

Large Filing Separator Sheet

Case Number: 08-709-EL-AIR
08-710-EL-ATA
08-711-EL-AAM

Date Filed: 7/25/2008

Section: 4 of 4

Number of Pages: 122

Description of Document: Application
Volume 9
Supplemental Information
(C) (6)

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician TM Date Processed 7/25/2008

to the extent erected by Owner or a third party and not included in, or required by, the Specifications and to the extent necessary to permit Contractor to perform its warranty obligations, any material or structures; and (c) provide Contractor reasonable access to Facility personnel as are reasonably necessary to the extent consistent with personnel job classifications and subject to availability to assist Contractor in the performance of its warranty obligations.

13.10 Exclusive Warranties. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE). Correction of Defects in the manner and within the period of time provided herein shall constitute complete fulfillment of all the liabilities of Contractor with respect to such Defect, whether the claims by Owner are based in contract, in tort (including negligence and strict liability), or otherwise.

14. INDEMNIFICATION

14.1 Contractor's Indemnity. Contractor shall indemnify and hold harmless Owner, its parents and Affiliates, and their respective partners, shareholders, members, agents, employees, officers, directors, and lenders and Financial Institutions (collectively, the "Owner Indemnitees") from and against:

(i) any and all Third Party Claims and all damages, liabilities, losses, costs and expenses associated therewith (including attorneys' fees and other professionals' fees) for any injury of or death to persons, damage to or destruction of third party property, contamination of the environment or injury to natural resources, whether contractual, in tort, or as a matter of strict liability or liability imposed by Law, to the extent any of the foregoing arise out of the negligence or willful misconduct or wanton acts or omissions of Contractor, any Subcontractor or any of their respective employees, agents or third parties over which either has reasonable control during the performance of the Services, including any Services during any Warranty Period, and

(ii) any and all claims, demands or causes of action of every kind and character by any Person and all damages, liabilities, losses, costs and expenses associated therewith (including attorneys' fees and other professionals' fees) for:

- (a) any violation or alleged violation of Laws by Contractor, any Subcontractor or any of their respective employees, agents or third parties over which either has reasonable control;
- (b) any action taken by Contractor, any Subcontractor or any of their respective employees, agents or third parties over which either has reasonable control, which action results directly in Owner violating any Law; or
- (c) any prohibited assignment by Contractor of this Agreement.

14.2 Owner's Indemnity. Owner shall indemnify and hold harmless Contractor, its parents and Affiliates and their respective partners, shareholders, members, agents, employees, officers, directors, and lenders (collectively, the "Contractor Indemnitees") from and against:

(i) any and all Third Party Claims and all damages, liabilities, losses, costs and expenses associated therewith (including attorneys' fees and other professionals' fees) for any injury of or death to persons, damage to or destruction of third party property, contamination of the environment or injury to natural resources, whether contractual, in tort, or as a matter of strict liability or liability imposed by Law, to the extent any of the foregoing arise out of, in whole or in part, the negligence or willful misconduct or wanton acts or omissions of Owner or any of its employees, agents or third parties over which it has reasonable control during the performance of the Services, including any Services during any Warranty Period; and

(ii) any and all claims, demands or causes of action of every kind and character by any Person and all damages, liabilities, losses, costs and expenses associated therewith (including attorneys' fees and other professionals' fees) for:

- (a) any violation or alleged violation of Laws by Owner, its employees or agents or third parties over which it has control (unless directly caused by Contractor, any Subcontractor, or any of their respective employees or agents or third parties over which either of them has control), or
- (b) any prohibited assignment of this Agreement by Owner, or
- (c) any pre-existing Hazardous Materials.

14.3 Intellectual Property Indemnity. Contractor shall, as part of the Fixed Prices, defend, indemnify and hold harmless Owner Indemnitees against any and all damages, liabilities, losses, costs and expenses (including attorneys' fees and other professionals' fees) associated with any claims, suits or proceedings brought against any of the Owner Indemnitees based on an allegation that any Services performed by Contractor or its Subcontractors, the Documentation or the Equipment, or any part thereof, or use thereof, constitutes an infringement or misappropriation of any right of any third party, including, without limitation, any copyrights, mask work rights, United States patent rights, trademark rights, trade secret rights, confidentiality rights or other property rights, if Contractor is notified promptly in writing and given authority, information, and assistance for the defense or settlement of such claim suit or proceeding. Contractor will not be responsible for any settlement of such suit or proceeding made without its written consent. Contractor shall obtain Owner's written consent, which may be withheld in Owner's sole discretion, prior to entering into any settlement of any such claim suit or proceeding that does not include a complete liability release for all Owner Indemnitees or that would prohibit use of any part of the Project, the Documentation or the Equipment by any Owner Indemnitees. If the use of the Project, the Documentation or the Equipment, or any part thereof, as a result of any such claim, suit or proceeding is held to constitute infringement, and its use by any of the Owner Indemnitees is enjoined, Contractor shall, at its option, either: (i) procure for such Owner Indemnitees the right to continue using the Project, the Documentation

or the Equipment, or any part thereof; (ii) replace same with substantially equivalent non-infringing Documentation or Equipment or parts thereof acceptable to Owner; or (iii) modify same in a manner acceptable to Owner and in conformance with the functional requirements of this Agreement so it becomes non-infringing. Except to the extent that Contractor is a contributory infringer, Contractor shall have no indemnity duty or obligation hereunder to the extent that the Facility, the Documentation or the Equipment furnished hereunder is (A) modified by Owner after acceptance thereof to make it infringing, or (B) combined by Owner with items not furnished hereunder or recommended or approved by Contractor and solely as a result of said modification or combination a claim, suit or proceeding is brought against Owner. Contractor shall flow down the requirements of this Section 14.3 and make Owner direct beneficiary of the indemnification obligation in its subcontracts with all Major Subcontractors. If Contractor is unable to flow down such provision to a Major Subcontractor, Contractor shall notify Owner in writing of such failure prior to entering into a subcontract with such Person and Owner and Contractor shall consult in good faith concerning the options to select an alternative Subcontractor. Notwithstanding anything to the contrary, Contractor's obligations under this Section 14.3 shall not apply to the Owner Equipment.

14.4 Indemnity Procedures for Third Party Claims.

(a) In the event of a Third Party Claim with respect to which an Indemnified Party has a claim for indemnification under this Article, then the Indemnified Party must notify the indemnifying Party thereof in writing of the existence of such Third Party Claim and must deliver copies of any documents served on the Indemnified Party with respect to such Third Party Claim; provided, however, that any failure to notify the indemnifying Party or deliver such copies will not relieve the indemnifying Party from any obligation hereunder unless (and then solely to the extent that) the indemnifying Party is materially prejudiced by such failure.

(b) The indemnifying Party shall have the right to conduct and control, through counsel of its own choosing, reasonably acceptable to the Indemnified Party, any Third Party Claim; provided, however, that (i) if requested by the Indemnified Party, the indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the indemnifying Party will have the financial resources to defend against the Third Party Claim and fulfill its indemnification obligations hereunder, (ii) the Indemnified Party may, at its election, participate in the defense thereof at its sole cost and expense and (iii) if (A) the indemnifying Party shall fail to defend any Third Party Claim, (B) the Parties mutually agree in writing to allow the Indemnified Party to assume the defense of such Third Party Claim and forego any indemnity claimed under this Article, (C) in the reasonable opinion of legal counsel for the Indemnified Party, such Third Party Claim involves the potential imposition of criminal liability on the Indemnified Party, its directors, officers, employees or agents, (D) in the reasonable opinion of legal counsel for the Indemnified Party, the Third Party Claim involves, or is likely to involve, any claim by any Government Authority or (E) in the reasonable opinion of legal counsel for the Indemnified Party, an actual or potential conflict of interest exists where it is advisable for such Indemnified Party to be represented by separate counsel, then the Indemnified Party shall be entitled to control and assume responsibility for the defense of such Third Party Claim, at the cost and expense of the indemnified Party. The indemnifying Party may, in any event, participate in such proceedings at its own cost and expense.

(c) The indemnifying Party, in the defense of any such litigation, other proceeding or other claim, shall have the right in its sole discretion to settle such Third Party Claim only if (i) such settlement involves only the payment of money and execution of appropriate releases of the Indemnified Party and its Affiliates, (ii) there is no finding or admission of any violation of Law, and (iii) the Indemnified Party or its Affiliates will have no liability with respect to such compromise or settlement. Otherwise, no such Third Party Claim shall be settled or agreed to without the prior written consent of the Indemnified Party. The Indemnified Party and the indemnifying Party shall fully cooperate in good faith in connection with such defense and shall cause their legal counsel, accountants and affiliates to do so, and shall make available to the other Party all relevant books, records, and information (in such Party's control) during normal business hours, and shall furnish to each other such other assistance as the other Party may reasonably require in connection with such defense, including making employees of the Indemnified Party available to testify and assist others in testifying in any such proceedings.

