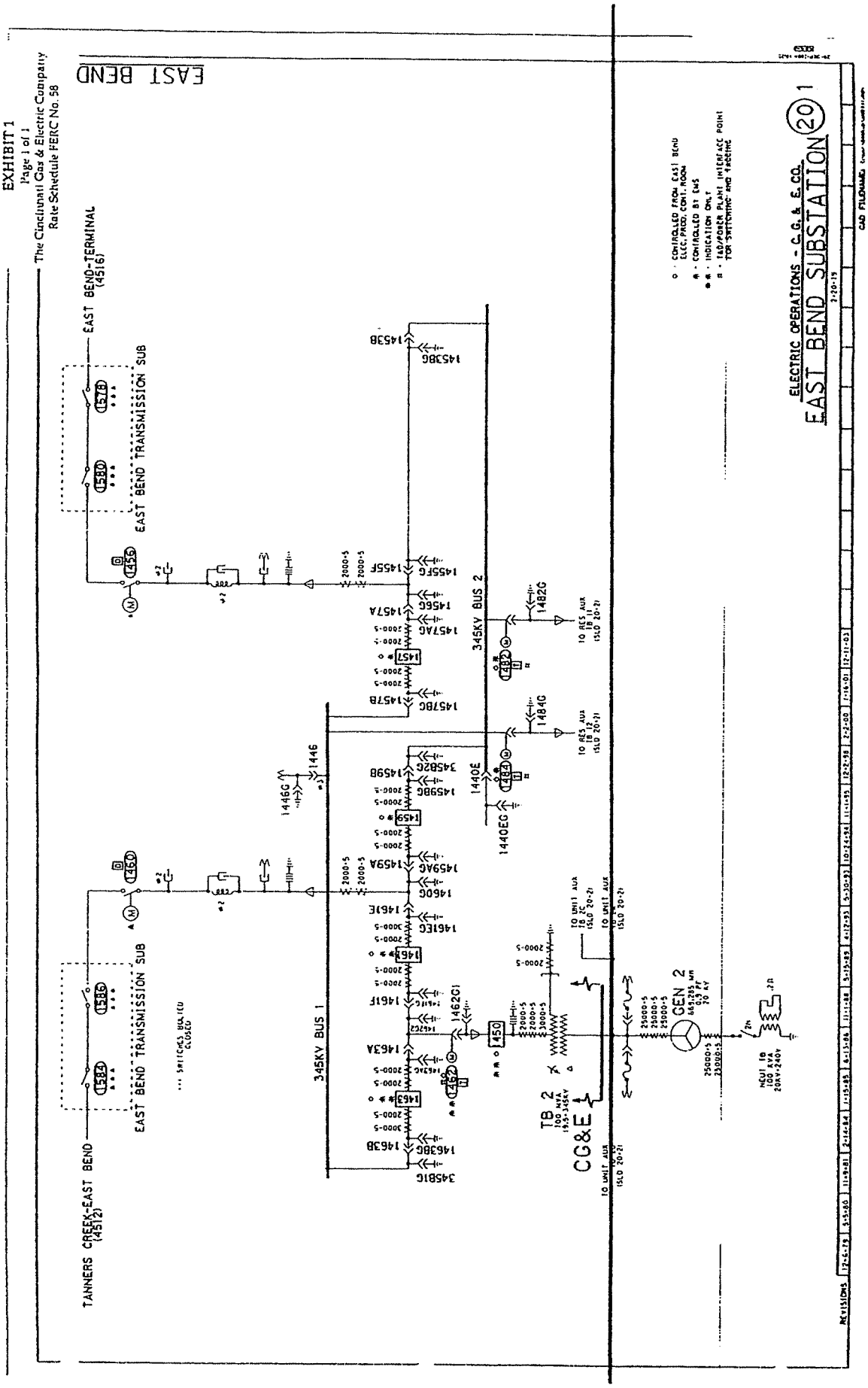
EXHIBIT 1
Page 1 of 1
The Cincinnati Gas & Electric Company
Rate Schedule FERC No. 58
EAST BEND
EAST BEND-TERMINAL
(4516)
EAST BEND TRANSMISSION SUB
TANNERS CREEK-EAST BEND
(4512)
EAST BEND TRANSMISSION SUB
345KV BUS 1
345KV BUS 2
TB 2
100 MVA
345-34.5KV
CG&E
GEN 2
ELECTRIC OPERATIONS - C.G.& E. CO.
EAST BEND SUBSTATION
201

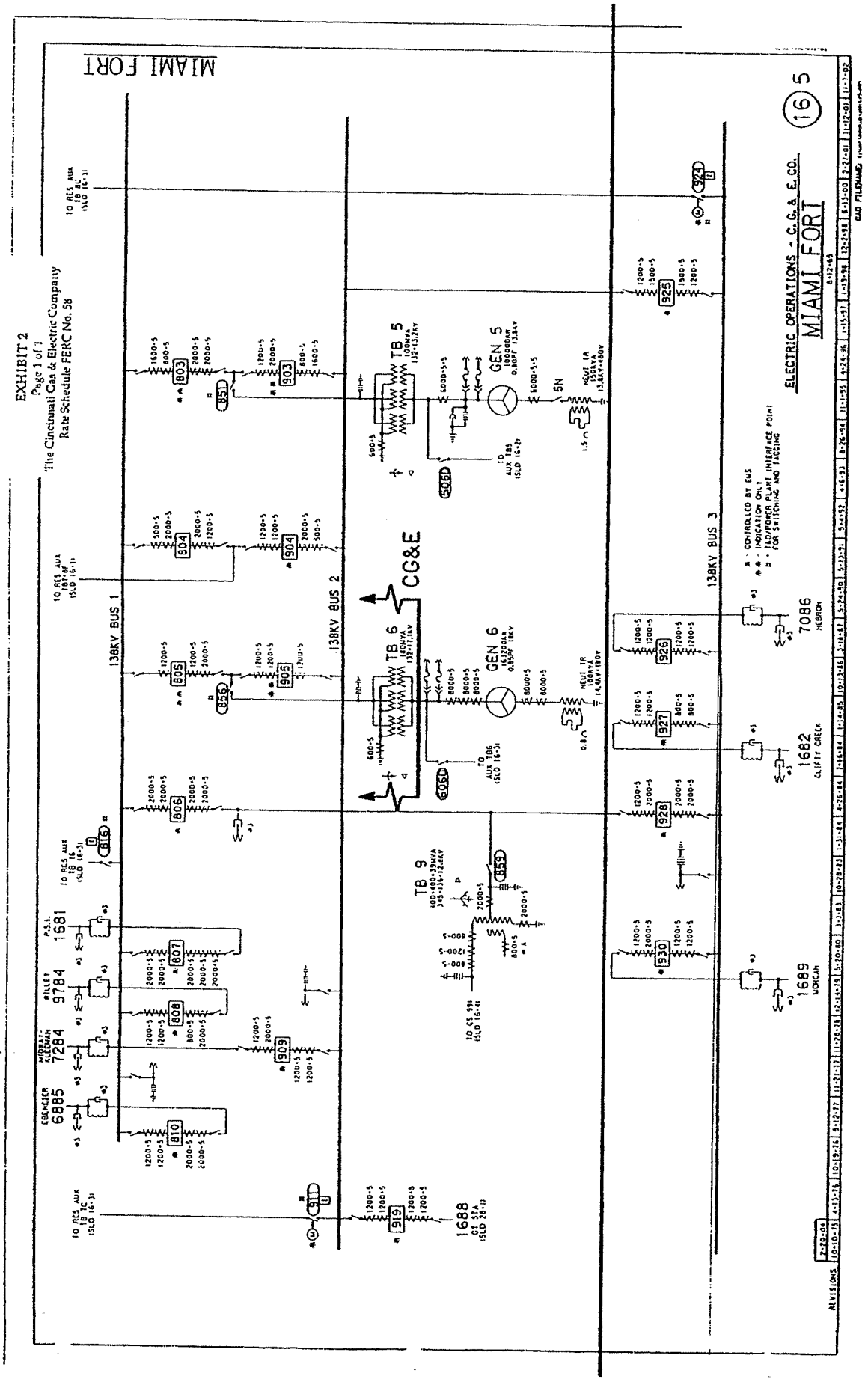
EXHIBIT 2
Page 1 of 1
The Cincinnati Gas & Electric Company
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ELECTRIC OPERATIONS - C.G. & E. CO.
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138KV BUS 1
138KV BUS 2
138KV BUS 3
CG&E
TB 5
TB 6
TB 9
GEN 5
GEN 6
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1682
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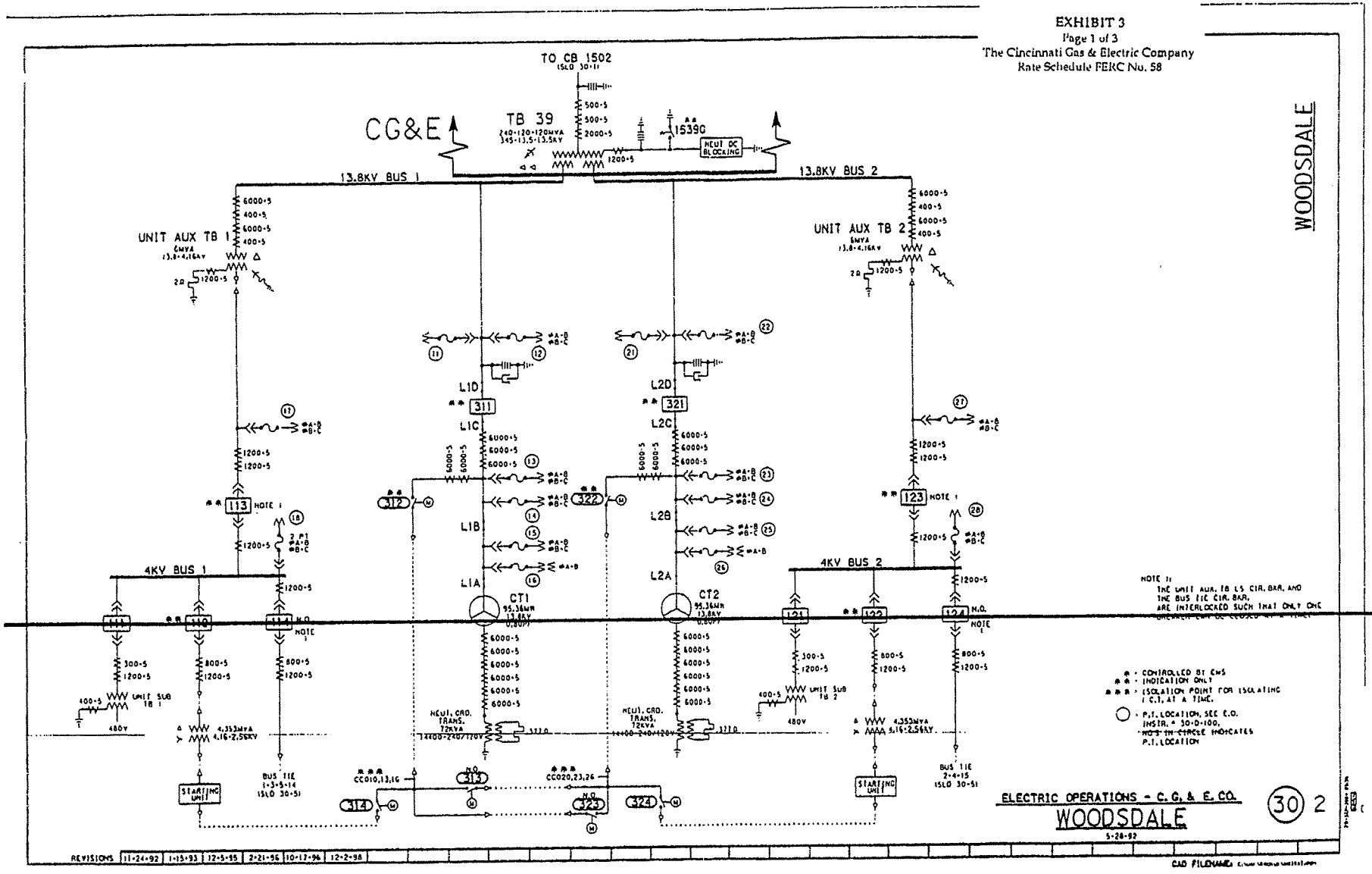
EXHIBIT 3
Page 1 of 3
The Cincinnati Gas & Electric Company
Rate Schedule FERC No. 58



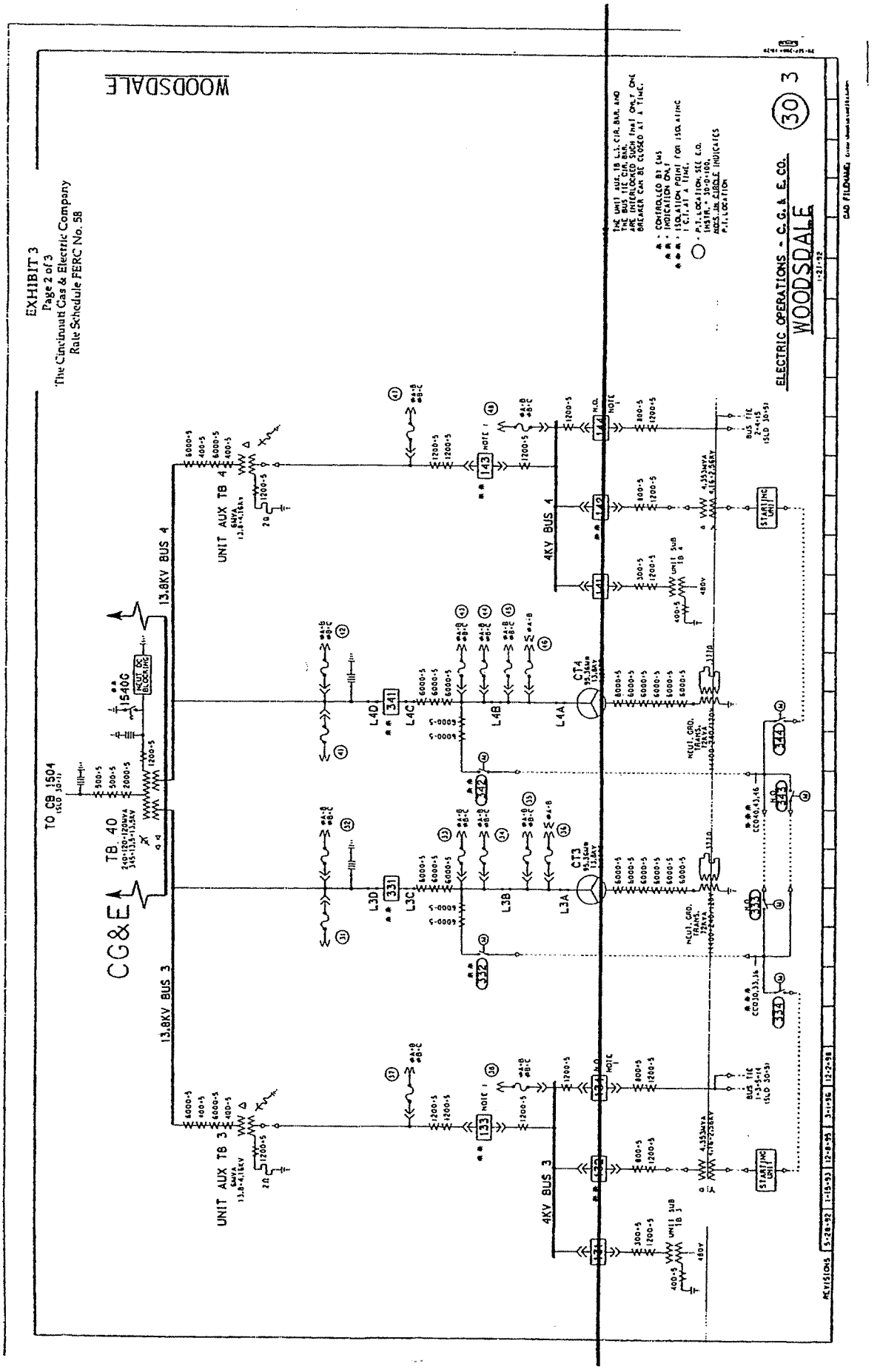


EXHIBIT 3
Page 2 of 3
The Cincinnati Gas & Electric Company
Rate Schedule FERC No. 58
WOODSDALE
ELECTRIC OPERATIONS - C. G. & E. CO.
WOODSDALE
30 3
CG&E
TB 40
TO CB 1504
1540G
13.8KV BUS 4
13.8KV BUS 3
UNIT AUX TB 4
UNIT AUX TB 3
4KV BUS 4
4KV BUS 3
CT4
CT3
L4A
L4B
L4C
L4D
L3A
L3B
L3C
L3D
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BUS TIE 1-3-15-16 (SLD 30-5)
START/INC UNIT
REVISIONS