15. INSURANCE

15.1 Owner Provided Builder's Risk.

(a) The Owner shall procure and maintain Builders Risk Insurance Coverage *** which provides for "All Risk" coverage for physical loss or damage to the Work from the date the Full Notice to Proceed *** issued until the latest of the Substantial Completion Dates of Unit 6 and the Unit 5 Scrubber, including physical loss or damage resulting from earthquake, flood and hot testing. Such coverage shall encompass the buildings, structure of work, materials and property associated with the Work in the care, custody or control of Contractor and the Subcontractors at the Site. Such coverage shall include coverage for earthquake, subsidence and sinkhole, water damage (including flood), windstorms, boiler, machinery, inland transit and temporary off-Site storage exposure, start-up and testing coverage, vandalism, malicious mischief, collapse, falsework, temporary buildings, debris removal including demolition occasioned by enforcement of applicable legal requirements.

(b) The Builder's Risk coverage provided by Owner shall in no way be construed to provide coverage for the tools, materials, and equipment of Contractor or any Subcontractor. The Builder's Risk policy does not provide coverage for Contractor's or any Subcontractor's equipment, including owned, used and leased equipment required to perform the Work. Furthermore, the Builder's Risk policy does not provide business interruption or delay in completion coverage for Contractor or any Subcontractor.

(c) The Builder's Risk Policy shall be in the name of the Owner. Contractor, its Affiliates and its Subcontractors *** shall be included as an additional insured.

(d)***, Contractor (and its Subcontractors) shall be responsible for deductibles up to *** for all other real property and tangible personal property (except up to *** for start-up and testing of all Equipment) at the Site ***.

(e) Owner shall, and shall cause its underwriters to, waive subrogation against Contractor (including its Affiliates) and its Subcontractors on such Builder's Risk insurance policy except for any claims or matters in which the Equipment warranty or the Services warranty provided by Contractor or any Subcontractor hereunder are involved. It is further agreed that Owner may elect to self-insure this risk. In the event that Owner elects to self-insure the Builder's Risk, Owner shall waive its right to recover the cost to repair or replace such loss or damage from Contractor (including its Affiliates) and its Subcontractors in excess of the deductible and to the extent that coverage would have been available had Owner obtained the foregoing Builder's Risk insurance policy. Should a loss be sustained at the Site and in the course of construction to property that is to be incorporated into the Project, Contractor shall replace or repair such loss or damage in accordance with the terms of this Agreement, and Contractor shall be reimbursed for all such costs plus the cost of extended overhead (including for home office costs and Field Non-Manual and procurement costs). Contractor shall act on behalf of Owner, at Owner's request, for the purpose of adjusting any loss to Owner's Equipment. ***.

15.2 Contractor Controlled Insurance Program (CCIP), Contractor's Insurance and Subcontractor's Insurance.

(a)*** the *** Date until the latest of the Final Completion Dates of Unit 6 and the Unit 5 Scrubber, and without limiting its indemnity obligations under this Agreement, Contractor shall, *** in forms approved by Owner (which approval evaluation shall not be unreasonably withheld or delayed) and with insurance companies approved to do business in the State of North Carolina that have (and shall maintain during the applicable policy period) a minimum A.M. Best rating of A-VII. The insurance shall be maintained until the latest of the Final Completion Dates of Unit 6 and the Unit 5 Scrubber, except for Products Liability/Completed Operations coverage, which shall be maintained for five (5) years beyond such date. Liability insurance coverage limits set forth below are minimums and dedicated to Services performed for Owner related to the Project.

Type	Coverage Amount
a) Workers' Compensation including U.S. Longshoremen's and Harbor Workers Act Coverage or other required coverage as appropriate and including b) below	Statutory
b) Employers Liability	\$\$\$ each accident; \$\$\$ each employee disease; \$\$\$ policy limit disease
c) Commercial General Liability Insurance shall be written ISO occurrence Form (CG 00 01 10 01) or equivalent and must include the following:	\$\$\$ per occurrence with \$\$\$ annual aggregate project specific (with dedicated coverage amounts fully available to any obligations under this Agreement)
• Products Liability/Completed Operations for *** beyond the latest of the Final Completion Dates of Unit 6 and the Unit 5 Scrubber	

Type	Coverage Amount
<ul style="list-style-type: none"> • Coverage for all premises and operations. The policy shall be endorsed to provide the Designated Construction Project(s) General Aggregate Limit Endorsement (ISO CG 2503, Ed 03/97) • If Work to be performed includes construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing, then such policy will include a Railroad's Contractual Liability Endorsement (ISO CG 2417, Ed 01/96); • Coverage for demolition and removal of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of the ground (XCU coverage). • Hazard and Personal Injury, with Employee Exclusion and Contractual Exclusion Deleted <p>d) Business Automobile Insurance on ISO form (CA 00 01 10 01) or equivalent. Must include coverage for the following:</p> <ul style="list-style-type: none"> (1) owned motor vehicles; (2) hired motor vehicles; and (3) other non-owned vehicles (4) coverage for certain railroad operations CA2070 10/01 <p>e) If aircraft are used in performance of the Services, Contractor shall provide or cause the operators of Aircraft to provide Aircraft Liability Insurance (except that aircraft for aerial photography shall be excluded from this requirement)</p>	<p>\$*** per occurrence</p> <p>\$*** combined single limit</p>

	Type	Coverage Amount
f)	If Ocean Cargo Shipments are made, Contractor shall provide Open Cargo Insurance	The maximum value of shipment, including packing, freight duties, and fees
g)	Umbrella/Excess Liability Insurance following form and excess of coverages in sections b, c and d (not required excess of d if CCIP) above. Hired and Non-Owned automobile coverage endorsed for Owner and Contractor.	\$*** project specific per occurrence and annual aggregate (with dedicated coverage amounts that are fully available to any obligations under this Agreement)
h)	If performing any design, engineering or architectural services, Professional Liability Insurance (also known as errors and omissions insurance), which shall insure Contractor's/Subcontractor's liability arising out of or relating to any design, engineering, or architectural Services.	\$*** project specific limit with three year's after completion of the Work reporting requirement for claims made forms.

15.3 General Requirements:

(a) The provisions of this Article do not modify or change any responsibility of Contractor or its Subcontractors as stated elsewhere in this Agreement. Owner assumes no responsibility for the solvency of any insurer to settle any claim. The insurance requirements herein are separate and apart from and in no way limit Contractor's Indemnity as stated in Section 14 of this Agreement. Anything herein to the contrary notwithstanding, the liabilities of Contractor under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Neither approval nor failure to disapprove insurance furnished by Contractor shall relieve Contractor from responsibility to provide insurance as required by this Agreement. No policy shall contain an exclusion that it would not respond to cover losses for damages to any Owner pre-existing property. All policies of insurance required hereunder shall be endorsed or shall otherwise provide that Contractor's insurance shall be primary with respect to Contractor's acts or omissions and not be in excess of, or contributing with, any insurance maintained by Owner (other than any Builders Risk as provided in this Agreement). Owner and its successors and assigns (including the Financial Institutions) shall be named as additional insureds for their imputed liability as a result of Contractor's negligent operations hereunder, using ISO additional insured (CG 20 10) or equivalent, under all policies of liability insurance to be maintained by Contractor (except Worker's Compensation insurance and Professional Liability). The liability policies of insurance shall be endorsed or shall otherwise include

severability of interest or cross liability clause. The policies set forth in this Article shall each contain a provision that coverages afforded under the policies will not be cancelled, renewed or materially modified unless at least sixty (60) Days prior written notice via certified United States mail has been given to Contractor and Owner or to any other entities as herein or hereinafter required, at the address so provided to the insurance company. All insurance required by this Article shall be provided by companies that have (and shall maintain during the applicable policy period) an AM Best Rating of A- VII or higher. Certificates shall be provided to Owner on *** industry standard ACORD forms showing such coverage in full force and effect shall be delivered to Owner within thirty (30) Days of the *** Date, *** within ten (10) Days of each policy renewal or change and from time to time thereafter, as may be requested by Owner. All policies shall include waivers of any right of subrogation of the insurers there under against Owner and its successors and assigns (including the Financial Institutions) using standard ISO forms or equivalent. The existence of any self-insured retentions (SIRS) over which the required policies apply must be disclosed to and approved by Owner. Contractor shall provide copies of CCIP placement and renewal policies and all endorsements *** to the Owner not later than sixty (60) Days following placement or renewal.