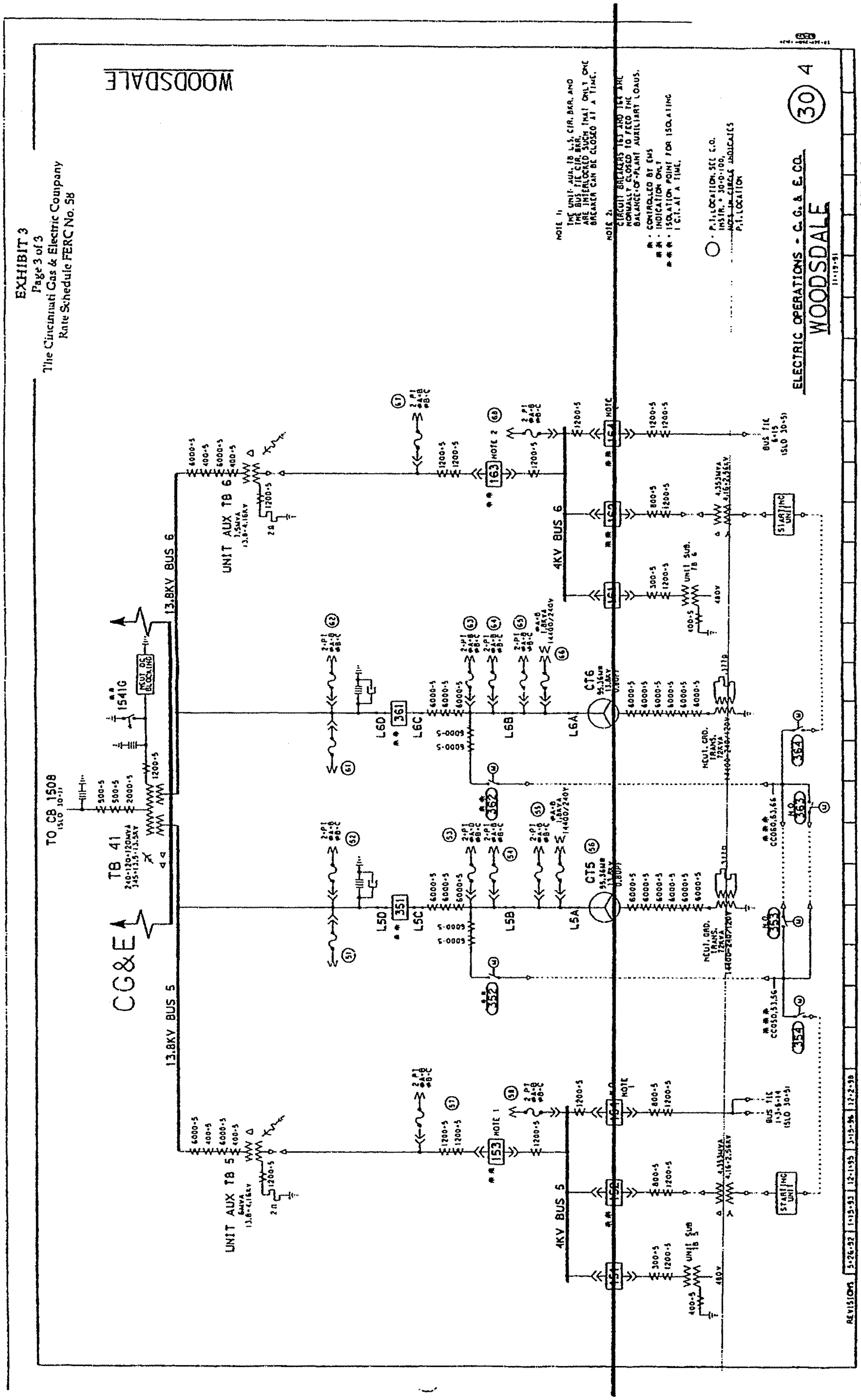
EXHIBIT 3
Page 3 of 3
The Cincinnati Gas & Electric Company
Rate Schedule FERC No. 58
WOODSDALE
CG&E
13.8KV BUS 5
13.8KV BUS 6
TB 41
TO CB 1508
UNIT AUX TB 5
UNIT AUX TB 6
4KV BUS 5
4KV BUS 6
CT5
CT6
STARTING UNIT
ELECTRIC OPERATIONS - C.G. & E. CO.
WOODSDALE
REVISIONS

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Ohio, Inc.	)	
Duke Energy Kentucky, Inc.	)	**Docket No. EC12-___-000**

APPLICATION FOR AUTHORIZATION UNDER SECTION 203 OF THE FEDERAL POWER ACT AND REQUEST FOR EXPEDITED ACTION

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On Behalf of
Duke Energy Corporation

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Ohio, Inc.	)	**Docket No. EC12-___-000**
Duke Energy Kentucky, Inc.	)	

APPLICATION FOR AUTHORIZATION UNDER SECTION 203 OF THE FEDERAL POWER ACT AND REQUEST FOR EXPEDITED ACTION

Pursuant to section 203(a)(1) of the Federal Power Act ("FPA"), 16 U.S.C. § 824b(a)(1) (2006), as amended by the Energy Policy Act of 2005 ("EPAct 2005"),[1] and Part 33 of the regulations of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. Part 33 (2011), Duke Energy Ohio, Inc. ("DEO") and Duke Energy Kentucky, Inc. ("DEK" and together with DEO, the "Applicants"),[2] hereby submit this application (the "Application") requesting all authorizations necessary for DEO to assign to DEK (the "Assignment") several generation step-up transformers ("GSUs"). The GSUs are interconnected with generating facilities (the "Plants") which had previously been transferred by DEO to DEK. The proposed Assignment would consolidate the ownership of the Plants and the associated GSUs at each plant site under DEK and thereby simplify ratemaking and accounting for the facilities by eliminating the need for inter-company charges for the costs of ownership, operation and maintenance of the GSUs under a separately filed agreement between DEO and DEK.[3]

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1 Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005).

2 On September 30, 2011, Duke Energy Corporation ("Duke Energy") and Progress Energy, Inc. ("Progress Energy") obtained conditional authorization under FPA section 203, for a transaction pursuant to which Progress Energy will become a wholly-owned subsidiary of Duke Energy and the former shareholders of Progress Energy will become shareholders of Duke Energy (the "Progress Merger"). *See Duke Energy Corp. and Progress Energy, Inc.*, 136 FERC ¶ 61,245 (2011). The conditional authorization was made subject to Applicants submission of additional mitigation measures which were filed on October 17, 2011. The Transaction addressed in the instant application deals exclusively with the transfer of certain jurisdictional transmission facilities among two existing, wholly-owned Duke subsidiaries and is unrelated to the Progress Merger.

3 *See Cincinnati Gas & Elec. Co.*, Letter Order under Delegated Authority in Docket No. ER04-1249-000 issued on March 2, 2005 ("Facilities Agreement"). An amended version of the Facilities Agreement reflecting the *(cont'd)*

As described below, the East Bend Generation Station ("East Bend"), Woodsdale Electric Generation Station ("Woodsdale") and Unit 6 of the Miami Fort Generation Station ("Miami Fort Unit 6") at which the GSUs are located were transferred on January 1, 2006 from DEO (then called Cincinnati Gas & Electric Company or "CG&E") to DEK (then called Union Light, Heat and Power Company or "ULH&P") at the direction of state regulators in Kentucky.[4] At the time of that transfer, only the generating facilities at each of the Plants were transferred to DEK, but ownership of the GSUs at those sites was retained by DEO. The GSUs are necessary to transform the electric power originating at the Plants to transmission-level voltage. Because of the bifurcated ownership, DEO currently provides step-up services to DEK under the Facilities Agreement using the GSUs at the Plants. Thus, concurrent with this application, DEO is filing a notice of termination for the Facilities Agreement under FPA section 205, to become effective on the closing date of the Assignment. The Assignment will serve the interests of both companies and their retail and wholesale customers by consolidating the ownership of the Plants and the GSUs within DEK, thus reducing the administrative costs and burdens of inter-company service charges under the Facilities Agreement that will be terminated upon closing.

I. REQUEST FOR EXPEDITED CONSIDERATION

Applicants are seeking Commission approval of this Application by December 30, 2011 to allow for a closing by December 31, 2011. Specifically, completion of the Assignment on December 31, 2011 will allow for the termination of the Facilities Agreement on the last day of a calendar month and quarterly reporting period. This will minimize the billing, accounting and

(cont'd from previous page)
closing of the Plant transfer in January 2006 was approved in a Letter Order under Delegated Authority in Docket No. ER06-548 issued on April 18, 2006.

[4] Because the transfer of the Plants to DEK was completed prior to the effectiveness of the new EPAct 2005 provisions governing generation asset transfers, that transactions was not subject to Commission approval under FPA section 203. As noted, however, the Facilities Agreement under which DEO charged DEK for the ownership, operation and maintenance of the GSUs was accepted for filing by the Commission.

reporting issues that otherwise must be addressed if the legal entity providing such jurisdictional services changed after December 31, 2011.

Expedited consideration of this Application is warranted because the Assignment involves the transfer of limited and discrete interconnection facilities (i.e., the GSUs) from a public utility with no captive retail or wholesale customers (DEO) to its wholly-owned public utility subsidiary (DEK) under terms which raise no material issues under the Commission's guidelines. Specifically, for purposes of the Assignment, the GSUs located at DEK's Woodsdale plant and Miami Fort Unit 6 are being valued at the net (depreciated) book values accepted by the Commission for setting the rates under the currently-effective Facilities Agreement for service provided by DEO to DEK from the GSUs. Given that the GSUs located at DEK's East Bend plant will need to be replaced in the near future due to the GSUs being near the end of their useful life, the transfer of those facilities to DEK will be priced at their scrap value determined in a manner described herein. Thus, the Assignment (a) does not involve a merger of traditional public utilities, (b) is consistent with Commission precedent and (c) does not require an Appendix A analysis or raise any concerns regarding competition, rates or regulation. In addition, as explained below and as demonstrated in Exhibit M, the Assignment does not raise any cross-subsidization, pledge or encumbrance concerns. Accordingly, Applicants request that the Commission provide for a 21-day comment period[5] and issue an order approving the Assignment no later than December 30, 2011.

[5] *See Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 194 (2005) (establishing a 21-day comment period for section 203 applications that do not require a detailed Appendix A analysis and that do not raise cross-subsidization concerns), *order on reh'g,* Order No. 669-A, FERC Stats. & Regs. ¶ 31,214 at P 155, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006) (collectively, "Order No. 669") (codified at 18 C.F.R. pts. 2, 33).

II. COMMUNICATIONS

Any questions or comments concerning this Application should be directed to the following:

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On Behalf of
Duke Energy Corporation

III. DESCRIPTION OF THE APPLICANTS

DEO and its DEK subsidiary are wholly-owned, indirect subsidiaries of Duke Energy, a Delaware corporation organized as a public utility holding company headquartered in Charlotte, North Carolina. Together with its subsidiaries, Duke Energy is a diversified energy company with both regulated and unregulated utility operations. Duke Energy supplies and delivers energy to customers in the U.S. and selected international markets. A list of Duke Energy's energy subsidiaries and affiliates is attached as Exhibit B.

Duke Energy's regulated utility operations in the U.S. consist of its franchised electric and gas business segment, which serves approximately 4 million retail customers located in five states in the Southeast and Midwest regions. The U.S. franchised electric and gas segment consists of regulated generation, and electric and gas transmission and distribution systems.

In its electric operations, Duke Energy owns approximately 27,000 MW of generating capacity and has a service area of approximately 50,000 square miles. Duke Energy subsidiaries also sell electricity at wholesale to incorporated municipalities and to public and private utilities.

Duke Energy's gas operations include regulated natural gas transmission and distribution with approximately 500,000 customers located in southwestern Ohio and northern Kentucky.

Duke Energy has four electric utility operating companies: DEO and its wholly-owned subsidiary DEK, Duke Energy Indiana, Inc. ("DEI") and Duke Energy Carolinas, LLC ("DEC" and collectively, the "Duke Operating Companies"). DEO and DEK also distribute and sell natural gas in portions of Ohio and Kentucky, respectively. The Duke Operating Companies and a number of their jurisdictional affiliates are authorized to sell power at market-based rates, with the exception of sales within the Duke Energy Carolinas Balancing Authority Area ("BAA").[6]

Duke Energy Commercial Asset Management serves as the wholesale merchant agent for DEO and a number of Duke Energy's other unregulated generation and marketing businesses in Duke Energy's commercial business segment, and owns a number of gas-fired power plants located in the Midwest region of the United States in the footprints of the Midwest Independent Transmission System Operator, Inc. ("MISO") and the PJM Interconnection, L.L.C. ("PJM").[7] For purposes of this Application, DEO and DEK are the only Duke Energy subsidiaries whose jurisdictional assets are implicated by the Assignment.

A. DUKE ENERGY OHIO

DEO, an indirect wholly-owned subsidiary of Duke Energy, is a combination electric and gas public utility company that generates, transmits, distributes and sells electricity at retail and

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[6] *See Duke Power, a Div. of Duke Energy Corp.*, 111 FERC ¶ 61,506 (2005); *see also Duke Power*, 113 FERC ¶ 61,192 (2005), *order approving settlement*, 115 FERC ¶ 61,042 (2006) (approving cost-based rates for wholesale sales within the Duke Power control area). DEC's baseline electric market-based rate tariff was accepted by Letter Order on October 26, 2010 in Docket No. ER10-2566-000. DEI, DEK, and DEO's baseline market-based rate tariffs were accepted by Letter Order on October 22, 2010 in Docket Nos. ER10-2034-000 (DEI), ER10-2032-000 (DEK), and ER10-2033-000 (DEO).

[7] Duke Energy Retail Sales, LLC, a subsidiary of Duke Energy and part of the commercial business segment, serves retail electric customers in Ohio with generation and other services. Duke Energy's commercial business segment also includes: Duke Energy Generation Services, Inc., which is an on-site energy solutions and utility services provider and is active in the development and operation of renewable energy projects in the U.S.; and Duke Energy International LLC, which owns, operates and manages power generation facilities and engages in sales and marketing of electric power and natural gas outside the U.S.

wholesale, and distributes and sells natural gas at retail in southwestern Ohio. As noted below, DEO is a hybrid entity that includes both traditional public utility operations as well as a substantial unregulated merchant energy business that is managed and operated by the commercial business segment. Its retail electric and natural gas distribution operations are regulated by the Public Utilities Commission of Ohio ("PUCO"). Under Ohio's restructuring statute, which initiated retail electric competition in 2001, DEO's retail electric customers have the legal right to purchase power from Competitive Retail Electric Service providers and are not considered "captive" under the Commission's regulations[8] DEO has been granted a waiver of the Affiliate Restrictions under its market-based rate authorization based on a Commission finding that Ohio retail customers are not captive and that DEO also does not serve any captive wholesale customers.[9]

DEO's unregulated generation fleet includes about 4,000 MW of coal-fired generation plants that currently are dedicated to DEO customers and about 3,600 of gas-fired generation located in Ohio, Pennsylvania, Indiana, Illinois and Indiana that are held in separate LLC subsidiaries and serve unregulated energy markets in the Midwest, as discussed further in Part I(B).

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[8] *See Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity and Ancillary Servs. by Pub. Utils.*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 479-81, *order clarifying final rule*, 121 FERC ¶ 61,260 (2007), *order on reh'g and clarification*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *order on reh'g and clarification*, 124 FERC ¶ 61,055, *order on reh'g and clarification*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g and clarification*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g and clarification*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305, *order on clarification*, 131 FERC ¶ 61,021, *reh'g denied*, 134 FERC ¶ 61,046 (2010), *reh'g pending*. *See also FirstEnergy Solutions Corp.*, 125 FERC ¶ 61,356 at P 27 (2008) (finding that Ohio retail customers are not "captive" because they "have retail choice, i.e., the ability to select a retail supplier based on rates, terms, and conditions of service offered"), *reh'g denied*, 128 FERC ¶ 61,119 (2009); *Dayton Power & Light Co.*, 123 FERC ¶ 61,231 at P 21 (2008) (same).

[9] *Cincinnati Gas & Elec. Co.*, 113 FERC ¶ 61,197 at P 18 (2005) ("*Cincinnati Gas & Electric*") (approving DEO's request—under its prior name—for a code of conduct waiver); *Cinergy Corp.*, 128 FERC ¶ 61,102 (2009); *see also Duke Energy Retail Sales, LLC*, 127 FERC ¶ 61,027 at PP 30-36 (2009) (approving waiver request of DEO affiliate); *Cinergy Mktg. & Trading, LP*, 116 FERC ¶ 62,197 (2006) (same).

B. DUKE ENERGY KENTUCKY

DEK, a Kentucky corporation and wholly owned subsidiary of DEO, is a combination electric and gas public utility company that generates, transmits, distributes and sells electricity at retail and wholesale, and distributes and sells natural gas at retail in northern Kentucky. DEK's retail electric operations are subject to the jurisdiction of the Kentucky Public Service Commission ("KPSC"). DEK has been authorized by the Commission to sell wholesale power at market-based rates.[10]

Although they are separately incorporated and legally distinct entities, DEO and DEK have been planned and operated as a single electric power system. For a number of historical reasons, all of the generating facilities of the two companies were originally held within DEO's generation portfolio and were planned and operated to meet the power needs of retail customers in the combined DEO/DEK service territories.

As a result of a policy determination by the KPSC that DEK should directly own the physical generation assets needed to serve its load, DEO and DEK agreed to the transfer of three electric generating stations (the "Plants") with a combined generating capacity of 1,105 MW from DEO to DEK.[11] The transfer was completed on January 1, 2006, when DEO assigned the Plants to DEK but retained the GSUs at each of the plant sites. DEK also entered into the Facilities Agreement with DEO for step-up service from the GSUs through which the power generated at the Plants is delivered to DEK's load over the MISO transmission network.

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[10] *See Cincinnati Gas & Electric*, 113 FERC ¶ 61,197.