(b) Contractor shall comply with the conditions stipulated in each of the insurance policies. None of the insurance coverage required hereunder shall be on "claims-made" forms, except Professional Liability. Coverage amounts must be fully available to any obligations under this Agreement (not eroded by any other project or agreement) and apply on an annual basis. CCIP provisions for excluding Subcontractors must be disclosed and approved by Owner in writing prior to CCIP effective date.

(c) If any of the insurance required under this Article (other than project-specific insurance) shall be directly or indirectly depleted by *** or more (whether due to payment of insurance proceeds, creation of a reserve or otherwise), Contractor shall obtain from the insurer a reinstatement option, if commercially available at a cost comparable to the original policy cost, to each such policy at least equal to the depleted amount. *** shall bear the cost of such option (including the cost associated with the reinstatement) *** Contractor shall cause such insurer to send to Owner a notice of such reinstatement and a copy of the reinstated policy related thereto upon Owner exercising and payment for the reinstatement.

(d) The insurance policies required by this Article shall allow for occupancy and utilization of the Facility, the Equipment and the Site by Owner, its Affiliates and any person reasonably permitted access thereto by Owner, including any representatives of the Financial Institutions.

(e) During the time any Subcontractor is engaged to perform any Service under this Agreement, Contractor shall obtain a certificate of insurance from such Subcontractor evidencing that such Subcontractor has obtained, and will maintain and keep in full force and effect (required only for off-Site Work if covered by CCIP, otherwise for all Subcontractor Work), Worker's Compensation in statutory amounts, Employer's Liability, Commercial General Liability, Automobile Insurance and all other policies reasonably necessary to perform such Service with adequate coverages and in such amounts in accordance with Contractor's normal practices and consistent with Good

Industry Practices, and provide Owner with evidence acceptable to Owner of such coverage, or Contractor shall maintain such coverage under its own insurance policies or CCIP. Contractor shall ensure that all Subcontractors obtain and maintain prudent insurance coverages. All Subcontractor coverages shall waive subrogation rights against Owner and Contractor, and shall name Owner and Contractor as additional insured (except Workers Compensation and Professional Liability).

(f) Any certificates of renewal with respect to any insurance policy required to be maintained by Contractor hereunder shall be delivered to Owner promptly after renewal. Contractor shall insure that the insurer shall submit a copy of all receipts for premiums paid to Owner promptly after payment of such premiums. Contractor shall be solely responsible for the timely payment in full of premiums for all insurance required of it hereunder. Should Contractor fail to provide or maintain any insurance required hereunder, Owner shall have the right, but not the obligation, to provide or maintain any such insurance, and to deduct the cost thereof from any amounts due and payable to Contractor, or, in the event there are no such amounts due and payable, Contractor shall reimburse Owner for such costs on demand. Contractor shall not unreasonably refuse to cooperate or to take any actions requested or necessary to prosecute any claims under any insurance policy required to be maintained by Contractor hereunder.

(g) With respect to ocean marine shipments, Contractor shall obtain at least fifteen (15) Days prior to any such shipment, cargo insurance covering "all risks" of loss or damage to property shipped, components of property shipped, or items contained in or shipped in or with the property shipped. This coverage is to be written on a replacement cost basis and in the full insurable value of these items, including packing and freight charges plus duties and fees. The coverage required by this paragraph shall continue in effect until appropriate coverage commences at the Site.

15.4 Insurance Costs and Assumptions. ***. For any Change Orders, additional CCIP costs, if any, shall be allocated to such Change Orders in proportion and as part of the same pricing components as set forth in (i) through (iv) above.

16. PROJECT CREDIT SUPPORT

16.1 Parental Guarantee. *** obligations under this Agreement *** as Exhibit I-1. *** Date until Final Completion of each Unit 6 and the Unit 5 Scrubber. Contractor shall, upon request of Owner, cause Guarantor to deliver to Owner (a) within *** Days following the end of each fiscal year, a copy of Guarantor's annual report (or, if there is no such report, a copy of such report for its parent company) containing audited, consolidated financial statements for such fiscal year, and (b) within *** Days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Guarantor's quarterly report (or, if there is no such report, a copy of such report for its parent company) containing unaudited consolidated financial statements for such fiscal quarter. In all cases, the statements shall be prepared in accordance with generally accepted accounting principles. To the extent such quarterly reports are not available, upon the reasonable request of Owner in response to a credit event in the marketplace, Guarantor shall provide unaudited management financial information for such fiscal quarter.

16.2 Standby Letter of Credit.

(a) Contractor has obtained and *** attached *** as Exhibit J-2. The Standby Letter of Credit *** be issued by a U.S. commercial bank or a foreign bank with a U.S. branch with total assets of at least \$5 billion having a general long-term senior unsecured debt rating of A - or higher (as rated by Standard & Poor's Rating Group) or A3 or higher (as rated by Moody's Investor Services, Inc.) and permits presentation at a bank located in Charlotte, NC, Atlanta, GA, or New York, NY. If at any time the Standby Letter of Credit fails to meet the foregoing conditions, Contractor shall replace the outstanding Standby Letter of Credit with a Standby Letter of Credit that meets the foregoing conditions. Contractor shall ensure that the Standby Letter of Credit shall be renewed or replaced on an annual basis and shall remain in full force and outstanding until the expiration of the Warranty Period, as such period may be extended pursuant to Section 13.3. If Contractor fails to renew or replace the Standby Letter of Credit at least thirty (30) Days prior to the expiration thereof, then, in the sole and absolute discretion of Owner, Owner shall be entitled to draw and retain until the end of the Warranty Period the full amount of such Standby Letter of Credit. Such retained amount, less any amount offset against such retained amount for claims, shall be returned to Contractor promptly upon expiration of the Warranty Period.

(b) Contractor shall cause the Standby Letter of Credit to be amended or replaced *** set forth in the Letter of Credit Value Chart attached as Exhibit J-3 (the "Letter of Credit Value Chart") so that the amount of such amended or replacement Standby Letter of Credit is revised to be equal to the amount set forth in the Letter of Credit Value Chart attached as Exhibit J-3; *** results in a revision to the Cash Flow Plan or any component thereof, or in the event of a *** Change Order (or series of Change Orders) that increases or decreases, cumulatively, the *** Contract Price by more than ***, Owner, in its reasonable discretion, shall be entitled to make an equitable adjustment to the Letter of Credit Value Chart to take into account such event, in which case Contractor, *** shall amend, replace or supplement the then-outstanding Standby Letter of Credit to reflect the adjustment made to the Letter of Credit Value Chart. ***, Owner shall not be obligated to make further Invoice payments, approve any such Change Order or modify the Schedule until Contractor shall have provided Owner with such amended, replacement or supplemental Standby Letter of Credit.

(c) Contractor shall Invoice Owner on a quarterly basis for the fees charged by the issuing financial institution for the issuance of the Standby Letter of Credit (including any amendment or replacement thereto) from the Effective Date through the Warranty Period, but without any administrative charges or Contractor profit added to such financial institution fees. For any equitable increase to the Letter of Credit Value Chart after the Effective Date, Owner shall pay the then-current fees charged by the issuing institution for such amendment, replacement or supplement. Contractor shall provide such documentation and materials as Owner may reasonably require to substantiate the *** Letter of Credit (including the fees *** for any amendment, replacement or supplement thereto).

16.3 Cooperation with Owner Financing.

(a) Contractor shall promptly provide to Owner (i) all cooperation that Owner reasonably requests to make presentations to potential Financial Institutions and their

consultants and representatives and to respond to any questions or requirements asked or imposed by any Financial Institutions, including any requests for financial information relating to Contractor, and (ii) all cooperation that Owner reasonably requests with respect to the Financial Institutions and their consultants and representatives, including developing and providing information regarding the Project (if available to Contractor) and this Agreement. Contractor shall provide the Financial Institutions with reasonable access to, and will permit them to review, the Documentation. In addition, Contractor shall provide the Financial Institutions with (A) the right to receive and render performance and to give reasonable time to cure defaults by Owner, on behalf of Owner, under this Agreement, (B) reasonable access to the Site and any other location where Services, including testing, are performed for the purposes of inspecting the Equipment and the Owner Equipment, provided that any such inspection does not unreasonably interfere with or delay Contractor's performance of the Services and (C) such access to documentation in relation to this Agreement or the Work at such times as Owner shall reasonably request. For any additional time required by any Financial Institution to cure any defaults of Owner hereunder, which defaults interfere in Contractor's ability to perform the Services, Contractor shall be entitled to an equitable adjustment in the Schedule in accordance with Article 8.

(b) Contractor hereby consents to the collateral assignment of this Agreement to the Financial Institutions. Contractor also shall enter into a consent to assignment with the Financial Institutions regarding this Agreement which shall contain provisions that are typically provided to financial institutions in similar project financing, including the right to render and receive performance under this Agreement, and giving the Financial Institutions copies of notices delivered to Owner under this Agreement. Owner will be entitled to assign, and Contractor shall ensure that the relevant instruments permit the assignment of, the benefit of any parental guarantee, Standby Letter of Credit or other financial instrument at any time to the Financial Institutions without the consent of Contractor or the issuer of such parental guarantee, Standby Letter of Credit or other financial instrument being required.

17. LIMITATION OF LIABILITY

17.1 No Consequential Damages. *** THEREOF, LOSS OF PROFITS OR REVENUES OR THE LOSS OF USE THEREOF, OR COST OF PURCHASED OR REPLACEMENT POWER (INCLUDING ADDITIONAL EXPENSES INCURRED IN USING EXISTING POWER FACILITIES) OR FROM CLAIMS OF CUSTOMERS OF CONTRACTOR OR OWNER.

17.2 Maximum Total Liability. FOR UNIT 6 OR THE UNIT 5 SCRUBBER, CONTRACTOR'S AND ITS SUBCONTRACTORS' TOTAL AGGREGATE LIABILITY TO OWNER UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), GUARANTEE, WARRANTY OR OTHERWISE, SHALL NOT EXCEED FORTY PERCENT (40%) OF THE RESPECTIVE CONTRACT PRICE FOR UNIT 6 OR THE UNIT 5 SCRUBBER, AS MAY BE ADJUSTED BY CHANGE ORDER (THE "MAXIMUM LIABILITY AMOUNT"); PROVIDED, HOWEVER, THE MAXIMUM LIABILITY AMOUNT SHALL NOT APPLY TO, AND NO CREDIT SHALL BE ISSUED AGAINST THAT LIMITATION FOR (A) A

PARTY'S INDEMNITY OBLIGATIONS HEREUNDER FOR THIRD PARTY CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE, (B) THE PROCEEDS FROM PROPERTY OR BUILDER'S RISK INSURANCE THAT A PARTY IS REQUIRED TO MAINTAIN IN ACCORDANCE WITH THIS AGREEMENT, (C) CLAIMS WHICH ARISE FROM A BREACH OF OBLIGATIONS UNDER ARTICLE 18 OR ARTICLE 19 OR (D) ANY PROCEEDS COLLECTED BY OWNER FROM THE VENDORS THAT ARE PARTY TO THE *** WITH RESPECT TO THE EQUIPMENT PROCURED PURSUANT THERETO.

17.3 Protected Parties. ALL THE PROVISIONS OF THIS ARTICLE SHALL ALSO PROTECT DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS OF EACH PARTY AND THEIR RESPECTIVE AFFILIATES AND SHALL APPLY REGARDLESS OF THE NEGLIGENCE OR STRICT LIABILITY OF EITHER PARTY, ITS AFFILIATES OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS.

17.4 Precedence. THE PROVISIONS OF THIS ARTICLE SHALL APPLY NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT AND SHALL NOT BE AMENDED BY ANY PRE-PRINTED TERMS ON ANY PURCHASE ORDER, BILL OF LADING OR OTHER COMMERCIAL DOCUMENT BETWEEN THE PARTIES.

17.5 ***. For Unit 6 or the Unit 5 Scrubber, *** for which Contractor may be liable to the Owner under this Agreement shall in no event exceed *** of the respective Contract Price for Unit 6 or the Unit 5 Scrubber, as may be amended by Change Order; provided, that such *** shall not limit Owner's remedies under this Agreement for other breaches, actions, or omissions of Contractor hereunder.

18. LIENS

18.1 Liens. Contractor shall keep the Facility, the Site, the Equipment and the Owner Equipment free from all Liens (other than Liens arising from non-payment and other acts of Owner), and shall promptly notify Owner of any Liens. If Owner seeks Contractor's indemnification for any Lien, Owner shall:

- (a) give Contractor prompt notice of any Lien of which it has knowledge;
- (b) cooperate in the defense of the Lien at Contractor's expense; and
- (c) give Contractor sole control of the defense and settlement, to the extent of Contractor's liability, for the Lien; provided, that Contractor shall promptly confirm in writing its obligation to indemnify Owner with respect to all costs and expenses with respect to the Lien.

18.2 Discharge or Bond. Contractor shall take prompt steps to discharge or bond any Lien filed by any Subcontractor based on a claim for payment by Contractor in connection with the Work (unless such Lien is due to the non-payment by Owner of an Invoice amount which is not the subject of a good faith dispute). If Contractor fails to so discharge or promptly bond any such Lien, Owner shall have the right, upon notifying Contractor in writing and providing Contractor reasonable time to discharge or bond the Lien, to take any and all reasonable actions and steps to satisfy, defend settle or otherwise remove the Lien at Contractor's expense, including reasonable attorneys' fees, costs and expenses. Owner shall have the right to deduct

and offset any expenses so incurred from any payment due, or which may become due, to Contractor under this Agreement or to recover those expenses from Contractor. Contractor shall have the right to contest any Lien, provided it first must provide to the lienholder, a court or other third Person, as applicable, a bond or other assurances of payment necessary to remove the Lien and all other encumbrances related to the Work from the Site and the Facility in accordance with the Laws of the State.

19. INTELLECTUAL PROPERTY

19.1 Delivery of Documentation. Prior to Final Completion of Unit 6 or the Unit 5 Scrubber, Contractor shall supply to Owner physical and electronic copies of all Documentation with respect to Unit 6 or the Unit 5 Scrubber. All such Documentation shall include any corrections, improvements, and enhancements to such Documentation that were incorporated during the construction of the Project and shall be of an "as-built" status (for certain agreed systems and documents) upon Final Completion of Unit 6 or the Unit 5 Scrubber. Contractor shall provide Owner during the Warranty Period at no additional cost, any corrections to errors discovered by Contractor or Owner in the Documentation subsequent to Final Completion of Unit 6 or the Unit 5 Scrubber. Contractor shall promptly notify Owner of the discovery of any such errors.

19.2 Ownership of Rights in Documentation. All rights, title and interests in and to the paid-up Documentation shall be owned by Owner; provided, that all rights, title and interests in and to Contractor Confidential Information within the Documentation shall remain with Contractor or its licensors. For such Contractor Confidential Information, Contractor hereby grants to Owner a non-transferable (except only as part of the sale or transfer of the Facility), royalty-free, fully paid up, irrevocable, nonexclusive license to use and copy such Contractor Confidential Information, but only for the purposes of Facility maintenance, operation, training, modification, consultation, repair and compliance with Laws, and subject to the restrictions on Contractor Confidential Information set forth in Article 20.

19.3 Ownership of Invention Rights. Contractor shall retain the ownership rights in any and all discoveries and inventions (patentable or un-patentable) that Contractor makes, creates, develops, discovers or produces in connection with the design, manufacture, testing, analysis, maintenance or construction of the Project or performance of the Services; provided, however, that Contractor hereby grants to Owner a transferable (but only as part of the sale or transfer of the Facility), royalty-free, fully paid up, irrevocable, nonexclusive license to use such discoveries and inventions for the purposes of Facility maintenance, operation, training, modification, consultation, repair, decommissioning and compliance with Laws.

19.4 Disclosure of Documentation. Owner may disclose or otherwise make available paid-up Documentation to a third party with whom Owner contracts for maintenance, operation, training, modification, repair, consultation or decommissioning; provided, that, if such Documentation contains Contractor's Confidential Information, the provisions of Article 20 shall apply. In the event of a Contractor Default and Owner termination, in addition to the rights above, Owner shall have the right to disclose the Documentation to third parties with whom Owner contracts for engineering, construction, commissioning or testing of the Facility, provided that, prior to such disclosure, such third parties shall execute a confidentiality agreement at least as strict as the requirements set forth herein.

19.5 Other Licenses. To the extent that a license may be required under any patent, trade secret right or other proprietary right of Contractor or Subcontractor to maintain, operate, conduct training, modify, repair, or decommission the Facility in connection with the Project, Contractor hereby grants to Owner a non-transferable (except only as part of the sale or transfer of the Facility), royalty-free, fully paid up, irrevocable, nonexclusive license under such patent, trade secret and other proprietary right for such purposes.