[11] Specifically, DEK acquired from DEO's predecessor a 100 percent ownership share (447 MW nameplate rating) in the East Bend Generating Station, a coal-fired station in Rabbit Hash, Kentucky, (b) the Woodsdale Generating Station, a 490 MW (nameplate rating) dual-fuel combustion-turbine peaking station that operates on either natural gas or propane and (c) Miami Fort Unit 6, a 168 MW (nameplate rating) coal-fired unit located in North Bend, Ohio.

DEO and DEK have received preliminary Commission approval to transfer their transmission assets from MISO to PJM as of January 1, 2012.[12] As a result, approximately 5,000 MW of generation owned by DEO and DEK would be "relocated" (for operational and market purposes) from MISO to PJM as part of the integration of DEO into PJM. The Assignment of the GSU facilities by DEO to its DEK subsidiary addressed in this Application is unrelated to DEO's move from MISO to PJM.

IV. DESCRIPTION OF THE ASSIGNMENT AND JURISDICTION OF THE COMMISSION

The Assignment will be implemented pursuant to the terms of an Asset Transfer Agreement dated November 1, 2011 between DEO and DEK (the "Asset and Sale Agreement"). As noted, the Asset and Sale Agreement provides for DEK to acquire the GSUs located at the Plants at their net (depreciated) book values as of the date of closing.[13] The GSUs include the following facilities:

1. The 700 MVA step-up transformer (bank 2) located at the East Bend generation plant in Rabbit Hash, Kentucky. The original cost of the transformer was $3,150,961. As described below, because of the planned replacement of this GSU (due to it reaching the end of its useful life) soon after closing of the Assignment, its transfer price for the Transaction has been set equal to its scrap value, which has been determined by Duke Energy through an independent (third-party) valuation to be approximately $270,000.

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[12] *Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.*, 133 FERC ¶ 61,058 (2010) (conditionally accepting realignment proposal).

[13] As noted, the transfer price for the Miami Fort and Woodsdale GSU will be the net book value as of the date of the closing of the Assignment. The net book values presented below for September 30, 2011 are the most recent published values from the DEO Form 3Qs and are provided for informational purposes only.

2. The 180 MVA step-up transformer (bank 6) located at the Miami Fort Unit 6 generation plant in North Bend, Ohio. The original cost of the transformer was $884,615 and the net book value of the transformer as of September 30, 2011 was approximately $53.503. As outlined below, the net book value has been determined to be substantially below the alternative cost of purchasing a used transformer and having it installed at the plant site.

3. The three 240 MVA step up transformers (banks 39, 40 and 41) located at the Woodsdale generation plant in Butler county, Ohio. The original cost of the three transformers was $10,592,322 and the net book value of the transformers as of September 30, 2011 was approximately $7,774,498. As outlined below, the net book value has been determined to be substantially below the alternative cost of purchasing a used transformer and having it installed at the plant site.

The Asset and Sale Agreement also provides for the termination of the existing Facilities Agreement between DEO and DEK at the time of closing. The Assignment is subject to approval by the Commission and the KPSC and DEO is considering whether any PUCO approvals are necessary. Prior Commission approval of the Assignment is required under FPA section 203(a)(1) since it involves the transfer or disposition by a public utility of jurisdictional facilities (the GSUs) to another public utility.

V. THE ASSIGNMENT IS CONSISTENT WITH THE PUBLIC INTEREST

Section 203(a) of the FPA, as amended by EPAct 2005, provides that the Commission shall approve the disposition of a jurisdictional asset if it finds that the transaction will be "consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate

company."[14] Furthermore, in accordance with the *Merger Policy Statement* and Order No. 642, the Commission examines three factors in analyzing whether a proposed transaction is consistent with the public interest: (1) the effect on competition, (2) the effect on rates and (3) the effect on regulation.[15]

As explained below, the Assignment should be approved because it is consistent with the public interest as defined by the three-factor test noted above and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company in accordance with FPA section 203(a)(4).

A. NO ADVERSE EFFECT ON COMPETITION

1. The Assignment Raises No Horizontal Market Power Concerns

The Assignment does not raise any horizontal market power concerns because it does not result in any changes in market shares or concentrations. The jurisdictional "facilities" implicated by the Assignment are several step-up transformers that are being transferred between two public utility affiliates within the same corporate family. Section 33.3(a)(2)(i) of the Commission's regulations states that a horizontal competitive screen analysis is not required if the applicant "[a]ffirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis*."[16] Clearly, the Assignment does not raise any horizontal

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[14] *Id.* § 824b (a) (4).

[15] *Inquiry Concerning the Commission's Merger Policy under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsid. denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) ("*Merger Policy Statement*") (codified at 18 C.F.R. pt. 2). On November 15, 2000, the Commission issued *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001) (codified at 18 C.F.R. pt. 33), which implements the policies stated in the *Merger Policy Statement*.

[16] 18 C.F.R. § 33.3(a)(2)(i). *See also Liberty Elec. Power, LLC*, 110 FERC ¶ 62,152 (2005) (approving transfer of jurisdictional facilities without requiring horizontal competitive screen analysis where parties held only *de minimis* interests in relevant markets).

market power concerns because the "facilities" that are the subject of the application are being transferred between affiliates. Accordingly, the transfer of the GSUs from one Duke affiliate to another does not change Duke's generation market shares and thus cannot cause an increase in market concentration because no new assets are involved in the Assignment.

2. The Assignment Raises No Vertical Market Power Concerns

The Assignment does not raise any issues under section 33.4(a)(2)(i) of the Commission's regulations governing vertical market power. The Assignment is narrowly focused on limited and discrete interconnection facilities at generation plant sites already under the control of the Applicants and does not include any other transmission assets or other inputs to electricity generation. Nor does the Assignment affect the availability of open access transmission service over jurisdictional transmission facilities owned by the Applicants and their affiliates. The Assignment, therefore, does not raise any vertical market power concerns.

3. The Assignment Is Not the Result of Affiliate Preferences

In cases where a regulated utility with captive customers such as DEK acquires assets from a market-regulated affiliate with no captive customers such as DEO,[17] the Commission has also expressed concerns about how the "safety net" aspects of such affiliate transactions might adversely affect competition.[18] Specifically, the Commission explained that the ability to transfer a merchant generation company's assets into the rate base of an affiliated utility provides a "likelihood of recovery of capital investment through rate base treatment" and thereby confers

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[17] Although DEO is deemed to be a market-regulated entity in terms of its generation assets and does not serve any retail or wholesale customers at cost-based rates, all of the company's transmission assets are subject to cost-based regulation.

[18] *See Cinergy Servs., Inc.*, 102 FERC ¶ 61,128 at P 23 (2003), *reh'g denied*, 108 FERC ¶ 61,250 (2004). While the issue is typically addressed in the context of sales of generation assets between affiliates, Applicants address it here in the context of the GSUs that are the subject of the Assignment since the costs related to those assets are recovered as "production" costs rather than "transmission" costs.

a competitive advantage to the affiliated merchant generation company relative to its competitors who lack such a financial backstop if they were to encounter financial difficulties.[19]

Because the Commission believes that reliance on such a "safety net" might theoretically deter market entry by competing suppliers who are not affiliated with regulated utilities,[20] the Commission reviews the competitive effects of proposed utility acquisitions of an affiliate's assets based on its *Edgar* guidelines.[21]

Under Commission precedent, there are three ways for applicants to demonstrate lack of affiliate abuse under the *Edgar* standard: (1) evidence of direct head-to-head competition between the affiliate and competing unaffiliated suppliers in a formal solicitation or informal negotiation process ("solicitation benchmark"); (2) evidence of the prices which unaffiliated buyers were willing to pay for similar services from the affiliate ("third-party pricing benchmark"); and (3) and benchmark evidence that shows the prices, terms and conditions of sales made by non-affiliated sellers ("comparable sales benchmark"). The foregoing is not an exclusive listing of benchmarking mechanisms and the Commission has stated that the individual facts of a case could bring forth other examples not explicitly contemplated in *Edgar* to show that the terms of a proposed transaction did not reflect affiliate preferences.[22]

Applicants submit that the Assignment is not the result of any affiliate preference that should implicate the Commission's safety-net concerns under *Edgar* which might harm

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19 *Id.*, 102 FERC ¶ 61,128 at P 23.

20 *Ameren Energy Gen. Co.*, 108 FERC ¶ 61,081 at P 61 (2004).

21 *Id.* at P 64 ("We conclude that, absent other compelling public interest considerations, we can no longer find a section 203 affiliate transaction to be consistent with the public interest unless the applicants demonstrate that appropriate steps were taken to safeguard against affiliate abuse, consistent with the Edgar standard."). The *Edgar* tests, first enunciated in *Boston Edison Co. Re: Edgar Electric Co.*, 55 FERC ¶ 61,382 (1991) ("*Edgar*"), are discussed below.

22 *Ameren Energy Gen. Co.*, 106 FERC ¶ 63,011 at P 74 (Initial Decision) ("*Edgar's* tests are not exclusive nor totally inclusive."), *aff'd*, 108 FERC ¶ 61,081 (2004); *see also Aquila Energy Mktg. Corp.*, 87 FERC ¶ 61,217 at 61,857 (1999) ("*Edgar* presented three *non-exclusive examples* of ways to demonstrate a lack of affiliate abuse . . . ." (emphasis added)).

competition by discouraging new market entry. First, the Assignment simply seeks to achieve a logical and cost-effective ownership alignment of the GSUs with their associated generation assets located at the same plant sites. Prior to initiating the transfer of the GSUs to DEK, the Duke Energy generation engineering group determined that pricing the Woodsdale and Miami Fort Unit 6 GSUs at their net book value was in fact the best deal for DEK. Specifically, as discussed in the attached affidavit of Dominic J. Melillo ("Melillo Affidavit"), an engineer with Duke Energy's Generation Support organization, Duke Energy contacted the firm of Equisales Associates, Inc. ("Equisales")[23] and obtained price quotes for purchasing and installing "used" GSUs similar to the existing GSUs located at the Woodsdale and Miami Fort Unit 6 sites and being sold to DEK under the Assignment. As explained in the Melillo Affidavit, the prices quoted by Equisales for such used GSUs was much higher than the (net book value) price at which DEO is transferring the existing GSUs at those sites to DEK so the Assignment clearly benefits DEK's customers.

The circumstances of the GSU transfer at the East Bend plant site are somewhat different than the other two plants since, as noted in the Melillo Affidavit, Duke Energy has determined that the relevant equipment at the East Bend site is at the end of its useful life and will need to be replaced in the near term.[24] Thus, for purposes of the Assignment, the East Bend GSU facilities were priced by DEO at their scrap value (which is also substantially below their net book value). Again, the pricing terms of the Assignment clearly protect the interests of DEK customers against any affiliate preference. Thus, Applicants submit there should be no concerns regarding

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[23] Equisales is one of the nation's largest providers of used and surplus high voltage transformers and substation equipment to electric utilities and industrial customers. They maintain a large inventory of used equipment and closely track the market values and supply-demand trends for such equipment. Equisales is an independent firm located in Houston, Texas and is not affiliated with Duke Energy.

[24] The existing GSU at East Bend may be retained by DEK as a "spare part" after the Assignment.

any adverse competitive effects on market entry that might result from allowing the Assignment to occur under the pricing terms contained in the Asset and Sale Agreement.

B. NO ADVERSE EFFECT ON RATES

The Assignment will not have an adverse effect on the rates charged to either wholesale customers or transmission service customers. The Assignment changes the legal entity that will own, operate and maintain the GSUs at the Plants. As outlined above, for purposes of the Assignment, the GSUs are being valued at or below their net (depreciated) book value which provides the cost-basis for the rates currently charged by DEO to DEK under the Facilities Agreement. DEK's retail customers and any wholesale customers would not be materially affected by inclusion of the GSU costs in DEK's rate base as those costs would be offset by the fact that they would no longer be paying charges under the Facilities Agreement which would terminate upon closing of the Assignment. Nor would the Assignment increase the costs to transmission customers taking service over DEK transmission facilities. Thus, the Assignment will not adversely affect either wholesale power or transmission service rates.

C. NO ADVERSE EFFECT ON REGULATION

The Assignment will have no effect on regulation. No "facilities" will be removed from Commission jurisdiction as a result of the Assignment. The FERC-jurisdictional status of the GSUs will remain the same after the consummation of the Assignment. Similarly, the Assignment will also have no adverse effect on state regulation. No state public utility commission with jurisdiction over any DEO or DEK public utility subsidiary will have its jurisdiction affected by the Assignment since the GSUs will remain subject to the Commission's jurisdiction.

D. NO CROSS-SUBSIDIZATION CONCERNS

Under the amendments to section 203 implemented by EPAct 2005, the Commission "shall approve" a proposed transaction "if it finds that the proposed transaction . . . will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless . . . the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."[25]

In Order Nos. 669, 669-A and 669-B, the Commission identified a four-factor test that applicants must satisfy in order to address the concerns identified in section 203 regarding any possible cross-subsidization, pledge or encumbrance of utility assets associated with the proposed transaction.[26] Under this test, the Commission examines whether a proposed transaction, at the time of the transaction or in the future, results in:

(1) transfers of facilities between a traditional utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;

(2) new issuances of securities by a traditional utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;

(3) new pledges or encumbrances of assets of a traditional utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; and

(4) new affiliate contracts between a non-utility associate company and a traditional utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

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[25] FPA § 203(a)(4), 16 U.S.C. § 824b.

[26] Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 169; Order No. 669-A, FERC Stats. & Regs. ¶ 31,214 at P 144; Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 at PP 45, 49.

Exhibit M hereto demonstrates that the Transaction will not result in any of the above-outlined transfers of facilities, issuances or securities, pledges or encumbrance of assets or other agreements that might raise cross-subsidization concerns. Exhibit M also contains, as required by 18 C.F.R. § 33.2(i), a listing of DEO's and DEK's existing pledges and encumbrances.

VI. INFORMATION AND EXHIBITS REQUIRED BY SECTION 33.2 OF THE COMMISSION'S REGULATIONS

Applicants provide below all information required by Part 33 of the Commission's regulations except to the extent that Applicants request waiver of requirements to file certain information that should not be relevant to the Commission's evaluation of the Transaction. Specifically, for the reasons described below, Applicants respectfully request that the Commission grant waiver or partial waiver of the requirement to file Exhibits A, C, D, F, G, H, J, and K and the information required to be submitted therein to the extent not otherwise provided in this Application.

A. EXACT NAME OF APPLICANTS AND ADDRESSES OF THEIR PRINCIPAL BUSINESS OFFICES

The exact legal name and address of the principal business offices of the Applicants are:

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

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

B. NAMES AND ADDRESSES OF PERSONS AUTHORIZED TO RECEIVE NOTICES AND COMMUNICATIONS

The names of the following persons should be placed on the official service list compiled by the Secretary in this proceeding.[27]

[27] Applicants respectfully request waiver of 18 C.F.R. § 385.203(b)(3) to provide that a copy of any communications be served on each person designated below.

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C. DESCRIPTION OF THE APPLICANTS

1. All business activities of the Applicants, including authorizations by charter or regulatory approval

The business activities of the Applicants are fully described above in Part III. Therefore, Applicants request waiver of the requirement to file Exhibit A.

2. A list of all energy subsidiaries and energy affiliates, percentage ownership in such subsidiaries and affiliates, and a description of the primary business in which each energy subsidiary and affiliate is engaged

A list of all of the energy subsidiaries and energy affiliates of Duke Energy is listed in Exhibit B. As the remaining Applicants are affiliates of Duke Energy, the list of energy subsidiaries and energy affiliates of Duke Energy incorporates any energy subsidiaries and energy affiliates of DEO and DEK.

3. Organizational charts depicting the Applicants' current and proposed post-transaction corporate structures

The Applicants' corporate structure will not change in any way following consummation of the Assignment. Accordingly, Applicants request waiver of the requirement to file Exhibit C.

4. Description of all joint ventures, strategic alliances, tolling arrangements or other business arrangements, including transfers of operational control of transmission facilities to Commission approved Regional Transmission Organizations, both current, and planned to occur within a year from the date of filing, to which the applicants or their parent companies, energy subsidiaries, and energy affiliates are a party, unless the transaction does not affect any of their business interests

The Assignment will not have any effect on any joint ventures, strategic alliances, tolling arrangements or other business arrangements of the Applicants or their affiliates separate from the Assignment.[28] Therefore, Applicants request waiver of the requirement to file Exhibit D.

5. Identity of common officers or directors of parties to the transaction

The Assignment involves the transfer of three GSUs interconnected with the Plants from DEO to its wholly-owned DEK subsidiary. A list of common officers and directors of the Applicants is included in Exhibit E.

6. Description and location of wholesale power customers and unbundled transmission services customers served by the applicants or their parent companies, subsidiaries, affiliates and associate companies

As explained above in Parts IV and V, the Assignment will have no impact on any DEO, DEK or other Duke Energy wholesale power customers or unbundled transmission service customers. Accordingly, Applicants request waiver of the requirement to file any additional information on the wholesale power and transmission service customers served by the applicants or their parent companies, subsidiaries, affiliates and associate companies pursuant to Exhibit F.