20. CONFIDENTIAL INFORMATION

20.1 Confidentiality Obligations. Each Party agrees: (a) to treat the other Party's Confidential Information as confidential and to take reasonable precautions to prevent unauthorized disclosure or use of the other Party's Confidential Information, such precautions taken being at least as great as the precautions taken by such Party to protect its own Confidential Information (but in no case less than reasonable care); (b) not to disclose the other Party's Confidential Information to any third party other than as provided in Section 20.2 below or with other Party's prior written authorization; and (c) not to use the other Party's Confidential Information except for the performance of this Agreement, the compliance with Laws, or the maintenance, operation, training, modification, repair, consultation or decommissioning of the Facility.

20.2 Permitted Disclosures. A Party may disclose the other Party's Confidential Information to third parties as follows:

(a) A Party may disclose the other Party's Confidential Information to any Government Authority if required to do so, in which case the Party from whom such disclosure is required shall (i) give the other Party all reasonably possible notice so as to facilitate such other Party being able, should it so desire, to seek a protective order or similar protection, and (ii) fully cooperate with the other Party's efforts, at the other Party's expense, to obtain such protection.

(b) Contractor may disclose Owner's Confidential Information to a Subcontractor if (i) such disclosure is necessary for Subcontractor's performance of its subcontract with Contractor and (ii) such Subcontractor first executes a written confidentiality agreement with Contractor (unless a confidentiality obligation is already included in the Subcontract) in a format reasonably acceptable to Owner.

(c) Owner may disclose Contractor's Confidential Information to (i) Financial Institutions; (ii) third parties engaged by Owner to provide consultation regarding the Duke Coal Facility; (iii) third parties with which Owner contracts for maintenance, operation, training, modification, repair, consultation or decommissioning of the Facility; and (iv) purchasers and prospective purchasers of the Facility, provided, that in any of the foregoing instances the third parties to which disclosure is made first execute a written confidentiality agreement with the Owner which provides Contractor protections which are at least as strict as the requirements set forth herein.

20.3 Publicity. Unless required by Law or securities practice and regulations, Contractor shall not make any announcement, give any photographs, or release any information concerning all or a portion of the Work, this Agreement, or the Facility, to any member of the public, press, Person, or any official body, without Owner's prior written consent; provided, that

Contractor may, at any time after Owner's first public announcement of the Project or this Agreement, include the Project (but not the details of this Agreement) in its regular experience lists.

21. ENVIRONMENTAL; HAZARDOUS MATERIALS

21.1 Material Safety Data Sheets. Contractor shall provide to Owner all Material Safety Data Sheets covering all Hazardous Materials and hazardous chemicals to be furnished, used, applied, or stored by Contractor, or any of its Subcontractors, at the Site in connection with the Services. Contractor shall provide Owner's Project Director or his designee with copies of any such Material Safety Data Sheets prior to entry at the Site or with a document certifying that no Hazardous Materials or hazardous chemicals will be brought onto the Site by Contractor, or any of its Subcontractors, during the performance of the Services. Contractor shall coordinate with Owner's Project Director to provide a listing of all of Contractor's hazardous chemicals and their quantities at the Site for purposes of chemical inventory reporting pursuant to 40 C.F.R. Part 370 and similar State regulations.

21.2 Facility Use, Storage Removal. When the use or storage of explosives or other Hazardous Materials or equipment is necessary for the performance of the Services, Contractor shall exercise the utmost care and shall conduct its activities under the supervision of properly qualified personnel in accordance with all applicable Laws. Before Substantial Completion of Unit 6 and the Unit 5 Scrubber, Contractor shall collect, for removal by Owner from the Site in accordance with all applicable Laws, all explosives and other Hazardous Materials that Contractor or its Subcontractors brought onto the Site or hazardous chemicals and equipment Contractor or its Subcontractors used, or stored at the Site or any neighboring property, unless the same have been permanently incorporated into the Facility. All such equipment and materials shall be removed in accordance with all applicable Laws, and Contractor shall so certify in writing to Owner.

21.3 Notice of Presence. Prior to bringing any Hazardous Material or other hazardous chemicals to the Site, Contractor shall provide written notice to Owner identifying any such Hazardous Materials or hazardous chemicals that Contractor, or its Subcontractors, proposes to bring onto the Site.

21.4 Labeling, Training. Contractor shall label all Hazardous Materials that Contractor or its Subcontractors bring to the Site and train all employees and other Persons, as necessary, in the safe use of such Hazardous Materials as required by all applicable Laws.

21.5 Handling, Collection, Removal Transportation and Disposal.

(a) Unless otherwise agreed by the Parties, Contractor shall be responsible for the proper handling, collection, and containerizing of all Hazardous Materials generated or brought onto the Site by Contractor or any Subcontractor or spilled or introduced into or at the Site by Contractor or any Subcontractor, including any Hazardous Materials furnished, used, applied or stored at the Site by Contractor, including, used oils, greases, and solvents from flushing and cleaning processes performed under the Agreement. Such Hazardous Materials will then be delivered to Owner for proper storage, transportation and disposal. All activities performed by Contractor in connection with the handling, collection and containerizing of such Hazardous Materials shall be performed in

accordance with the requirements of all Government Authorities and all applicable Laws. For the avoidance of doubt, Contractor has no obligations and/or liability with respect to the handling, collection or containerizing of any pre-existing Hazardous Materials except to the extent the Gross Negligence or the willful misconduct or wanton acts of Contractor or its Subcontractors caused the release of such pre-existing Hazardous Materials.

(b) Contractor has included time in the Schedule and costs in the Contract Price for satisfying its obligations as to all Hazardous Materials that it is responsible for under this Agreement by virtue of such Hazardous Materials being brought onto the Site by Contractor or its Subcontractors. Contractor shall not seek, and shall not be entitled to receive, a Change or extension of time in the Schedule as a result of satisfying its obligations with respect to any such Hazardous Materials brought onto the Site by Contractor or its Subcontractors, including the handling, collection, or containerizing of such Hazardous Materials.

21.6 Notice of Discovery. Contractor shall provide prompt written notice to Owner of all suspected Hazardous Materials that Contractor finds during performance of the Services.

21.7 Policies and Procedures. Contractor shall adhere to all Site policies and procedures for environmental compliance, including Owner's Environmental Work Practices Manual and Hazardous Material safety programs. If no such Site policies or procedures exist, Contractor shall develop, implement and enforce effective written policies and procedures applicable to the Services, within the framework of all applicable Laws, for general Site safety and the proper labeling, handling, collection and containerizing of any Hazardous Materials at the Site in order to ensure the highest standards of prudent practice at the Site for the safety of all employees, agents and representatives of Contractor and any of its Subcontractors.

21.8 Asbestos Containing Products. Except as otherwise authorized by Owner in writing, all Equipment or Owner Equipment furnished, delivered or installed by Contractor and all materials and tools used by Contractor in the performance of the Services at the Site shall contain zero percent asbestos or refractory ceramic fibers. If Owner authorizes in writing such delivery or use, Contractor shall clearly mark all containers or other materials containing asbestos or refractory ceramic fibers, and such containers or materials shall be sealed to prevent any leakage of asbestos or ceramic fibers. Contractor shall indemnify, defend and hold harmless Owner from and against any and all claims, demands and damages incurred from any unauthorized asbestos or refractory ceramic furnished or delivered to or installed at the Site by Contractor or any Subcontractor.

21.9 Pre-Existing Hazardous Material. Owner shall indemnify Contractor and its Subcontractors from any liability in connection with any pre-existing Hazardous Material, except to the extent such liability was caused by the Gross Negligence or the willful misconduct or wanton acts or omissions of Contractor or its Subcontractors. Except as provided above, Owner shall at all times remain the responsible Party for all pre-existing Hazardous Material and its remediation. Any assistance provided by Contractor shall be pursuant to a mutually agreed Change Order, and Contractor shall be entitled to a Change Order for equitable price and/or schedule adjustment if its cost or performance is impacted by the discovery of any pre-existing Hazardous Materials.

22. TITLE: RISK OF LOSS

22.1 Transfer of Title: Security Interest. Except as otherwise expressly provided in this Agreement, good, exclusive and marketable title, free and clear of all Liens (other than Liens created by the non-payment by Owner of an Invoice amount which is not the subject of a good faith dispute), to the Equipment and to each of the constituent parts thereof shall pass to Owner upon the (i) delivery of such Equipment or constituent part thereof to the Site and (ii) payment of the amount then due under a Invoice covering such Equipment or constituent part of such Equipment, notwithstanding any disputed amounts withheld or offset by Owner against any payment sought by Contractor in accordance with the terms of this Agreement. The passage of title to Owner shall not be deemed an acceptance or approval of such Equipment (or any Service), affect the allocation of risk of loss, affect any security interest in favor of Owner therein or otherwise relieve Contractor of any obligation under this Agreement to provide and pay for transportation and storage in connection with the Equipment. Further, upon the passage of title, the Equipment, constituent parts thereof and the unused spare parts shall be specifically excluded from the bankruptcy estate of Contractor in the event of any bankruptcy or insolvency proceeding involving Contractor. Regardless of whether title has passed to Owner, Contractor hereby grants Owner a continuing security interest in all of the Equipment to the extent of the payments made in connection therewith, whether now owned or hereafter acquired, wherever located and all attachments and accessions thereto and all replacements thereof, all drawings, plans and general intangibles related thereto, all warranties and contract rights related thereto and all proceeds of the foregoing (collectively, the "Collateral"), to secure all past, present and future indebtedness and obligations which Contractor owes Owner under this Agreement. Contractor shall cause such security interest to constitute, at all times, a valid, enforceable, duly perfected, first priority security interest in the Collateral superior to all other claims to and interests in the Collateral, including the claims of any lender, vendor or Subcontractor to Contractor, it being understood that Owner shall be responsible for initial perfection of such security interest. Contractor hereby authorizes Owner to file financing statements naming Contractor as debtor with respect to the Collateral in such jurisdictions as Owner believes are necessary to perfect the foregoing security interest. Contractor shall execute and deliver at all times requested by Owner all other instruments and documents necessary or desirable to establish, perfect or maintain this security interest. At the request of Owner, Contractor shall clearly label the Collateral with Owner's name for the purpose of proper identification of the Collateral.

22.2 Risk of Loss. Contractor shall have care, custody and control of the Work and the Owner Equipment (but only after its arrival at the Site) until Substantial Completion. Notwithstanding the above fact, the Owner is providing the Builder's Risk policy for the Work, the Equipment and the Owner Equipment, which shall commence upon the earlier of (a) delivery of such items to the Owner's Site or (b) such time as Owner's inland transit coverage commences. To the extent of the proceeds of Builder's Risk insurance paid to Contractor under this Agreement, Contractor shall be obligated to replace, repair or reconstruct the Equipment that is lost, damaged, or destroyed before the transfer of care, custody and control of the Equipment to Owner. For Equipment or materials that are removed from the Site for repair, replacement or refurbishment under the warranty herein, the risk of loss to such Equipment or Materials shall pass to Contractor at the time of the loading of such Equipment or Materials on the carrier at the Owner's Facility. Owner will resume the risk of loss of such Equipment or Materials upon completion of the unloading of the repaired, replaced or refurbished Equipment from the carrier.

at Owner's Facility. Notwithstanding the foregoing, to the extent the loss or damage is covered by Owner's Builder's Risk policy or Owner's property insurance, Contractor shall only be responsible for any loss or resulting damage that it or its Subcontractors cause to any Work, Equipment or Owner Equipment up to *** during construction and *** during start-up and Performance Testing. ***. In addition, to the extent the loss or damage is covered by Owner's Builder's Risk policy or Owner's property insurance, Contractor shall only be responsible for up to *** in the event such loss is caused by the Gross Negligence or the willful misconduct of Contractor or its Subcontractors. Contractor shall be responsible for such deductible, which shall not be applied against the Contract Price.

22.3 Contractor Tools. Risk of loss or damage to the equipment or tools of Contractor, all Subcontractors, and their respective employees and agents shall at all times remain with those parties, and Owner shall have no responsibility for such equipment or tools.

23. DEFAULT, TERMINATION AND SUSPENSION

23.1 Events of Default. A Party shall be in default of its obligations pursuant to this Agreement upon the occurrence of anyone or more of the following circumstances (each, a "Default"):

(a) Nonpayment. Such Party fails to pay or cause to be paid any amount that has become due and payable by it to the other Party under this Agreement within ten (10) Business Days after receipt of written notice that such amounts are past due;

(b) Insolvency. Such Party becomes insolvent, or fails generally to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of creditors; commences any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of itself or its debts or assets, or adopts an arrangement with creditors, under any bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar law of United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

(c) Assignment. Such Party assigns or transfers, or attempts to assign or transfer, this Agreement or any right or interest herein, except as expressly permitted by this Agreement;

(d) Abandonment. Such Party, if it is Contractor, abandons the Work and fails, except as otherwise addressed in Section 23.7, to recommence performance of the Services within five (5) Days after written notice from Owner;

(e) Insurance. Such Party fails to obtain and maintain insurance as required by this Agreement;

(f) Repudiation. Such Party expressly repudiates this Agreement;

(g) Performance Guarantees. Such Party fails to satisfy the Minimum Performance Guarantees of Unit 6 or the Unit 5 Scrubber within *** after the Guaranteed Final Completion Date for Unit 6 or the Unit 5 Scrubber;

(h) Breach. Such Party breaches any of its material obligations under this Agreement other than those obligations relating to the matters set forth in Section 23.1(a) through (g) above and for which no other remedy is specified in the Agreement and, if such breach is capable of being cured, such Party fails to cure such breach within *** Days after written notice of such breach, provided that such cure period shall be extended to *** Days after written notice of such breach if such breach is capable of being cured but not within *** Days, and such breaching Party immediately commences to cure such breach and diligently and continually prosecutes measures which are reasonably calculated to cure such breach within such *** Day period; and

(i) Delay in Schedule. It is forecasted that Contractor will fail to meet Substantial Completion by the Guaranteed Final Completion Date as set forth in Section ~~Error! Reference source not found.~~ hereof and, if such forecasted delay is capable of being cured, Contractor fails to ***.

23.2 Owner Remedies. In the event of a Contractor Default, Owner shall have any or all of the following rights and remedies:

(a) Termination. Subject to the limitation on liability, Owner, without prejudice to any of its other rights or remedies under this Agreement, may terminate this Agreement immediately by delivery of a notice of termination to such Party;

(b) Equitable Remedies. Subject to the limitations on liability set forth in this Agreement, Owner may seek equitable relief, including injunctive relief or specific performance, to cause Contractor to take action, or to refrain from taking action, pursuant to this Agreement, or to make restitution of amounts improperly retained or received under this Agreement; and

(c) Damages. Subject to the limitations on liability set forth in this Agreement, Owner shall be entitled to seek all other damages available in equity or at law.

23.3 Contractor Remedies. In the event of an Owner Default, Contractor shall have any or all of the following rights and remedies:

(a) Termination/Suspension. Contractor, without prejudice to any of its other rights or remedies under this Agreement, may terminate this Agreement (or suspend performance) immediately by delivery of a notice of termination/suspension to Owner, and such termination/suspension shall be deemed as if done for convenience of Owner under Section 23.4(a) and 23.7;

(b) Equitable Remedies. Subject to the limitations on liability set forth in this Agreement, Contractor may seek equitable relief, including injunctive relief or specific performance, to cause Owner to take action, or to refrain from taking action, pursuant to this Agreement, or to make restitution of amounts improperly retained or received under this Agreement; and

(c) Damages. Subject to the limitations on liability set forth in this Agreement, Contractor shall be entitled to seek all other remedies or damages available in equity or at law.

23.4 Termination for Convenience.

(a) Termination Rights.

Owner may terminate this Agreement at its convenience and in its entirety, or only with respect to Unit 6 or the Unit 5 Scrubber, upon prior written notice to Contractor, in which event Owner shall pay the cancellation charges set forth in Section 23.4(b) below.

(b) Cancellation Charges.

If Owner terminates this Agreement, or Unit 6 or Unit 5 Scrubber, under Section 23.4(a) above, Owner shall pay termination charges to Contractor, as Contractor's exclusive remedy, which termination charges shall consist of all amounts billed or currently billable by Contractor and due and owing under this Agreement, including for Equipment delivered (or being fabricated for delivery) and Services performed prior to such termination (including in-progress work) and all unavoidable and reasonably incurred termination charges, such as those incurred through demobilization and storage or through cancellation charges paid to Subcontractors. The total amount payable by Owner as a termination charge shall be reduced by (A) any rebates, credits or refunds obtained, (B) the reasonable salvage value for undelivered and unpaid for Equipment, or (C) the sale of such Equipment to a third party, with the understanding that Owner, at its exclusive preference, may accept delivery of complete or incomplete Equipment included in the termination charges.

For the period from the Amendment Date until the Full Notice to Proceed on Unit 6, Contractor has provided to Owner a reasonable estimate of the anticipated total termination costs to be paid by Owner to Contractor, by month, based upon current cash flow forecasts, equipment cancellation charges, and other demobilization costs, which such forecasted amounts being:

(i) If prior to ***, an estimated amount, including amounts paid to date, for the Unit 5 Scrubber of *** and for Unit 6 of ***, and

(ii) If prior to ***, an estimated amount, including amounts paid to date, for the Unit 5 Scrubber of *** and for Unit 6 of ***.