D. DESCRIPTION OF JURISDICTIONAL FACILITIES OWNED, OPERATED OR CONTROLLED BY THE APPLICANTS OR THEIR PARENT COMPANIES, SUBSIDIARIES, AFFILIATES AND ASSOCIATE COMPANIES

The only jurisdictional assets implicated by the Assignment are the three GSUs interconnected with the Plants as described in Part IV. A general description of the jurisdictional facilities owned, operated or controlled by DEO's parent company Duke Energy and its subsidiaries, affiliates and associate companies is provided in Part III. Aside from the GSUs described above, none of the other jurisdictional facilities owned or controlled by Duke Energy and its many affiliates is germane to the Commission's review and approval of the Assignment

[28] The Facilities Agreement will be terminated through a filing under FPA section 205 to become effective upon closing of the Assignment.

pursuant to FPA section 203. Accordingly, Applicants request waiver of the requirement to file Exhibit G or to provide a more detailed description of Duke Energy's other jurisdictional assets not implicated or affected by the Assignment.

E. NARRATIVE DESCRIPTION OF THE ASSIGNMENT FOR WHICH COMMISSION AUTHORIZATION IS REQUESTED

A full narrative description of the Assignment is provided above in Part IV of this Application and detailed further in the attached Asset and Sale Agreement. Accordingly, Applicants request waiver of the requirement to file Exhibit H.

1. The identity of all the parties involved in the Assignment

The parties involved in the Assignment are DEO and DEK as described above in Part III of this Application.

2. All jurisdictional facilities and securities associated with or affected by the Assignment

The jurisdictional assets involved in the Assignment are fully described in Part III. No jurisdictional securities are associated with or affected by the Assignment.

3. The consideration for the Assignment

The details of the Assignment, including the consideration therefor, are set forth in the Asset and Sale Agreement attached hereto as Exhibit I. As stated in that Agreement, the Assignment of the GSUs from DEO to its wholly-owned subsidiary DEK is being undertaken to consolidate the ownership of the Plants and the GSUs at the corresponding plant sites, thereby reducing the administrative costs and burdens of inter-company service charges. The consideration for the Assignment will be equal to the sum of the net book values of the Woodsdale and Miami Fort Unit 6 GSUs as of December 31, 2011 or the date of closing, and the scrap value of East Bend GSU which is $270,000.

4. The effect of the Assignment on such jurisdictional facilities and securities

The Assignment will have no effect on either the jurisdictional facilities or jurisdictional securities of the Applicants.

F. CONTRACTS RELATED TO THE TRANSACTION TOGETHER WITH COPIES OF ALL OTHER WRITTEN INSTRUMENTS ENTERED INTO OR TO BE ENTERED INTO BY THE PARTIES TO THE ASSIGNMENT

The Assignment will be accomplished in accordance with the material terms of the Asset and Sale Agreement, which is included herein as Exhibit I.

G. STATEMENT EXPLAINING THE FACTS RELIED UPON TO DEMONSTRATE THAT THE ASSIGNMENT IS CONSISTENT WITH THE PUBLIC INTEREST

A full discussion of the facts relied upon to demonstrate that the Assignment is consistent with the public interest is provided in Part V of this Application. Therefore, Applicants request waiver of the requirement to file Exhibit J.

H. GENERAL OR KEY MAP SHOWING THE PROPERTIES OF EACH PARTY TO THE ASSIGNMENT

Diagrams showing the configuration of the GSUs at each of the Plants are included as Exhibit A to the Asset and Sale Agreement. Applicants request waiver of any requirement to include maps showing the "properties" of DEO an DEK pursuant to Exhibit K.

I. LICENSES, ORDERS, OR OTHER APPROVALS REQUIRED FROM OTHER REGULATORY BODIES IN CONNECTION WITH THE TRANSACTION, AND THE STATUS OF OTHER REGULATORY ACTIONS

The Assignment must also be approved by the KPSC and DEO is considering whether any PUCO approvals are necessary.

J. EXPLANATION (1) OF HOW APPLICANTS ARE PROVIDING ASSURANCE THAT THE TRANSACTION WILL NOT RESULT IN CROSS-SUBSIDIZATION OF A NON-UTILITY ASSOCIATE COMPANY OR PLEDGE OR ENCUMBRANCE OF UTILITY ASSETS FOR THE BENEFIT OF AN ASSOCIATE COMPANY, OR (2) IF NO SUCH ASSURANCE CAN BE PROVIDED, AN EXPLANATION OF HOW SUCH CROSS-SUBSIDIZATION, PLEDGE OR ENCUMBRANCE WILL BE CONSISTENT WITH THE PUBLIC INTEREST (EXHIBIT M)

Exhibit M to this Application provides an explanation as to why the Assignment will not, at the time of the Assignment or in the future, result in any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company as required by the Commission's regulations.[29]

VII. INFORMATION ON PROPOSED ACCOUNTING ENTRIES REQUIRED BY SECTION 33.5 OF THE COMMISSION'S REGULATIONS

DEO and DEK are required to maintain their accounts in accordance with the Commission's Uniform System of Accounts. Information on the proposed accounting entries for the Assignment are provided in Attachment 2 in accordance with the requirements of 18 C.F.R. § 33.5.

VIII. VERIFICATIONS

Pursuant to section 33.7 of the Commission's regulations,[30] signed verifications by persons having authority with respect thereto and having knowledge of the matters set forth in this Application are included as Attachment 1 on behalf of the Applicants.

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[29] 18 C.F.R. § 33.2(j).

[30] *Id.* § 33.7.

IX. CONCLUSION

For the reasons set forth above, Applicants request that the Commission: (i) grant the expedited consideration and waivers requested in this Application and (ii) issue an order under section 203(a)(1) of the FPA granting all authorizations and waivers necessary for the Assignment on or before December 30, 2011.

Respectfully submitted,

/s/
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sally.richardson@skadden.com

On Behalf of
Duke Energy Corporation

November 2, 2011

Exhibit B

Energy Subsidiaries and Affiliates of Duke Energy Corporation

Name of Energy Subsidiary or Affiliate	Ownership Percentage by Duke Energy Corp.	Primary Business
APOG, LLC	25%	Provides technical, engineering, and procurement support services to and for the benefit of member-owned or operated nuclear facilities.
Cincap IV, LLC*	10%	Markets electricity at wholesale.
CinCap V, LLC*	10%	Markets electricity at wholesale.
CS Murphy Point, LLC	100%	Owns and is developing and constructing a solar photovalic electric generation facility in Cherokee County, North Carolina.
DEGS O&M, LLC	100%	Operates and maintains a power plant owned by BTEC New Albany LLC.
DEGS of Boca Raton, LLC	100%	Operates and maintains certain thermal energy facilities located in Boca Raton, Florida and sells associated thermal and other energy-related products and services.
DEGS of Cincinnati, LLC	100%	Owns and operates a district cooling business in downtown Cincinnati, Ohio.
DEGS of Narrows, LLC	100%	Owns, operates, maintains and manages the existing utility system at the Celanese Acetate manufacturing facility located in Narrows, Virginia.
DEGS of Philadelphia, LLC	100%	Provides various utility services and distribution system operation and maintenance to the Philadelphia Navy Yard which is a location of an industrial park that contains several commercial business and is managed by the Philadelphia Industrial Development Corp.
DEGS of San Diego, Inc.	100%	Supervises the construction of, operates and maintains an energy facility at Children's Hospital in San Diego, California.
DEGS of South Charleston, LLC	100%	Designed, built, owns, operates and maintains certain steam generating equipment and ancillary water treatment equipment to be located at the UCC Technical Center in South Charleston, West Virginia.

Name of Energy Subsidiary or Affiliate	Ownership Percentage by Duke Energy Corp.	Primary Business
DEGS of St. Bernard, LLC	100%	Operates, maintains and manages the existing utility system and designed, developed, constructed and owns system improvements at Proctor & Gamble's chemical manufacturing facility located in St. Bernard, Ohio.
DEGS of Tuscola, Inc.	100%	Oversees the operations and staffing of a qualifying facility located in Tuscola, Illinois.
Delta Township Utilities II, LLC	100%	Provides assets to service General Motors' assembly plant located in Delta Township, Michigan, including the design, construction, ownership, operations and maintenance of such assets.
Delta Township Utilities, LLC	51%	Constructs, owns, operates and maintains energy-related facilities for a General Motors metal stamping facility located in Delta Township, Michigan.
Duke Energy Business Services LLC*	100%	Centralized service company and provides services to all Duke entities.
Duke Energy Carolinas, LLC*	100%	Engaged in the production, transmission, distribution and sale of electricity in the central and western portions of North Carolina and South Carolina.
Duke Energy Commercial Asset Management, Inc.*	100%	Holds assets of divested or other non-regulated power plants.
Duke Energy Commercial Enterprises, Inc.*	100%	Engaged in the business of marketing energy commodities at wholesale.
Duke Energy Fayette II, LLC*	100%	Owns and sells power from a natural gas-fired combined cycle generating facility located near Masontown, Pennsylvania.
Duke Energy Hanging Rock II, LLC*	100%	Owns and sells power from a natural gas-fired electric generation plant located in Lawrence County, Ohio.
Duke Energy Indiana, Inc.*	100%	Engaged in the production, transmission, distribution and sale of electricity in North Central, Central and Southern Indiana.
Duke Energy Kentucky, Inc.*	100%	Engaged in the transmission, distribution and sale of electricity and the sale and transportation of natural gas in northern Kentucky.
Duke Energy Lee II, LLC*	100%	Owns and sells power from a natural gas-fired, simple cycle electric generation plant in Lee County, Illinois.

Name of Energy Subsidiary or Affiliate	Ownership Percentage by Duke Energy Corp.	Primary Business
Duke Energy Marketing America, LLC	100%	Wholesale power marketer that also markets natural gas and other energy-related products in the United States.
Duke Energy Merchants, LLC	100%	Inactive company. Formerly provided financial, risk management and asset management services to producers, transporters and users of global energy commodities and derivative products such as crude oil, refined products, liquefied petroleum gas, residual fuels, coal, and fertilizer.
Duke Energy Murray Operating, LLC	100%	Operates and maintains an energy facility owned by a subsidiary of KGen, LLC.
Duke Energy Ohio, Inc.*	100%	Engaged in the production, distribution, transmission, and sale of electricity in the MISO and PJM regions and the sale and transportation of natural gas in southern Ohio.
Duke Energy Retail Sales, LLC*	100%	Sells electricity to retail customers in Ohio.
Duke Energy Saltville Gas Storage, LLC	50%	Owns 50% of Saltville Storage Company L.L.C. which owns and operates an underground gas storage facility in Virginia.
Duke Energy Storage Company, LLC	100%	Natural gas marketer.
Duke Energy Trading and Marketing, L.L.C.*	60%	Engaged in wholesale power marketing and the marketing of natural gas and other energy-related products in the United States.
Duke Energy Vermillion II, LLC*	100%	Owns and sells power from a natural gas-fired electric generation plant located in Vermillion County, Indiana.
Duke Energy Washington II, LLC*	100%	Owns and sells power from a natural gas-fired electric generation plant located in Beverly, Ohio. Has been granted exempt wholesale generator status from the Commission.
Energy Equipment Leasing LLC	49%	Leases, sells or finances energy-related equipment.
Environmental Wood Supply, LLC	50%	Handles all fuel and fuel procurement-related costs for St. Paul Cogeneration LLC.
GPM Gas Gathering L.L.C.	50%	Owns and operates natural gas gathering facilities in Texas.
Happy Jack Windpower, LLC*	100%	Owns and sells power from a wind generation facility located in Cheyenne, Wyoming.

Name of Energy Subsidiary or Affiliate	Ownership Percentage by Duke Energy Corp.	Primary Business
Kit Carson Windpower, LLC*	100%	Owns and sells power from a wind generation facility located in Kit Carson County, Colorado.
KO Transmission Company	100%	Engaged in the transportation of natural gas in interstate commerce between Kentucky and Ohio.
Martins Creek Solar NC, LLC	100%	Owns and sells power from a solar generation facility located in North Carolina.
Miami Power Corporation	100%	Owns an electric transmission line in Kentucky and Indiana.
Murphy Farm Power, LLC	100%	Owns and is developing and constructing a solar photovalic electric generation facility in Culberson, North Carolina.
North Allegheny Wind, LLC*	100%	Owns and sells power from a wind generation facility located in Blair and Cambria Counties, Pennsylvania.
Notrees Windpower, LP	100%	Owns and sells power from a wind generation facility located in Ector and Winkler Counties, Texas. Has been granted exempt wholesale generator status by the Commission.
NuStart Energy Development, LLC	16.67%	Has been awarded a contract from the Department of Energy to implement a plan to obtain Nuclear Regulatory Commission approval and issuance of a construction and operating license for an advanced nuclear power plant. In furtherance of its plan, NuStart will implement specific tasks supportive of deploying at least one advanced nuclear reactor design. These tasks will include a full range of engineering and technical tasks, analyses, and licensing activities.
Ocotillo Windpower, LP	100%	Owns and sells power from a wind generation facility located in Howard County, Texas. Has been granted exempt wholesale generator status by the Commission.
Ohio Valley Electric Corporation*	9%	Owns and sells power from an electric generating facility named Clifty Creek located in Indiana.
Owings Mills Energy Equipment Leasing LLC	49%	Leases energy equipment.
Pioneer Transmission, LLC	50%	Formed to build, own, and operate 240 miles of high-voltage transmission lines and related facilities in Indiana.

Name of Energy Subsidiary or Affiliate	Ownership Percentage by Duke Energy Corp.	Primary Business
RE Ajo 1 LLC	100%	Owns, is developing and will operate a solar photovoltaic electric generation facility currently in construction in Pima County, Arizona.
RP-Orlando, LLC	100%	Developing a solar photovoltaic electric generation project to be located on property owned by the Orlando Utilities Commission in Orlando, FL.
Ryegate Associates	33.1126%	Owns and sells power from a biomass facility in Vermont.
SEC Bellefonte SD Solar One, LLC	100%	Owns certain solar photovoltaic rooftop generating facilities serving the Bellefonte school district Pennsylvania.
SEC BESD Solar One, LLC	100%	Owns certain solar photovoltaic rooftop generating facilities serving the Bald Eagle school district in Pennsylvania.
Shirley Wind, LLC	100%	Developed and operates a wind-powered electric generation facility in Brown County, Wisconsin. Has been granted qualifying facility status from the Commission.
Shreveport Red River Utilities, LLC	40.8%	Constructs, owns, operates and maintains energy-related facilities located at a General Motors vehicle assembly plant in Shreveport, Louisiana.
Silver Sage Windpower, LLC*	100%	Owns and sells power from a wind generation facility located in Laramie County, Wyoming.
Solar Star North Carolina I, LLC	100%	Owns and sells power from a solar generation facility located in North Carolina. Has been granted qualifying facility status from the Commission.
Solar Star North Carolina II, LLC	100%	Owns and sells power from a solar generation facility located in North Carolina. Has been granted qualifying facility status from the Commission.
St. Paul Cogeneration, LLC*	50%	Owns, operates and maintains an exempt wholesale generator in downtown St. Paul, Minnesota.
SUEZ/VWNA/DEGS of Lansing, LLC	40.8%	Develops, constructs and operates certain energy facilities located at a General Motors facility in Lansing, Michigan.
SUEZ-DEGS of Ashtabula, LLC	49%	Operates and maintains a qualifying facility located in Ashtabula, Ohio and provides other energy-related products and services.
SUEZ-DEGS of Lansing, LLC	51%	Provides management services for SUEZ/VWNA/DEGS of Lansing, LLC.

Name of Energy Subsidiary or Affiliate	Ownership Percentage by Duke Energy Corp.	Primary Business
SUEZ-DEGS of Owings Mills, LLC	49%	Leases energy equipment.
SUEZ-DEGS of Rochester, LLC	49%	Provides energy-related services to Kodak Park in Rochester, New York.
SUEZ-DEGS of Silver Grove, LLC	49%	Provides energy-related services to the Lafarge gypsum manufacturing plant in Silver Grove, Kentucky. These services include the design, installation and operation of a combined heat and power system.
SUEZ-DEGS of Tuscola, LLC	49%	Owns, operates and maintains a qualifying facility in Tuscola, Illinois and provides other energy-related products and services.
Sweetwater Wind 1 LLC	13.59%	Owns and sells power from a wind generation facility located in Nolan County, Texas.
Sweetwater Wind 2 LLC	13.14%	Owns and sells power from a wind generation facility located in Nolan County, Texas.
Sweetwater Wind 3 LLC	13.18%	Owns and sells power from a wind generation facility located in Nolan County, Texas.
Sweetwater Wind 4 LLC	18.717%	Owns and sells power from a wind generation facility located in Nolan County, Texas.
Sweetwater Wind 5 LLC	18.717%	Owns and sells power from a wind generation facility located in Nolan County, Texas.
Taylorsville Solar, LLC	100%	Owns and sells power from a solar generation facility located in North Carolina. Has been granted qualifying facility status from the Commission.
Three Buttes Windpower, LLC*	100%	Owns and sells power from a wind generation facility located in Converse County, Wyoming.
Top of the World Wind Energy LLC*	100%	Owns and sells power from a wind generation facility located in Wyoming.
TX Solar I LLC	100%	Owns and sells power from a solar generation facility located in Texas. Has been granted exempt wholesale generator status from the Commission.

* This entity has been granted market-based rate authority from the Commission.

Exhibit E

Common Officers/Directors of Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.