The above termination amounts include all previously paid and all actual and anticipated payments of Invoices by Owner during such time period pursuant to the Cash Flow Plan.

(c) In the event of termination under this Section 23.4, the limitations of liability (if there remains any liability) expressed as a percentage of the Contract Price with respect to the terminated Unit 6 or the Unit 5 Scrubber shall be deemed instead to be expressed as a percentage of the respective payments received to the date of termination.

23.5 Termination for Force Majeure. Owner or Contractor may terminate this Agreement in its entirety, and without liability, due to Force Majeure in accordance with the terms of Article 9 and Section 23.4(a) above.

23.6 Effect of Termination. Upon termination of this Agreement, Contractor shall immediately:

- (a) stop the performance of all Services except as may be necessary to preserve the Equipment and Owner Equipment as requested by Owner;
- (b) issue no further purchase orders and enter into no further contracts relating to the Work except with the prior written consent of Owner;
- (c) assign to Owner, upon Owner's request, all rights of Contractor under contracts or purchase orders entered into by Contractor in connection with this Agreement;
- (d) to the extent possible, upon Owner's request, terminate existing contracts and purchase orders entered into by Contractor in connection with this Agreement;
- (e) deliver all then existing paid-up Documentation, including drafts thereof (subject to Article 19), to Owner in hard copy and electronic formats reasonably requested by Owner; and
- (f) turn over care, custody and control at the Site of all Equipment and Owner Equipment.

23.7 Suspension. Owner may, in its sole discretion, order Contractor to suspend all or any portion of the Services for a period of time as Owner may request. Contractor shall comply with such order. The suspension shall commence on the Day specified in Owner's written notice to Contractor which shall be at least five (5) Days after Owner gives Contractor that notice. During any such suspension: (a) Contractor shall take reasonable precautions to protect, store and secure the Equipment and Owner Equipment against deterioration, loss or damage, and (b) Owner shall reimburse Contractor on a current time and material basis for all its costs, including those incurred in connection with the foregoing and for its (its Subcontractors') stand-by charges as well as demobilization and remobilization charges. Contractor shall resume any suspended Services promptly, but in no event later than ten (10) Days after Owner gives Contractor written notice to do so, and shall use its best efforts to fully resume the Services as soon as reasonably possible. If Owner orders a suspension of all or any portion of the Services, Contractor shall be entitled to an equitable adjustment in the Contract Price and the Schedule in accordance with Article 8. If Owner orders a suspension of all of the Services, which suspension continues for three hundred sixty (360) or more consecutive Days, either Party may thereafter terminate this Agreement by giving the other Party written notice, and the rights and remedies of Contractor shall be the same as those to which Contractor would have been entitled if this Agreement had been terminated under Section 23.4.

24. SAFETY, INCIDENT REPORTING

24.1 Environmental, Health and Safety Programs. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with its performance of the Agreement, including appropriate precautions and programs for areas in and around the Site. Without limiting the generality of the foregoing, Contractor shall comply with all applicable Laws and meet the requirements of all of Owner's environmental, health, safety, and security policies and manuals as amended from time to time, including the Duke Energy Safe Work Practices Manual, the Duke Energy Scaffold Manual, the Duke Energy Lifting Program, the Duke Energy Environment, Health, and Safety Manual and the Duke Energy Contractor EHS Compliance Program. A copy of any policies and manuals of Owner shall be provided to Contractor upon request. Contractor shall designate a responsible, qualified full-time member of Contractor's organization at the Site whose duty shall be the prevention of incidents and injuries and addressing unsafe and undesirable behavior for each of the following three (3) areas: environmental matters (U.S. Environmental Protection Agency and any applicable State agency), health matters (industrial hygiene and employee health hazard prevention/mitigation) and safety matters, as each area relates to construction activities generally and the Work specifically. One individual may be designated for more than one of these three areas if the individual is qualified in all such areas.

24.2 OSHA and Other Laws. Contractor shall give notices and comply with all applicable Laws bearing on the safety of Persons or property or their protection from damage, injury or loss, including the Occupational Safety and Health Act ("OSHA") and the Americans with Disabilities Act.

(a) Contractor represents that it is familiar with the Site, the Services to be performed, the Equipment to be provided, the Project to which the Equipment will be a part, the hazards of the Work, and, if applicable, the Material Safety Data Sheets for, and the hazards of, the Hazardous Materials or hazardous chemicals that Contractor is expected to provide. Contractor acknowledges that Owner has Material Safety Data Sheets for all Owner chemicals located at the Site and shall make such MSDS available to Contractor or its Subcontractors upon a request made to Owner's Project Director, or other safety representative of Owner at the Site. Contractor also represents that it is familiar with the labeling system used in the workplace.

(b) Contractor acknowledges that OSHA and regulatory standards or State plan equivalent (collectively, the "OSHA Standards") require that its employees be trained in various subjects, such as, but not limited to, the hazards of, and standards applicable to, the Work (29 C.F.R. § 1926.21(b)(2)) (applicable to construction work), lockout/tagout (29 C.F.R. § 1910.147), confined space entry (29 C.F.R. §§ 1926.21(b)(6) or 1910.146), and asbestos (29 C.F.R. §§ 1910.1001 or 1926.1101). Contractor warrants that its employees and their supervisors have been trained in accordance with all applicable OSHA Standards, and that they have been trained to recognize and avoid any hazards related to the Work, and to perform the Services safely and without danger to any employee or to any property.

(c) Contractor represents that its employees are or will be equipped with the personal protective equipment required by applicable OSHA Standards in 29 C.F.R. Parts 1926 and 1910, and with the personal protective equipment required to protect its employees against other serious health or safety hazards. Contractor agrees that it shall discipline its employees who violate any OSHA Standards or applicable Laws in accordance with its own policies and procedures.

(d) Contractor represents that it will comply with all OSHA Standards applicable to the Work, including those requiring pre-employment testing of employees, such as but not limited to, pulmonary testing, blood testing, urine testing, hearing testing, respirator fit testing, drug screening, and/or applicable medical surveillance testing.

(e) Contractor shall fully comply with its safety programs and/or any Site specific safety plans which Owner has reviewed and accepted.

(f) Within twenty four (24) hours of a request, or as soon as possible, and to the extent permitted by applicable Law, Contractor shall provide copies of any and all training for its employees concerning any safety and health standard, any substantive or technical training requirement of the Work or the results of any occupational testing to Owner.

24.3 Worksite Safety.

(a) Contractor shall take all reasonable precautions at the Work Site for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to Persons and property resulting from the Work, including:

(i) Contractor employees, Subcontractors and other Persons performing the Services and all Persons who may be affected by the performance of the Services;

(ii) the Equipment and Owner Equipment to be incorporated into the Project, whether in storage on or off the Site or under the care, custody or control of Contractor or Subcontractors; and

(iii) other property at or adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

(b) Contractor shall give notices and shall comply with applicable Laws bearing on safety of persons or property or their protection from damage, injury or loss.

(c) Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall erect, maintain or undertake, as required by existing conditions and the performance of the Agreement, all reasonable safeguards for the safety and protection of Persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities. Those precautions may include providing security guards.

(d) Contractor agrees to provide to Owner the name, title, and phone number of its emergency contact person prior to the commencement of the Services.

(e) Within twenty four (24) hours of its occurrence and in addition to reporting to Government Authorities as required by applicable Law, Contractor shall notify Owner in writing of any incident, injury or illness experienced by a Contractor employee in the performance of any of the Services or on any part of Owner's premises or lands, and shall provide copies of the OSHA 101 and OSHA 200 or 300 log entry for such incident, injury or illness. Within one week of the incident, injury or illness, Contractor shall provide a preliminary written report of the incident, injury or illness and the measures to prevent a similar occurrence in the future. Owner has the right to request a final report, which Contractor shall provide within one week of Owner's request. All such reports shall be in accordance with Owner's policies and procedures. For all accidents which cause serious bodily injury or property damage, Contractor shall immediately notify Owner's Project Director and Owner's health and safety representative by telephone or messenger, giving full details and statements of any witnesses.

(f) Upon request from Owner, Contractor shall provide an OSHA log listing injuries or illnesses sustained by Contractor employees during the five (5) years preceding the request in any of Owner's process areas subject to Owner's process safety management standard, 29 C.F.R. § 1910.119, as provided to Contractor.