Name of Officer/Director	DEK Title/Position	DEO Title/Position
Adams, Susie C.	Vice President	Vice President
Beach, Richard G.	Assistant Secretary	Assistant Secretary
Butler, Keith Gerard	Senior Vice President	Senior Vice President
Caldwell, Myron Lawing	Senior Vice President	Senior Vice President
Campbell, Russell K.	Vice President	Vice President
Carrick, M. Allen	Assistant Treasurer	Assistant Treasurer
Council, Donna T.	Assistant Treasurer	Assistant Treasurer
Daji, Swati V.	Chief Risk Officer	Chief Risk Officer
De May, Stephen Gerard	Senior Vice President	Senior Vice President
	Treasurer	Treasurer
Finnigan, John J.	Vice President	Vice President
Gainer, James B.	Vice President	Vice President
Ghartey-Tagoe, Kodwo	Assistant Secretary	Assistant Secretary
	Vice President	Vice President
Good, Lynn J.	Director	Director
	Chief Financial Officer	Chief Financial Officer
Harrington, Sue Cochran	Assistant Secretary	Assistant Secretary
Haviland, Richard W.	Senior Vice President	Senior Vice President
Jamil, Dhiaa M.	Group Executive	Group Executive
	Chief Generation Officer	Chief Generation Officer
Janson, Julia S.	President	President
Lucas III, Robert Theodore	Assistant Secretary	Assistant Secretary
Maltz, David S.	Vice President	Vice President
	Corporate Secretary	Corporate Secretary
Manes, Gianna M.	Senior Vice President	Senior Vice President
	Chief Customer Officer	Chief Customer Officer
Manly, Marc E.	Director	Director
	Chief Legal Officer	Chief Legal Officer
	Group Executive	Group Executive
Mehring, James E.	Vice President	Vice President
Mohler, David W.	Chief Technology Officer	Chief Technology Officer
	Senior Vice President	Senior Vice President
Monday, Karen R.	Vice President	Vice President
Mullinax, A. R.	Senior Vice President	Senior Vice President
	Chief Information Officer	Chief Information Officer
Newton, Paul Robert	Senior Vice President	Senior Vice President
O'Connor, C. James	Vice President	Vice President
Peeler, V. Nelson	Vice President	Vice President
Reising, Ronald R.	Chief Procurement Officer	Chief Procurement Officer
	Senior Vice President	Senior Vice President

Name of Officer/Director	DEK Title/Position	DEO Title/Position
Ringel, Robert J.	Assistant Corporate Secretary	Assistant Corporate Secretary
Roebel, John J.	Senior Vice President	Senior Vice President
Rogers, James E.	Director	Director
	Chief Executive Officer	Chief Executive Officer
Stanley, Jim L.	Senior Vice President	Senior Vice President
Tyndall, William F.	Senior Vice President	Senior Vice President
Weber, Jennifer L.	Chief Human Resources Officer	Chief Human Resources Officer
	Senior Vice President	Senior Vice President
Wiles, James D.	Vice President	Vice President
Young, Steven Keith	Senior Vice President	Senior Vice President
	Controller	Controller

EXHIBIT I

Contracts Related to the Proposed Transaction

ASSET TRANSFER AGREEMENT

BY AND BETWEEN

DUKE ENERGY OHIO, INC.

AND

DUKE ENERGY KENTUCKY, INC.

Dated as of November 1, 2011

Schedule 4.01(c)(ii)	Transferor's Required Governmental and Third Party Consents
Schedule 4.02(c)(ii)	Transferee's Required Governmental and Third Party Consents

ASSET TRANSFER AGREEMENT

This ASSET TRANSFER AGREEMENT (this "Agreement"), dated as of November 1, 2011, is by and between Duke Energy Ohio, Inc., an Ohio corporation ("Transferor"), and Duke Energy Kentucky, Inc., a Kentucky corporation ("Transferee"). Collectively, Transferee and Transferor may be referred to herein as the "Parties" and each, individually, as a "Party".

W I T N E S S E T H

WHEREAS, by means of an Asset Transfer Agreement with respect to East Bend Station (as defined below) dated as of January 25, 2006 by and between Transferor, as transferor and Transferee, as transferee (the "East Bend Agreement"), Transferee acquired an undivided 69% interest, as tenant in common with the Dayton Power & Light Company, in Unit 2 of the East Bend Generating Station ("East Bend Station"), a coal-fired electric generating station with a nameplate rating of 648 megawatts located in Boone County, Kentucky near the Village of Rabbit Hash, such generating station being comprised of a boiler and steam turbine generator, together with certain other improvements, equipment, assets, properties (both tangible, including real property, and intangible), facilities and rights associated therewith or ancillary thereto;

WHEREAS, by means of an Asset Transfer Agreement with respect to Miami Fort 6 (as defined below) dated as of January 25, 2006 by and between Transferor, as transferor and Transferee, as transferee (the "Miami Fort 6 Agreement"), Transferee acquired Unit 6 of the Miami Fort Generating Station ("Miami Fort 6"), a coal-fired electric generating station with a nameplate rating of 168 megawatts located in Hamilton County, Ohio near the Village of North Bend, such generating station being comprised of a boiler and steam turbine generator, together with certain other improvements, equipment, assets, properties (both tangible, including real property, and intangible), facilities and rights associated therewith or ancillary thereto;

WHEREAS, by means of an Asset Transfer Agreement with respect to Woodsdale Station dated as of January 25, 2006 by and between Transferor, as transferor and Transferee, as transferee (the "Woodsdale Agreement", and together with the East Bend Agreement and the Miami Fort 6 Agreement, the "Prior Transfer Agreements"), Transferee acquired the Woodsdale Electric Generating Station ("Woodsdale Station"), a dual-fuel, single cycle electric generating station with a nameplate rating of 490 megawatts located in Butler County, Ohio in the city of Trenton, such generating station being comprised of six dual-fuel gas turbines, together with certain other improvements, equipment, assets, properties (both tangible, including real property, and intangible), facilities and rights associated therewith or ancillary thereto;

WHEREAS, Transferor did not transfer, and Transferee did not acquire, through the Prior Transfer Agreements, any right, title or interest in or to certain electrical transmission facilities (as distinguished from generation facilities) located at or forming part of any of East

Bend Station, Miami Fort 6 or Woodsdale Station (whether or not regarded as a "transmission" or "generation" asset for regulatory or accounting purposes), including any energized switchyard facilities and real property directly associated therewith, any substation facilities and support equipment, as well as any permits, contracts and warranties related thereto, including those certain assets and facilities specifically identified on Schedule 2.01 (the "Transmission Assets") ***including without limitation***, any of Transferor's right, title and interest in and to any generation step-up transformers or any other equipment or facilities connected or appurtenant to East Bend Station, Miami Fort 6 or Woodsdale Station classified as "Station Equipment" under Account No. 353 of the Federal Energy Regulatory Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to Provisions of the Federal Power Act, 18 C.F.R. § 101 (such "Station Equipment", the "GSUs" and further described on Exhibit A hereto);

WHEREAS, Transferor desires to transfer and assign to Transferee, and Transferee desires to acquire and assume from Transferor, the Transmission Assets and certain associated liabilities, upon the terms and conditions hereinafter set forth;

WHEREAS, Transferor and Transferee intend that the transfer of the Transferred Assets (as defined below) contemplated herein qualifies under Section 351 of the Internal Revenue Code of 1986, as amended; and

WHEREAS, Duke Energy Corporation, a Delaware corporation, owns indirectly all of the outstanding common stock of Transferor and Transferee.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, agreements, representations and warranties hereinafter set forth, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. (a) As used in this Agreement, the following terms have the following meanings:

"Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Ancillary Agreements" means the Bill of Sale and Assignment and Assumption Agreement, [the Deed,] the Termination of Facilities Operation Agreement and any other

agreements or instruments entered into between the Parties with respect to the transactions contemplated by this Agreement.

"Assumed Liabilities" has the meaning set forth in Section 2.03.

"Bill of Sale and Assignment and Assumption Agreement" means that certain Bill of Sale and Assignment and Assumption Agreement to be executed and delivered at Closing by Transferor to Transferee, in substantially the form attached hereto as Exhibit B.

"Closing" has the meaning set forth in Section 3.04.

"Closing Date" has the meaning set forth in Section 3.04.

"CRD" has the meaning set forth in Section 7.11.

"Direct Claim" has the meaning set forth in Section 6.03(c).

"East Bend Station" has the meaning set forth in the Recitals.

"Effective Time" has the meaning set forth in Section 3.04.

"Encumbrance" means any security interest, pledge, mortgage, lien, charge, option to purchase, lease, claim, restriction, covenant, title defect, hypothecation, assignment, deposit arrangement or other encumbrance of any kind or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or title retention agreement).

"Excluded Assets" has the meaning set forth in Section 2.02.

"Excluded Liabilities" has the meaning set forth in Section 2.04.

"Facilities Operation Agreement" means that certain Facilities Operation Agreement, dated September 27, 2004 and effective January 1, 2006 by and between Transferor and Transferee, whose termination shall be in substantially the form attached as Exhibit C.

"GAAP" means United States generally accepted accounting principles as in effect from time to time, applied on a consistent basis.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

"Governmental Authority" means any: (a) nation, state, county, city, town, village, district, or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign, or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); (d) multi-national organization or body; or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

"GSU" has the meaning set forth in the recitals hereto.

"Indemnifiable Loss" has the meaning set forth in Section 6.02(a).

"Indemnifying Party" has the meaning set forth in Section 6.02(d).

"Indemnitee" has the meaning set forth in Section 6.02(c).

"Knowledge" means the actual knowledge of the corporate officer or officers of the specified Person charged with responsibility for the particular function as of the date of this Agreement, or, with respect to any certificate delivered pursuant to this Agreement, the date of delivery of the certificate, after reasonable inquiry by each such officer of selected employees of the specified Person whom such officer believes, in good faith, to be the persons generally responsible for the subject matters to which the knowledge is pertinent.

"Laws" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any foreign country and any domestic or foreign state, county, city or other political subdivision or of any Governmental Authority.

"Liability" means any liability or obligation, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether incurred or consequential, and whether due or to become due.

"Material Adverse Effect" means (i) any event, circumstance or condition materially impairing the ability of Transferor to perform its obligations under this Agreement or any Ancillary Agreement, or (ii) any change in or effect on Transferor or the Transferred Assets that is materially adverse to the Transferred Assets, other than (a) any change resulting from changes in the international, national, regional or local wholesale or retail markets for electricity, (b) any change resulting from changes in the international, national, regional or local markets for fuel used at Woodsdale Station, (c) any change resulting from changes in the North American, national, regional or local electric transmission system, and (d) any change in Law generally applicable to similarly situated Persons.

"Miami Fort 6" has the meaning set forth in the Recitals.

"Net Book Value" means an amount in dollars, as reflected in the corresponding line item or items of the balance sheet of Transferor as of the applicable date, equal to total fixed assets net of accumulated depreciation.

"Organizational Documents" means (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) the limited liability company or operating agreement and certificate of formation of a limited liability company; (c) the partnership agreement and any statement of partnership of a general partnership; (d) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (e) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; and (f) any amendment to any of the foregoing.

"Parent" has the meaning set forth in the first paragraph of this Agreement.

"Party" has the meaning set forth in the first paragraph of this Agreement.

"Permits" has the meaning set forth in Section 4.01(m).

"Permitted Encumbrances" means (i) the respective rights and obligations of the Parties under this Agreement and the Ancillary Agreements; (ii) all matters that would be disclosed in a current title commitment or title policy or survey for the Real Property; (iii) Encumbrances for Taxes not yet due or which are being contested in good faith by appropriate proceedings and that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (iv) carriers', warehousemen's, materialmen's, mechanics', repairman's or other like Encumbrances arising in the ordinary course of business that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (v) zoning, planning, conservation restriction and other land use and environmental regulations by Governmental Authorities; (vi) Encumbrances resulting from legal proceedings being contested in good faith by appropriate proceedings that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (vii) other Encumbrances that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

"Person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Authority.

"Prime Rate" means as of any date, the prime rate as published in The Wall Street Journal on such date or, if not published on such date, on the most recent date of publication.

"Representatives" means, with respect to a Party, such respective directors (or parties performing similar functions), officers, employees, representatives, agents and advisors (including accountants, legal counsel, environmental consultants and financial advisors).

"Scrap Value" is the current market price of copper multiplied by the salvageable amount of copper from the East Bend GSU (less dismantling and transportation costs required to salvage the copper from the GSU).

"Station Equipment" has the meaning set forth in the Recitals.

"Tax" means any tax, charge, fee, levy, penalty or other assessment imposed by any federal, state, local or foreign taxing authority, including, but not limited to, any income, gross receipts, excise, property, sales, transfer, use, franchise, payroll, withholding, social security or other tax, including any interest, penalty or addition attributable thereto.

"Third Party Claim" has the meaning set forth in Section 6.03(a).

"Transferee" has the meaning set in the first paragraph of this Agreement.

"Transferee Indemnitee" has the meaning set forth in Section 6.02(b).

"Transferee's Required Consents" means Transferee's Required Governmental Consents and Transferee's Required Third-Party Consents.

"Transferee's Required Governmental Consents" means the consents, approvals, filings and/or notices of, with, from or to Governmental Authorities listed in Section I of Schedule 4.02(c)(ii).

"Transferee's Required Third-Party Consents" means the consents, approvals, filings and/or notices of, with, from or to Third Parties (other than Governmental Authorities) listed in Section II of Schedule 4.02(c)(ii).

"Transferred Assets" has the meaning set forth in Section 2.01.

"Transferor" has the meaning set forth in the first paragraph of this Agreement.

"Transferor Indemnitee" has the meaning set forth in Section 6.02(a).

"Transferor's Real Property" has the meaning set forth in Section 5.05.

"Transferor's Required Consents" means Transferor's Required Governmental Consents and Transferor's Required Third-Party Consents.

"Transferor's Required Governmental Consents" means the consents, approvals, filings and/or notices of, with, from or to Governmental Authorities listed in Section I of Schedule 4.01(c)(ii).

"Transferor's Required Third-Party Consents" means the consents, approvals, filings and/or notices of, with, from or to Third Parties (other than Governmental Authorities) listed in Section II of Schedule 4.01(c)(ii).

"Transmission Assets" has the meaning set forth in the recitals hereto.

"Woodsdale Station" has the meaning set forth in the Recitals.

(b) Interpretation. In this Agreement, unless otherwise specified or where the context otherwise requires:

(i) a reference, without more, to a recital is to the relevant recital to this Agreement, to an Article or Section is to the relevant Article or Section of this Agreement, and to a Schedule or Exhibit is to the relevant Schedule or Exhibit to this Agreement;

(ii) words importing any gender shall include other genders;

(iii) words importing the singular only shall include the plural and vice versa;

(iv) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation;"

(v) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(vi) reference to any applicable Law means, if applicable, such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder,

(vii) "or" is used in the inclusive sense of "and/or";

(viii) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto;

(ix) the words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; and

(x) references to any party hereto or any other agreement or document shall include such party's successors and permitted assigns, but, if applicable, only if such successors and assigns are not prohibited by this Agreement.

ARTICLE II

TRANSFER OF ASSETS

Section 2.01. Transfer of Assets. Upon the terms and conditions set forth in this Agreement, at the Closing but effective as of the Effective Time, Transferor shall transfer, convey, assign and deliver to Transferee, and Transferee shall acquire and assume from Transferor, free and clear of all Encumbrances, other than Permitted Encumbrances, all of Transferor's right, title and interest in, to and under Transmission Assets, which are described on Schedule 2.01 hereto, each as of the Effective Time, including all of Transferor's right, title and interest in, to and under all books, expired purchase orders, operating records, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures, studies, reports, equipment repair, safety, maintenance or service records, and similar items (subject to the right of Transferor to retain copies of same for its use), other than such items that are proprietary to third parties, related to the Transmission Assets and accounting records related thereto (to the extent that any of the foregoing is contained in an electronic format, Transferor shall reasonably cooperate with Transferee to transfer such items to Transferee in a format that is reasonably acceptable to Transferee).

Notwithstanding the foregoing, the transfer of the Transferred Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Transferred Assets unless Transferee expressly assumes that Liability pursuant to Section 2.03.

Section 2.02. Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.01 or elsewhere in this Agreement, nothing in this Agreement shall constitute or be construed as conferring on Transferee, and Transferee is not acquiring, any right, title or interest in and to any properties, assets, business, operation, or division of Transferor or any of its Affiliates (other than Transferee) not expressly set forth in Section 2.01 (collectively, the "Excluded Assets").

Section 2.03. Assumed Liabilities. On the Closing Date, Transferee shall execute and deliver the Assumption Agreement, pursuant to which, among other things, Transferee shall assume and agree to perform and discharge, without recourse to Transferor the following Liabilities of Transferor, solely to the extent such Liabilities accrue or arise from and after the Effective Time and would otherwise constitute Liabilities (in whole or in part) of Transferor, other than Excluded Liabilities (as defined below), in accordance with the respective terms and subject to the respective conditions thereof (collectively, the "Assumed Liabilities"):

(a) all liabilities or obligations to third parties for personal injury or tort, or similar causes of action arising solely out of the ownership, lease, maintenance or operation of the Transferred Assets (collectively, "Tort Liabilities"), but in each case solely to the extent accruing or arising from and after the Effective Time; and

(b) any Tax that may be imposed by any federal, state or local government on the ownership, sale, operation or use of the Transferred Assets on or after the Effective Time, except for any income Taxes attributable to income received by Transferor.

Section 2.04. Excluded Liabilities. Except for the Assumed Liabilities, Transferee shall not assume by virtue of this Agreement, the Bill of Sale and Assignment and Assumption Agreement or any other Ancillary Agreement, or the transactions contemplated hereby or thereby, or otherwise, and shall have no liability for, any Liabilities of Transferor (the "Excluded Liabilities").

ARTICLE III

ASSET TRANSFER; CLOSING

Section 3.01. Asset Transfer. Transferor shall transfer such Transferred Assets as relate to Miami Fort 6 and Woodsdale Station to Transferee at [depreciated] Net Book Value as of the Effective Time, which is $_7,828,001, as of September 30, 2011 and shall transfer such Transfer such Transferred Assets as relate to East Bend Station at Scrap Value, which is equal to $ 270,000 (collectively, the "Transfer Consideration").

Section 3.02. [reserved]

Section 3.03. Proration. (a) Transferee and Transferor agree that personal property, real estate, occupancy and any other Taxes, assessments and other charges, if any, on or with respect to the business and operation of the Transferred Assets shall be prorated as of the Effective Time, with Transferor liable to the extent such items relate to any time period through the Effective Time, and Transferee liable to the extent such items relate to periods subsequent to the Effective Time.

(b) In connection with such proration, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual amount of such Taxes or fees for the preceding year (or appropriate period) for which actual Taxes or fees are available and such Taxes or fees shall be reprorated upon request of either the Transferor or the Transferee made within 60 days of the date that the actual amounts become available. Transferor and Transferee agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.03.

Section 3.04. Closing. The transfer, assignment, conveyance and delivery of the Transferred Assets, and the consummation of the other transactions contemplated by this Agreement shall take place at a closing (the "Closing"), to be held at the offices of Duke Energy Ohio, Inc., 139 East Fourth Street, Cincinnati Ohio 45201 at 10:00 a.m. eastern standard time (or another mutually acceptable time and location), on the date of execution and delivery of this Agreement by each of the Parties (or on such other date as may be mutually agreed upon by the Parties) (the "Closing Date"). The Closing shall be effective for all purposes as of [_____], 2011 (the "Effective Time").

Section 3.05. Closing Deliveries. (a) At the Closing, Transferor will deliver, or cause to be delivered, to Transferee:

(i) reserved

(ii) the Bill of Sale and Assignment and Assumption Agreement, duly executed by Transferor;

(iii) the Termination of Facilities Operation Agreement, duly executed by Transferor;

(iv) copies of all Transferor's Required Consents obtained by Transferor;

(v) such other documents as are contemplated by this Agreement or as the Transferee may reasonably request to carry out the purposes of this Agreement.

(b) At the Closing, Transferee will provide the Transfer Consideration as well as the Additional Transfer Consideration. In addition, Transferee will deliver, or cause to be delivered, to Transferor:

(i) the Bill of Sale and Assignment and Assumption Agreement, duly executed by Transferee;

(ii) the Termination of Facilities Operation Agreement, duly executed by Transferee;

(iii) copies of all Transferee's Required Consents obtained by Transferee; and

(iv) such other documents as are contemplated by this Agreement or as the Transferor may reasonably request to carry out the purposes of this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.01. Representations and Warranties of Transferor. Transferor represents and warrants to Transferee, except as otherwise set forth in Transferor's most recent report filed with the Securities and Exchange Commission on Form 10K and any other current or periodic reports filed thereafter and prior to the date hereof, as follows:

(a) Organization and Good Standing; Qualification. Transferor is a corporation duly formed, validly existing and in good standing under the laws of the State of Ohio. Transferor has all requisite power and authority to own, lease or operate the Transferred Assets and to carry on its business as it is now being conducted. Transferor is duly qualified or licensed to do business as a foreign corporation and is in good standing as a foreign corporation in each jurisdiction in which the character or location of the properties owned or used by it or the nature of the business conducted by it makes such qualification or license necessary, except for jurisdictions in which the failure to be so qualified, licensed or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Authority and Enforceability. Transferor has full corporate power and authority to execute and deliver, and carry out its obligations under, this Agreement and each Ancillary Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Transferor of this Agreement and each Ancillary Agreement to which it is a party, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action on the part of Transferor. Assuming the due authorization, execution and delivery of this Agreement and each Ancillary Agreement to which it is a party by Transferee, and subject to the receipt of Transferor's Required Consents, each of this Agreement and each such Ancillary Agreement constitutes a legal, valid and binding obligation of Transferor, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity.

(c) No Violation; Consents and Approvals. (i) Subject to obtaining Transferor's Required Consents, neither the execution, delivery and performance by Transferor of this Agreement and each Ancillary Agreement to which it is a party, nor the consummation by Transferor of the transactions contemplated hereby and thereby, will (A) conflict with or result in any breach of any provision of the Organizational Documents of Transferor; (B) result in a default (or give rise to any right of termination, cancellation or acceleration), or require a consent, under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Transferor is a party or by which it or any of the Transferred Assets may be bound, except for any such defaults or consents (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; or (C) constitute a violation of any law, regulation, order, judgment or decree applicable to Transferor, except for any such violations as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) Except as set forth in Section I of Schedule 4.01(c)(ii) (listing each of Transferor's Required Governmental Consents) or Section II thereof (listing each of Transferor's Required Third-Party Consents), no consent or approval of, filing with, or notice to, any Governmental Authority or other Person is necessary for the execution, delivery and performance of this Agreement by Transferor or of any Ancillary Agreement to which

Transferor is a party, or the consummation by Transferor of the transactions contemplated hereby and thereby, other than such consents, approvals, filings or notices which, if not obtained or made, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) Insurance. All material policies of fire, liability, workers' compensation and other forms of insurance owned or held by, or on behalf of, Transferor and insuring the Transferred Assets are in full force and effect, all premiums with respect thereto covering all periods up to and including the date hereof have been paid (other than retroactive premiums which may be payable with respect to comprehensive general liability and workers' compensation insurance policies), and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation.

(e) [reserved].

(f) [reserved]

(g) Improvements. Neither Transferor nor any Affiliate thereof has received any written notices from any Governmental Authority stating or alleging that any Improvements constituting part of the Transferred Assets have not been constructed in compliance with applicable Laws.

(h) Title; Condition of Assets. (i) Subject to Permitted Encumbrances, Transferor is the holder of record title to the Real Property and has good and valid title to the other Transferred Assets that it purports to own, free and clear of all Encumbrances.

(ii) The Transferred Assets, except for the East Bend GSU, taken as a whole, (A) are in good operating and usable condition and repair, free from any defects (except for ordinary wear and tear, in light of their respective ages and historical usages, and except for such defects as do not materially interfere with the use thereof in the conduct of the normal operation and maintenance of the Transferred Assets taken as a whole) and (B) have been maintained consistent with Good Utility Practice. The East Bend GSU is at the end of its useful life.

(i) Condemnation. There are no pending or, to the Knowledge of Transferor, threatened proceedings or governmental actions to condemn or take by power of eminent domain all or any part of the Transferred Assets.

(j) [reserved]

(k) Legal Proceedings. There are no actions or proceedings pending or, to the Knowledge of Transferor, threatened against Transferor before any court, arbitrator or Governmental Authority, which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. Transferor is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any court, arbitrator or

Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(l) Permits. (i) Transferor has all permits, licenses, franchises and other governmental authorizations, consents and approvals (other than Environmental Permits, which are addressed in Section 4.01(i)) (collectively, "Permits") necessary to own and operate the Transferred Assets, except where any failures to have such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(m) Taxes. To the best of Transferor's knowledge and belief, Transferor has filed all Tax Returns that are required to be filed by it with respect to any Tax relating to the Transferred Assets, and Transferor has paid all Taxes that have become due as indicated thereon, except where such Tax is being contested in good faith by appropriate proceedings, or where any failures to so file or pay would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There are no Encumbrances for Taxes on the Transferred Assets that are not Permitted Encumbrances.

(n) [reserved]

(o) Compliance with Laws. Transferor is in compliance with all applicable Laws with respect to the ownership or operation of the Transferred Assets, except where any such failures to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(p) Limitation of Representations and Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND IN ANY ANCILLARY AGREEMENT, TRANSFEROR IS NOT MAKING, AND HEREBY DISCLAIMS, ANY OTHER REPRESENTATIONS AND WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING TRANSFEROR OR THE TRANSFERRED ASSETS OR ANY PART THEREOF.

Section 4.02. Representations and Warranties of Transferee. Transferee represents and warrants to Transferor as follows:

(a) Organization and Good Standing. Transferee is a corporation duly formed, validly existing and in good standing under the laws of the State of Kentucky and has all requisite power and authority to own, lease or operate its properties and to carry on its business as it is now being conducted.

(b) Authority and Enforceability. Transferee has full corporate power and authority to execute and deliver and carry out its obligations under this Agreement and each Ancillary Agreement to which it is a party, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Transferee of this Agreement and each such Ancillary Agreement, and the consummation of the transactions

contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action by Transferee. Assuming the due authorization, execution and delivery of this Agreement and each such Ancillary Agreement by the other party or parties thereto, and subject to the receipt of Transferee's Required Consents, each of this Agreement and each such Ancillary Agreement constitutes a legal, valid and binding obligation of Transferee, enforceable against Transferee in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity.

(c) No Violation; Consents and Approvals. (i) Subject to obtaining Transferee's Required Consents, neither the execution, delivery and performance by Transferee of this Agreement and each Ancillary Agreement to which Transferee is a party, nor the consummation by Transferee of the transactions contemplated hereby and thereby, will (A) conflict with or result in any breach of any provision of the Organizational Documents of Transferee; (B) result in a default (or give rise to any right of termination, cancellation or acceleration), or require a consent, under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Transferee is a party or by which any of their respective material properties or assets may be bound, except for any such defaults or consents (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements; or (C) constitute a violation of any law, regulation, order, judgment or decree applicable to Transferee, except for any such violations as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements.

(ii) Except as set forth in Section I of Schedule 4.02(c)(ii) (listing each of Transferee's Required Governmental Consents) or Section II thereof (listing each of Transferee's Required Third-Party Consents), no consent or approval of, filing with, or notice to, any Governmental Authority or other Person is necessary for the execution and delivery of this Agreement or any Ancillary Agreement by Transferee, or the consummation by Transferee or Company of the transactions contemplated hereby and thereby, except for any such consents, approvals, filings or notices which, if not obtained or made, would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements.

(d) Legal Proceedings. There are no actions or proceedings pending or, to the Knowledge of Transferee, threatened against Transferee before any court, arbitrator or Governmental Authority, which, individually or in the aggregate, would reasonably be expected to have a material adverse effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements. Transferee is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any court, arbitrator or Governmental Authority which, individually or in the aggregate, would reasonably be

expected to have a material adverse effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements.

ARTICLE V

COVENANTS

Section 5.01. Books and Records. For a period of 7 years after the Closing Date (or such other date as the Parties may mutually determine), each Party and its Representatives shall have reasonable access to all books and records of the Transferred Assets, to the extent that such access may reasonably be required by such Party in connection with the Assumed Liabilities or the Excluded Liabilities, or other matters affected by the operation of the Transferred Assets. Such access shall be afforded by the Party in possession of any such books and records upon receipt of reasonable advance notice and during normal business hours. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it or the other Party with respect to such access pursuant to this Section 5.01. If the Party in possession of such books and records desires to dispose of any such books and records upon or prior to the expiration of such seven-year period, such Party shall, prior to such disposition, give the other Party a reasonable opportunity, at such other Party's expense, to segregate and remove such books and records as such other Party may select.

Section 5.02. Finder's Fees. Transferor, on the one hand, and Transferee, on the other hand, represent and warrant to the other that no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by the Party making such representation. Transferor, on the one hand, and Transferee, on the other hand, will pay to the other or otherwise discharge, and will indemnify and hold the other harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees incurred by reason of any action taken by the indemnifying party.

Section 5.03. Tax Matters. All transfer, use, stamp, sales and similar Taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be the sole responsibility of Transferor and, to the extent paid by Transferee, Transferor shall promptly reimburse Transferee upon request.

Section 5.04. Further Assurances. (a) Subject to the terms and conditions of this Agreement, each of Transferor, on the one hand, and Transferee, on the other hand, shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transfer of the Transferred Assets pursuant to this Agreement and the assumption of the Assumed Liabilities, including using commercially reasonable efforts with a view to obtaining all necessary consents, approvals and authorizations of, and making all required notices or filings with, third parties required to be obtained or made in order to consummate the transactions hereunder, including the transfer

of the Transferred Permits to Transferee. Neither Transferor, on the one hand, nor Transferee, on the other hand, shall, without prior written consent of the other, take or fail to take any action which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement.

(b) To the extent that Transferor's rights under any warranty or guaranty described in Section 2.01(a) may not be assigned without the consent of another Person, which consent has not been obtained by the Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof or be unlawful. The Parties agree that if any consent to an assignment of any such warranty or guaranty has not been obtained or if any attempted assignment would be ineffective or would impair Transferee's rights and obligations under the warranty or guaranty in question, so that Transferee would not in effect acquire the benefit of all such rights and obligations, Transferor shall use commercially reasonable efforts to the extent permitted by law and such warranty or guaranty, to enforce such warranty or guaranty for the benefit of Transferee to the maximum extent possible so as to provide Transferee with the benefits and obligations of such warranty or guaranty. Notwithstanding the foregoing, Transferor shall not be obligated to bring or file suit against any third party, provided that if Transferor determines not to bring or file suit after being requested by Transferee to do so, Transferor shall assign, to the extent permitted by law or any applicable agreement, its rights in respect of the claims so that Transferee may bring or file such suit.

Section 5.05. Termination of Facilities Operation Agreement. The Parties agree to terminate the Facilities Operation Agreement by entering into the Termination of Facilities Operation Agreement in substantially the form attached hereto as Exhibit C at the Closing.

ARTICLE VI

INDEMNIFICATION

Section 6.01. Survival. (a) The representations and warranties of the Parties contained herein shall survive the Closing for a period of one year and thereafter shall be of no further force and effect, except that (i) the representations and warranties set forth in Section 4.01(i) shall survive the Closing for a period of three years, (ii) the representations and warranties set forth in Section 4.01(n) shall survive the Closing for the period of the applicable statute of limitations, (iii) the representations and warranties set forth in Section 4.01(a), (b) and (c) and Section 4.02(a), (b) and (c) shall survive indefinitely, and (iv) any representation or warranty as to which a claim has been asserted during the survival period shall continue in effect with respect to such claim until such claim has been finally resolved or settled.

(b) The covenants and agreements of the Parties contained in this Agreement shall survive the Closing in accordance with their respective terms.

Section 6.02. Indemnification. (a) From and after the Closing, Transferee shall indemnify, defend and hold harmless Transferor and its Representatives (each, a

"Transferor Indemnitee") from and against any and all claims, demands, suits, losses, liabilities, penalties, damages, obligations, payments, costs and expenses (including, without limitation, the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) (each, an "Indemnifiable Loss") asserted against or suffered by any Transferor Indemnitee relating to, resulting from or arising out of (i) any breach by Transferee of any representation, warranty, covenant or agreement of Transferee contained in this Agreement or the Ancillary Agreements, or (ii) the Assumed Liabilities.

(b) From and after the Closing, Transferor shall indemnify, defend and hold harmless Transferee and its Representatives (each, a "Transferee Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any Transferee Indemnitee relating to, resulting from or arising out of (i) any breach by Parent or Transferor of any of their representations, warranties, covenants or agreements contained in this Agreement or the Ancillary Agreements, (ii) the Excluded Liabilities, or (iii) noncompliance with any bulk sales or transfer laws as provided in Section 7.06.

(c) The amount of any Indemnifiable Loss shall be reduced (i) to the extent that any Person entitled to receive indemnification under this Agreement (an "Indemnitee") receives any insurance proceeds with respect to such Indemnifiable Loss, and (ii) to take into account any net Tax benefit realized by the Indemnitee arising from the recognition of such Indemnifiable Loss (but only to the extent that the Parties, following good faith negotiations for a period of 30 days, jointly agree that such Tax benefit would be realized by the Indemnitee).

(d) The expiration or termination of any covenant, agreement, representation or warranty shall not affect the Parties' obligations under this Section 6.02 if the Indemnitee provided the Person required to provide indemnification under this Agreement (the "Indemnifying Party") with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

(e) Subject to Section 7.10 and subparagraph (f) immediately below, the rights and remedies of the Parties under this Article VI are exclusive and in lieu of any and all other rights and remedies which the Parties may have under this Agreement or otherwise in respect of any breach of or failure to perform any representation, warranty, covenant or agreement set forth in this Agreement, after the occurrence of the Closing.

(f) Each Party waives any provision of law to the extent that it would limit or restrict the agreements contained in this Section 6.02. Notwithstanding any provisions in this Agreement to the contrary, each Party retains its remedies at law or in equity with respect to willful, knowing or intentional misrepresentations or breaches of this Agreement.

(g) Notwithstanding anything to the contrary herein, no Party (including an Indemnitee) shall be entitled to recover from any other Party (including an Indemnifying Party) for any liabilities, damages, obligations, payments, losses, costs, or expenses under

this Agreement or any amount in excess of the actual compensatory damages, court costs and reasonable attorney's fees suffered by such party. The Parties waive any right to recover punitive, special, exemplary and consequential damages arising in connection with or with respect to this Agreement. The provisions of this Section 6.02(g) shall not apply to indemnification for a Third Party Claim.

(h) An Indemnitee shall use commercially reasonable efforts to mitigate all Indemnifiable Losses, including availing itself of any defenses, limitations, rights of contribution, claims against third parties and other rights at law or equity. Commercially reasonable efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any losses or expenses for which indemnification would otherwise be due hereunder, and, in addition to its other obligations hereunder, the Indemnifying Party shall reimburse the Indemnitee for the Indemnitee's reasonable expenditures in undertaking such mitigation.

(i) The rights and obligations of indemnification under this Section 6.02 shall not be limited or subject to set-off based on any violation or alleged violation of any obligation under this Agreement or otherwise, including but not limited to breach or alleged breach by the Indemnitee of any representation, warranty, covenant or agreement contained in this Agreement.

(j) Transferee shall indemnify Transferor for any Tax Liability of Transferor to the extent that such Tax Liability results from an increase in the Tax basis of the Transferred Assets in the hands of the Transferee.

Section 6.03. Procedure for Indemnification. (a) If any Indemnitee receives notice of the assertion of any claim or of the commencement of any claim, action, or proceeding made or brought by any Person who is not a party to this Agreement or any Affiliate of a Party to this Agreement (a "Third Party Claim") with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee shall give such Indemnifying Party reasonably prompt written notice thereof, but in any event such notice shall not be given later than 20 days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defense of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel, provided that the counsel for the Indemnifying Party who shall conduct the defense of such Third Party Claim shall be reasonably satisfactory to the Indemnitee. The Indemnitee shall cooperate in good faith in such defense at such Indemnitee's own expense. If an Indemnifying Party elects not to assume the defense of any Third Party Claim, the Indemnitee may compromise or settle such Third Party Claim over the objection of the Indemnifying Party, which settlement or compromise shall conclusively establish the Indemnifying Party's liability pursuant to this Agreement.

(b) If, within 20 days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party Claims, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 6.03(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnifying Party shall fail to take reasonable steps necessary to defend diligently such Third Party Claim within 20 days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps, the Indemnitee may assume its own defense and the Indemnifying Party shall be liable for all reasonable expenses thereof. Without the prior written consent of the Indemnitee, the Indemnifying Party shall not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within 10 days after its receipt of such notice, the Indemnifying Party shall be relieved of its obligations to defend such Third Party Claim and the Indemnitee may contest or defend such Third Party Claim. In such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer plus reasonable costs or expenses paid or incurred by Indemnitee up to the date of said notice.

(c) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event such notice shall not be given later than 30 days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party shall have a period of 30 days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such thirty 30 day period, the Indemnifying Party shall be deemed to have accepted such claim. If the Indemnifying Party rejects such claim, the Indemnitee will be free to seek enforcement of its right to indemnification under this Agreement.

(d) If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by, from or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof at the Prime Rate) shall promptly be repaid by the Indemnitee to the Indemnifying Party. Upon making any indemnity payment, the Indemnifying Party, to the extent of such indemnity payment, shall be subrogated to all rights of the Indemnitee against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided, however, that (i) the Indemnifying Party shall then be in compliance with its obligations under this Agreement in respect of such Indemnifiable

Loss and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnifying Party against such third party on account of said indemnity payment are hereby made subordinate in right of payment to the Indemnitee's rights against such third party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnifying Party shall duly execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights, and otherwise cooperate in the prosecution of such claims at the direction of the Indemnifying Party. Nothing in this Section 6.03(d) shall require any Party hereto to obtain or maintain any insurance coverage.

(e) A failure to give timely notice as provided in this Section 6.03 shall not affect the rights or obligations of any Party hereunder except if, and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually and materially prejudiced as a result of such failure.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.01 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (i) on the day when delivered personally or by e-mail (with confirmation) or facsimile transmission (with confirmation), (ii) on the next business day when delivered to a nationally recognized overnight delivery service, or (iii) 5 business days after deposited as registered or certified mail (return receipt requested), in each case, postage prepaid, addressed to the recipient Party at its address set forth below (or to such other addresses and e-mail and facsimile numbers for a Party as shall be specified by like notice; provided, however, that any notice of a change of address or e-mail or facsimile number shall be effective only upon receipt thereof):

If to Transferor, to:

Duke Energy Ohio, Inc.
139 East Fourth Street
Cincinnati, OH 45202
Attn: President
Facsimile No.: 513-419-5842

If to Transferee, to:

Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202
Attn: President
Facsimile No: 513-419-5842

Section 7.02. Waiver. The rights and remedies of the Parties are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by each other Party; (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

Section 7.03. Entire Agreement; Amendment etc.

(a) This Agreement and the Ancillary Agreements, including the Schedules, Exhibits, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement supersedes all prior or contemporaneous agreements, understandings or statements or agreements between the Parties, whether written or oral, with respect to the transactions contemplated hereby. Each Party acknowledges and agrees that no employee, officer, agent or representative of the other Party has the authority to make any representations, statements or promises in addition to or in any way different than those contained in this Agreement and the Ancillary Agreements, and that it is not entering into this Agreement or the Ancillary Agreements in reliance upon any reliance upon an representation, statement or promise of the other Party except as expressly stated herein or therein.

(b) This Agreement may not be amended, supplemented, terminated or otherwise modified except by a written agreement executed by Transferor, Parent and Transferee.

(c) This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.04. Assignment. This Agreement and all the of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests

or obligations hereunder may be assigned by, on the one hand, Transferor, and on the other hand, Transferee, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other Party, and any attempt to make any such assignment without such consent will be null and void. Notwithstanding the foregoing, Transferor or Transferee may assign or otherwise transfer its rights hereunder and under any Ancillary Agreement to any bank, financial institution or other lender providing financing to Transferor or Transferee, as applicable, as collateral security for such financing; provided, however, that no such assignment shall (x) impair or materially delay the consummation of the transactions contemplated hereby or (y) relieve or discharge Transferor or Transferee, as the case may be, from any of its obligations hereunder and thereunder.

Section 7.05. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 7.06. Bulk Sales Laws. Transferee hereby acknowledges that, notwithstanding anything in this Agreement to the contrary, Transferor will not comply with the provisions of the bulk sales laws of any jurisdiction in connection with the transactions contemplated by this Agreement; and Transferee hereby irrevocably waives compliance by Transferor with the provisions of the bulk sales laws of all applicable jurisdictions.

Section 7.07. Governing Law. This Agreement, the construction of this Agreement, all rights obligations between the Parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including all tort and contract claims) will be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to choice of law principles thereof.

Section 7.08. Counterparts; Facsimile Execution. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties and delivered to each other Party, it being understood that the Parties need not sign the same counterpart. This Agreement may be executed by facsimile signature(s).

Section 7.09. Schedules. The Schedules to this Agreement are intended to be and hereby are specifically made a part of this Agreement

Section 7.10 Specific Performance. The Parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not to be performed in accordance with the terms hereof and that the Parties will be entitled to specific performance of the terms hereof in addition to any other remedies at law or in equity.

Section 7.11. Dispute Resolution. (a) If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following alternative dispute resolution ("ADR") procedures prior to any Party pursuing other available remedies:

(i) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

(ii) If, within 30 days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either Party (the "Neutral") to act as a mediator. If the Parties are unable to agree on the Neutral within 20 days, they shall seek assistance in such regard from the Center for Resolution of Disputes, Inc., which has an office in downtown Cincinnati ("CRD"). The Parties shall share the fees of the Neutral and all other common fees and expenses equally.

(iii) The mediation may proceed in accordance with CRD's Model Procedure for Mediation of Business Disputes, or the Parties may establish their own procedure.

(iv) The Parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within 60 days, then, upon 7 days" written notice to the other Party, either Party may propose another form of ADR (e.g., arbitration, a mini-trial, or a summary jury trial) or may pursue other available remedies.

(b) All ADR proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for the ADR proceedings shall not be used as evidence by the other Party in any subsequent litigation; provided, however, that the underlying facts supporting such materials may be subject to discovery.

(c) Each Party fully understands its specific obligations under the ADR provisions of this Agreement. Neither Party considers such obligations to be vague or in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceeding.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, each of the Parties has caused this Asset Transfer Agreement to be executed on its behalf by its respective officer thereunto duly authorized, all as of the day and year first above written.

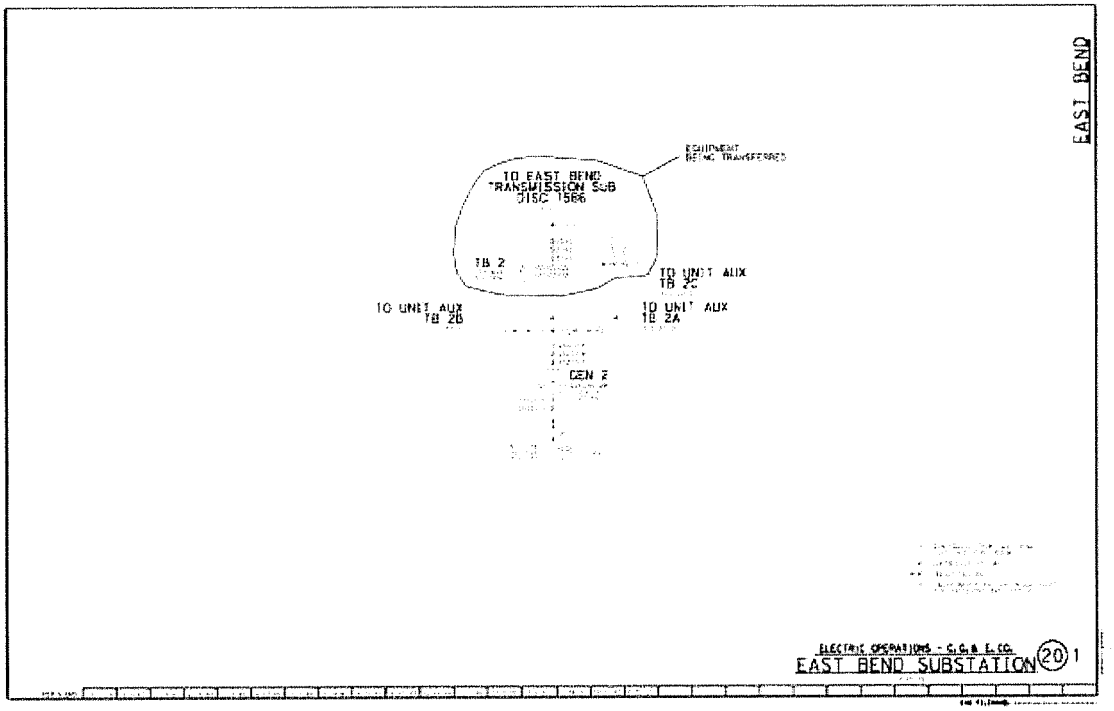
DUKE ENERGY OHIO, INC.

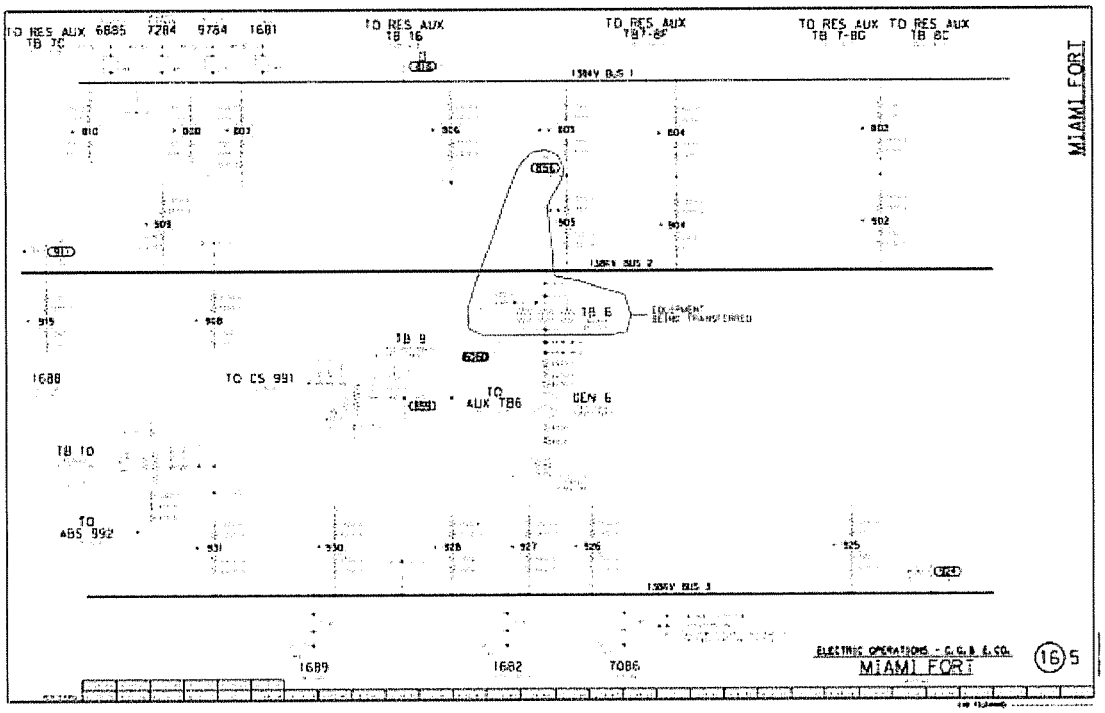
By: _____
Chuck R. Whitlock
President, Midwest Commercial Generation

DUKE ENERGY KENTUCKY, INC.

By: _____
Barry E. Pulskamp
Senior Vice President, Regulated Fleet Operations

EXHIBIT A


EAST BEND
EQUIPMENT BEING TRANSFERRED
TO EAST BEND TRANSMISSION SUB 315C 1566
TB 2
TO UNIT AUX TB 2C
TO UNIT AUX TB 2B
TO UNIT AUX TB 2A
GEN 2
ELECTRIC OPERATIONS - C.G.& E. CO.
EAST BEND SUBSTATION 20 1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TB 7C
TO RES AUX
TB 16
TO RES AUX
TB 7-8C
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TB 8C
MIAMI FORT
TB 8
TB 9
6280
1688
TO CS 991
TO
AUX TB6
GEN 6
TB 10
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ABS 992
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TO86
ELECTRIC OPERATIONS - C. G. & E. CO.
MIAMI FORT
16 5

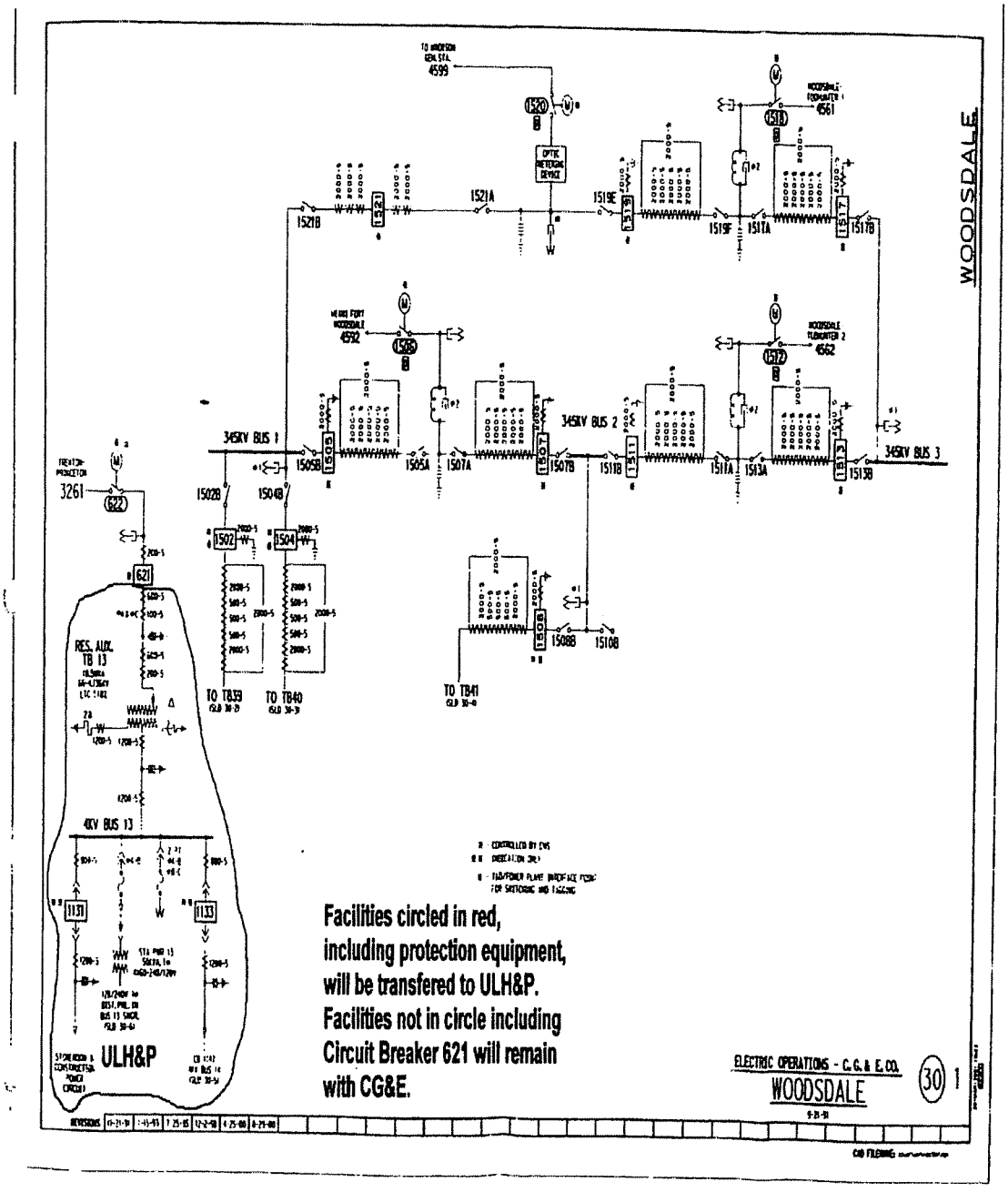
WOODSDALE
345KV BUS 1
345KV BUS 2
345KV BUS 3
4KV BUS 13
RES. AUX. TB 13
TO TB39
TO TB40
TO TB41
ULH&P
Facilities circled in red, including protection equipment, will be transfered to ULH&P. Facilities not in circle including Circuit Breaker 621 will remain with CG&E.
ELECTRIC OPERATIONS - C. G. & E. CO.
WOODSDALE
30 1

EXHIBIT B

BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT

This Bill of Sale and Assignment and Assumption Agreement ("Bill of Sale") is entered into effective as of _____, 2011, by and between **Duke Energy Ohio, Inc.**, an Ohio corporation with an address of 139 E. Fourth Street, Cincinnati, Ohio 45202 ("Seller"), and **Duke Energy Kentucky, Inc.**, a Kentucky corporation with an address of 139 E. Fourth Street, Cincinnati, OH 45202 ("Purchaser"). All capitalized terms, unless otherwise specified herein, shall have the same meaning given to them in the Purchase Agreement.

WHEREAS, by means of an Asset Transfer Agreement with respect to East Bend Station (as defined below) dated as of January 25, 2006 by and between Seller, as transferor and Purchaser, as transferee (the "East Bend Agreement"), Purchaser acquired an undivided 69% interest, as tenant in common with the Dayton Power & Light Company, in Unit 2 of the East Bend Generating Station ("East Bend Station"), a coal-fired electric generating station with a nameplate rating of 648 megawatts located in Boone County, Kentucky near the Village of Rabbit Hash, such generating station being comprised of a boiler and steam turbine generator, together with certain other improvements, equipment, assets, properties (both tangible, including real property, and intangible), facilities and rights associated therewith or ancillary thereto;

WHEREAS, by means of an Asset Transfer Agreement with respect to Miami Fort 6 (as defined below) dated as of January 25, 2006 by and between Seller, as transferor and Purchaser, as transferee (the "Miami Fort 6 Agreement"), Purchaser acquired Unit 6 of the Miami Fort Generating Station ("Miami Fort 6"), a coal-fired electric generating station with a nameplate rating of 168 megawatts located in Hamilton County, Ohio near the Village of North Bend, such generating station being comprised of a boiler and steam turbine generator, together with certain other improvements, equipment, assets, properties (both tangible, including real property, and intangible), facilities and rights associated therewith or ancillary thereto;

WHEREAS, by means of an Asset Transfer Agreement with respect to Woodsdale Station dated as of January 25, 2006 by and between Seller, as transferor and Purchaser, as transferee (the "Woodsdale Agreement", and together with the East Bend Agreement and the Miami Fort 6 Agreement, the "Prior Transfer Agreements"), Purchaser acquired the Woodsdale Electric Generating Station ("Woodsdale Station"), a dual-fuel, single cycle electric generating station with a nameplate rating of 490 megawatts located in Butler County, Ohio in the city of Trenton, such generating station being comprised of six dual-fuel gas turbines, together with certain other improvements, equipment, assets, properties (both tangible, including real property, and intangible), facilities and rights associated therewith or ancillary thereto;

WHEREAS, Seller did not transfer, and Purchaser did not acquire, through the Prior Transfer Agreements, any right, title or interest in or to the electrical transmission facilities (as distinguished from generation facilities) located at or forming part of any of East Bend Station, Miami Fort 6 or Woodsdale Station (whether or not regarded as a "transmission" or "generation" asset for regulatory or accounting purposes), including any energized switchyard facilities and real property directly associated therewith, any substation facilities and support equipment, as well as any permits, contracts and warranties related thereto, including those certain assets and facilities specifically identified on Schedule 2.01 to that certain Asset Transfer Agreement by and between Seller and Purchaser of even date herewith (the "New Asset Transfer Agreement"), attached hereto (the "Transmission Assets") ***including without limitation***, any of Seller's right, title and interest in and to any generation step-up transformers or any other equipment or facilities connected or appurtenant to East Bend Station, Miami Fort 6 or Woodsdale Station classified as "Station Equipment" under Account No. 353 of the Federal Energy Regulatory Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to Provisions of the Federal Power Act, 18 C.F.R. § 101 (such "Station Equipment", the "GSUs" and further described on Exhibit A of the New Asset Transfer Agreement);

WHEREAS, Seller is transferring to Purchaser, and Purchaser is acquiring from Seller, the Transmission Assets/GSUs, pursuant to the terms of the New Asset Transfer Agreement;

WHEREAS, in connection with the New Asset Transfer Agreement, Seller is also assigning to Purchaser, and Purchaser is assuming from Seller, the Assumed Liabilities, as defined in the New Asset Transfer Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. Effective upon the execution and delivery hereof by the parties hereto, (a) Seller hereby unconditionally and irrevocably assigns, sells, transfers and conveys to Purchaser all of its right, title, interest, obligations and liabilities in and to the Assumed Liabilities, and (b) Purchaser hereby unconditionally and irrevocably accepts such assignment and hereby unconditionally and irrevocably assumes all of Seller's right, title, interest, obligations and liabilities in and to the Assumed Liabilities.

2. For the consideration set forth in the Transfer Agreement, Seller hereby sells, transfers, conveys and assigns to Purchaser any and all interest of Seller in the Transmission Assets/GSU.

3. This Bill of Sale shall not be deemed to supersede or in any way modify any of the provisions of the New Asset Transfer Agreement.

4. All of the terms and provisions of this Bill of Sale shall be binding upon Seller and Purchaser and their respective successors and assigns and shall inure to the benefit of Seller and Purchaser, and their respective successors and assigns.

5. This Bill of Sale supersedes all prior or contemporaneous understandings, agreements, statements, discussions, or writings between Seller and Purchaser concerning this subject matter, with the exception of the New Asset Transfer Agreement, with such prior understandings, agreements, statements, discussions and writings between Seller and Purchaser being merged into this Bill of Sale, and this Bill of Sale constitutes the entire agreement between the Seller and the Purchaser with regard to this subject matter, with the exception of the New Asset Transfer Agreement, which shall prevail in the event of a conflict.

6. This Bill of Sale may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (including by facsimile) to the other party hereto.

7. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Ohio, exclusive of any conflict of laws provisions thereof that would refer jurisdiction to the laws of another state.

8. This Bill of Sale may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. Any party hereto may, only by an instrument in writing, waive compliance by the other party hereto with any term or provision of this Bill of Sale on the part of such other party to be performed or complied with. The waiver by any party hereto of a breach of any term of this Bill of Sale shall not be construe as a waiver of any subsequent breach.

9. Subject to the terms and conditions of this Bill of Sale, at any time or from time to time after the execution and delivery hereof, at either party's request and without further consideration, the other party hereto shall execute and deliver to such requesting party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such requesting party may reasonably request in order to effectuate more fully the purposes of this Bill of Sale.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Seller and Purchaser have executed this Bill of Sale as of _____, 2011.

SELLER:

DUKE ENERGY OHIO, INC.

By: _____
Name:
Title:

PURCHASER:

DUKE ENERGY KENTUCKY, INC.

By: _____
Name:
Title:

EXHIBIT C

November 1, 2011

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

Re: Duke Energy Ohio, Inc. ER12-____-000
Notice of Cancellation

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d, and section 35.15 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") regulations, 18 C.F.R. § 35.15, Duke Energy Ohio, Inc. ("DEO") is informing the Commission that it plans to cancel the Facilities Operation Agreement ("Facilities Agreement") between DEO and its affiliate Duke Energy Kentucky, Inc. ("DEK"), which is currently designated as Rate Schedule No. 60. As explained below, given unrelated events and the workings of eTariff, this filing is largely informational in nature, as DEO seeks to abide as best it can by the 60-day notice requirement in light of the unusual circumstances regarding the appropriate method for filing a cancellation, as discussed below.

Under the Facilities Agreement, DEO charges DEK a monthly fee for DEK's use of generation step up transformers owned by DEO located at the DEK plants (Woodsdale, East Bend, and Miami Fort Unit 6). [1] Recently, DEO and DEK management determined that it would be more efficient if DEK owned and operated the GSUs. Thus, DEO and DEK are filing contemporaneous with this filing an application for authorization under section 203 of the Commission's regulations for authorization for DEO to transfer the GSUs to DEK. Once Commission authorization is obtained and any needed state authorization, the parties will determine a closing date and transfer the GSUs at the closing. Given that at this point in time

[1] Woodsdale, East Bend and Miami Fort Unit 6 plants were formerly owned by DEO, but were transferred to DEK on January 1, 2006 as part of a corporate restructuring effort; however, DEO retained ownership of the generation step up transformers located at these plants ("GSUs") and charged DEK a monthly fee for use of such facilities.

the precise date for the closing is not available, DEO and DEK, as explained below, will notify the Commission once a closing date is certain.

The closing date is not likely to occur prior to January 1, 2012. Because DEO is moving to PJM effective January 1, 2012, it has already filed (in Docket No. ER12-245) to cancel Rate Schedule No. 60 (i.e., the Facilities Agreement) and plans to have PJM file effectively the identical agreement in eTariff as a PJM Service Agreement. Because the Facilities Agreement likely will be in effect as a PJM service agreement under the PJM OATT on the date of the closing, it is this as-yet-undesignated service agreement (and its associated tariff record) that in all likelihood will need to be formally cancelled. In sum, if closing occurs *before* January 1, 2012, DEO will file with FERC to confirm that cancellation should occur on the closing date in this docket. If the closing occurs *after* January 1, 2012, PJM will file a Notice of Cancellation of, or if not yet acted upon, move to withdraw, the relevant PJM tariff record for the Facilities Agreement.

DEO requests that questions or other communications regarding this filing be addressed to:

Sheri Hylton May
Duke Energy Corporation
139 East Fourth Street
Mail Code 1212 Main
Cincinnati, Ohio 45202
513-287-4340
Sheri.may@duke-energy.com

DEO has served a copy of this filing on the following entities by mail:

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601-8294

Peggy Laub
Duke Energy Kentucky
221 E. Fourth Street
Mail Code: EA503
Cincinnati, OH 45202
Peggy.Laub@duke-energy.com

Respectfully submitted,

/s/Sheri Hylton May
Sheri Hylton May
Senior Counsel
Duke Energy Corporation
139 East Fourth Street
1212 M
Cincinnati, OH 45202
Sheri.May@duke-energy.com

SCHEDULES TO
ASSET TRANSFER AGREEMENT
BY AND BETWEEN
DUKE ENERGY OHIO, INC.
AND
DUKE ENERGY KENTUCKY, INC.

Dated as of November 1, 2011

Schedule 2.01 Transmission Assets
(see Exhibit A)

Schedule 4.01(c)(ii)Transferor's Required Governmental and Third Party Consents

Filed with the Federal Energy Regulatory Commission, Application for Authorization under Section 203 of the Federal Power Act

Schedule 4.02(c)(ii)Transferee's Required Governmental and Third Party Consents

Filed with the Federal Energy Regulatory Commission, Application for Authorization under Section 203 of the Federal Power Act
Filed with the Kentucky Public Service Commission, Application Regarding the Acquisition of Generation Step Up Transformers and for a Declaratory Order that it is an Ordinary Extension in the Usual Course of Business

EXHIBIT M

Explanation (1) of how Applicant is providing assurance, based on facts and circumstances known to them or that are reasonably foreseeable, that the proposed Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, or (2) if no such assurance can be provided, an explanation of how such cross-subsidization, pledge or encumbrance will be consistent with the public interest

Section 203(a)(4) of the FPA provides that the Commission must find that a proposed jurisdictional transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission finds that such cross-subsidization, pledge, or encumbrance is consistent with the public interest.[30] The Commission has stated that the concern about cross-subsidization is principally a concern over preventing the transfer of benefits from a traditional public utility's captive customers to shareholders of a non-regulated affiliate.[31]

In its *Supplemental Policy Statement*, the Commission stated that it one of the classes of transactions that might raise the type of cross-subsidization concerns described in Order No. 669 are those transactions where one party is a franchised public utility with captive customers.[32] That is the case in the Assignment since DEK *does* have captive customers (even though its DEO parent does not). However, as explained in Part V, the transaction addressed herein does not raise any concerns about cross-subsidization since under the Assignment, the GSUs are being valued at or below the same net (depreciated) book value being used as the cost-basis for the Facilities Agreement under which DEK customers currently compensate DEO for the ownership, operation and maintenance of the GSUs.

The applicants include herein the Melillo Affidavit where it is shown how Applicants sought to demonstrate the absence of any affiliate preferences and assure that the prices paid by DEK for the Miami Fort Unit 6 and Woodsdale GSUs are substantially below the competitive market alternative of purchasing and installing replacement "used" transformers from one of the nation's largest vendors of such used equipment who has no affiliation with Duke Energy. Similar efforts to demonstrate the absence of affiliate preference were undertaken in relation to the transfer price determination for the East Bend GSU, which will need to be replaced soon after the Assignment is completed due to reaching the end of its useful life. Since DEK may retain this GSU as a spare part, the Applicants agreed to use the salvage value of this equipment

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[30] *See* 16 U.S.C. § 824b(a)(4).

[31] *See Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 at PP 147, 167 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006) (collectively, "Order No. 669"); *see also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 13 (2007) ("*Supplemental Policy Statement*"), *order on clarification*, 122 FERC ¶ 61,157 (2008); *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, FERC Stats. & Regs. ¶ 31,264, *order on reh'g*, Order No. 707-A, FERC Stats. & Regs. ¶ 31,272 (2008).

[32] *See Supplemental Policy Statement* at P 16.

for transfer pricing purposes as determined through consultations with an independent scrap metal dealer. Thus, DEK power sale customers will be paying essentially the same or lower charges after the Assignment as they do under the existing contractual arrangements where they pay charges to DEO for service from the GSUs under the Facilities Agreement. No customers taking service over DEK transmission facilities would be affected by the Assignment since the costs of the GSUs are not included in transmission rates either prior to or after completion of the Assignment. In summary, the Assignment does not raise any possible concerns in the context of DEK in relation to cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company

There is no corresponding concern regarding protection of DEO customers against cross-subsidization since, as noted in Parts III and V of this Application, the Commission has found that as a result of retail access legislation in Ohio, DEO's retail customers have access to alternative suppliers and are not considered captive. DEO also does not serve any captive wholesale customers. DEO does own transmission facilities but those facilities are under the control of MISO and in any event, such ownership does not raise any conceivable cross-subsidization concerns in the context of the Assignment since the costs of the GSUs is not recovered through transmission rates. Consequently, Applicants submit that the Assignment does not raise any cross-subsidization concerns and there is no potential harm to customers.

(i) Disclosure of existing pledges and/or encumbrances of utility assets

Under the Assignment there will be no changes to existing pledges and/or encumbrances of utility assets. Applicants therefore request waiver of any requirement to disclose such pledges or encumbrances pursuant to this provision of the filing requirement.

(ii) A detailed representation

Applicants represent that, based on facts and circumstances known to them or that are reasonably foreseeable, the Assignment will not result in, at the time of the Assignment or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.[33] Specifically, there are no existing pledges and/or encumbrances of the assets of traditional utilities involved in the Assignment, and the Assignment will not result in: (a) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities and an associate company; (b) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns, or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (c) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over

[33] As noted, the Assignment involves a transfer of three GSUs from DEO to its DEK subsidiary, and does not involve, at the time of the Assignment or in the future, "the cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company." DEK does have captive retail customers and while DEO does not have captive retail customers, it does own transmission facilities that are subject to control by MISO. As explained above, however, there are no new "pledges or encumbrances" involved in the Assignment so there are no cross-subsidization concerns in this context.

jurisdictional transmission facilities, for the benefit of an associate company; or (d) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA, 16 U.S.C. §§ 824d, 824e.[34]

The following is a listing of the property or assets of Duke Energy subsidiaries that are, and in the ordinary course of business may be, subjected to Liens under the following documents.

Duke Energy Indiana, Inc.

1. Original Indenture, dated September 1, 1939, between Duke Energy Indiana, Inc. and Deutsche Bank National Association, as Trustee (Successor Trustee to LaSalle National Bank), as amended and supplemented by various supplemental indentures thereto, securing first mortgage bonds

Duke Energy Ohio, Inc.

2. Original Indenture between Duke Energy Ohio, Inc. and The Bank of New York Mellon Trust Company, N.A., as successor trustee, as amended and supplemented by various supplemental indentures including the Fortieth Supplemental Indenture, dated as of March 23, 2009, securing first mortgage bonds.

Cinergy Receivables Company LLC

3. Receivables Sale Agreement, dated as of November 5, 2010, among Cinergy Receivables Company LLC, as Seller, Duke Energy Ohio, Inc., as Initial Servicer, The Royal Bank of Scotland plc, as Program Agent for the Purchasers, the Managing Agents from time to time party thereto, The Royal Bank of Scotland plc and JPMorgan Chase Bank, N.A., as Related Purchasers, Windmill Funding Corporation and Chariot Funding LLC, as Conduit Purchasers, and the other Related Purchasers and Conduit Purchasers from time to time party thereto, along with the Second Amended and Restated Purchase and Sale Agreement among Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc., as originators of accounts receivable, and Cinergy Receivables Company LLC, as the purchaser of accounts receivable, securing accounts receivable of Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.

[34] As noted, the existing Facilities Agreement between DEO and DEK will be terminated upon closing of the Assignment.