24.4 Dangerous Materials. When the use or storage of explosives or other dangerous materials or equipment or unusual methods are necessary for the Work, Contractor shall exercise appropriate care and carry on its activities only under the supervision of properly qualified personnel. Contractor shall notify Owner's Project Director prior to bringing any explosives onto the Site.

24.5 Loading. Contractor shall not load or permit any part of the Equipment or Owner Equipment to be loaded at the Site so as to endanger the safety of Persons or property.

24.6 Cooperation in Governmental Investigation. Contractor and its Subcontractors of whatever tier shall assist Owner in responding to requests by any Government Authority for information in connection with inspections or investigations of Owner relating to the Work involving Contractor or its Subcontractors of whatever tier performed for Owner, on Owner's property, involving Owner's employees, equipment or processes. Within one (1) Day of the request, or upon such other reasonable time as agreed by the Parties, Contractor shall make its employees available at the Site for interviews and shall produce copies of any documents relevant to the investigation to Owner. Except as prohibited by Law, Contractor shall promptly inform Owner of inspections and investigations on Contractor's property, and of subpoenas, document requests, requests for information, deposition notices, discovery requests, or similar requests by any Government Authority, concerning Owner, the Work, or any accidents, injuries, illnesses or claims resulting from the Work.

24.7 Audit. To the extent permitted by applicable Law, Owner shall have the right to review and copy all of Contractor's documents that relate to safety and health at the Site, including Contractor's safety and health programs, safety and health training records, OSHA recordkeeping forms (such as 101, 200, 300 and 301), any incident report or first report of injuries form and any industrial hygiene monitoring test results.

25. QUALIFICATIONS AND PROTECTION OF ASSIGNED PERSONNEL

25.1 Contractor's Personnel. Contractor shall comply in all respects with all applicable labor and immigration Laws that may impact Contractor's Work under this Agreement, including the Immigration Reform and Control Act of 1986 and Form I-9 requirements. Without limiting the generality of the foregoing, Contractor shall perform all required employment eligibility and verification checks and maintain all required employment records. Contractor acknowledges and agrees that it is responsible for conducting adequate screening of its employees and agents prior to starting the Work. By providing an employee or Subcontractor under this Agreement, Contractor warrants and represents that it has completed the screening measures with respect to such employee or Subcontractor and that such screening measures did not reveal any information that could adversely affect such employee's or Subcontractor's suitability for employment or engagement by Contractor or competence or ability to perform duties under this Agreement. If in doubt whether a suitability, competence or ability concern exists, Contractor shall discuss with Owner the relevant facts and Owner will determine, in its sole discretion, whether such Person should be allowed to perform the Work. Owner, in its sole discretion, shall have the option of barring from the Site any person whom Owner determines does not meet the qualification requirements set forth above. In all circumstances, Contractor shall ensure that the substance and manner of any and all screening measures performed by Contractor pursuant to this Section conform fully to applicable Law. Contractor shall supervise, coordinate and direct the Work using Contractor's best skill, judgment and attention. Owner shall have the right to bar from the Site any Person employed or engaged by Contractor or Subcontractor who engages in misconduct or is incompetent or negligent while on the Site or while performing the Services, or whom Owner has previously terminated for cause or otherwise dismissed or barred from the Site. Upon request of Owner, Contractor shall immediately remove those Persons to whom Owner objects from the Site and shall not allow the further performance of the Services by those Persons. In addition, in the event that Contractor learns of any such misconduct, incompetence or negligence independent of Owner's objection, Contractor shall remove such Persons from the Site, shall not allow any further performance of the Services by such Persons and shall promptly notify Owner of such misconduct, incompetence or negligence and the actions taken by Contractor as a result thereof. In either such event, any cost for replacement of such Persons shall be considered part of the Contract Price and shall be allocated to the pricing component for which the Work is being performed.

25.2 Drug and Alcohol Testing. Neither Contractor nor its Subcontractors shall in any way use, possess, or be under the influence of illegal drugs or controlled substances or consume or be under the influence of alcoholic beverages during the performance of the Services. Any person (whether employed or retained by Contractor or any Subcontractor or otherwise) under the influence, or in possession of, alcohol, any illegal drug, or any controlled substance, will be removed from the Site and, subject to Owner's fitness for duty program requirements, shall be prevented from performing any future Services at the Site or elsewhere related to the Project. Contractor shall have in place a drug testing program meeting the requirements of all applicable Laws and the Owner's Drug and Alcohol Testing Policy (MICCS Substance Abuse Program, dated as of July, 2007) attached hereto as Exhibit N, as such policy may be updated by Owner from time to time generally for its contractors, and shall furnish to Owner proof of compliance with

such regulations and policies, including a copy of Contractor's drug and alcohol testing plan and an affidavit stating that Contractor is in compliance, and will remain in compliance, with such regulations and policies for the duration of this Agreement. Upon request, and to the extent permitted by law, Contractor will furnish Owner copies of the records of employee drug and alcohol test results required to be kept by Law. Contractor will indemnify and hold harmless Owner from any and all liability for (a) Contractor's or any Subcontractor's personnel who fail a drug or alcohol test given under any Government Authority regulations, and (b) any claims made by a Contractor's or Subcontractor's employee resulting from removal from the Site as provided in this Article. If Contractor fails to comply with these regulations while performing under this Agreement, such noncompliance will be deemed a breach of this Agreement, and Contractor shall be liable for such breach, as well as for all direct damages arising out of such noncompliance.

25.3 Training of Employees. Contractor represents that all Contractor and Subcontractor personnel have received all necessary training regarding environmental, OSHA and any other matters required by applicable Laws and relevant to the Work. Training on implementation of any additional environmental mitigation measures appropriate for the Work will be specified by Owner before commencement of the Services.

25.4 Compliance with Employment Laws; Policies. All Services shall be performed in accordance with all applicable Laws, including worker's compensation Laws, minimum and maximum salary and wage statutes and regulations, and licensing Laws and regulations. Contractor shall fully reimburse Owner for any and all fines or penalties of whatever kind or type that Owner may incur as the result of and to the extent caused by Contractor's failure to fully comply with and fulfill any of the provisions of this Article. To the extent commercially reasonably practical, Contractor shall use reasonable efforts to adopt and utilize a subcontracting plan with its first-tier Subcontractors that complies with 48 C.F.R. § 52-219-9 for Small Diverse Suppliers ("SDS"). In addition, Contractor shall (a) utilize SDS as required by law; (b) provide Owner with a quarterly status report in the format set forth on Owner's website at www.duke-energy.com, or in such other format as is reasonably acceptable to Owner; (c) enter the SDS data in any report on Owner's website at www.duke-energy.com and (d) provide Owner, its designated auditors and any applicable government agency the right of access during normal business hours to inspect any records related to SDS and compliance with this section.

25.5 Substitution. Contractor reserves the right to change any of its personnel performing Services. In such event, Contractor shall provide replacement personnel meeting the requisite qualifications and who have equal or better capabilities.

26. RECORDS AND AUDIT

26.1 Technical Documentation. Except to the extent applicable Laws require a longer retention, Contractor shall maintain its own, and shall cause its Subcontractors to maintain their own, technical documentation relative to the Equipment and the Owner Equipment for a period of three (3) years after the latest of the Final Completion Dates of Unit 6 and the Unit 5 Scrubber. Contractor shall give Owner thirty (30) Days prior written notice before destroying or disposing of any such documentation or records and a reasonable opportunity for Owner during such period to make copies of any such documentation.

26.2 Accounting Records. Except to the extent applicable Laws require a longer retention, Contractor shall maintain and shall cause its Subcontractors to maintain complete accounting records relating to all Work performed or provided under this Agreement, which records shall include an estimate of installed costs per component in accordance with FERC accounting requirements, on a time and material, or reimbursement, basis in accordance with generally accepted accounting principles in the United States, as set forth in pronouncements of the Financial Accounting Standards Board (and its predecessors) and the American Institute of Certified Public Accountants, for a period of three (3) years after the latest of the Final Completion Dates of Unit 6 and the Unit 5 Scrubber, except that records relating to Sales Taxes for such items must be retained for four (4) years as specified in Section 26.4. Contractor shall give Owner thirty (30) Days prior written notice before destroying or disposing of any such accounting records and a reasonable opportunity for Owner during such period to make copies of any such documentation.

26.3 Owner's Right to Audit. For verification of *** claimed by Contractor for reimbursement or for any Work performed or provided by Contractor or its Subcontractors on a time and material basis or for any suspended, terminated, delayed or accelerated Services, *** third party auditor reasonably acceptable to Contractor (which acceptance shall not be unreasonably withheld or delayed) shall have the right and access at reasonable times during normal business hours to examine and audit Contractor's records and books related to all such costs as is reasonably necessary for Owner to verify such costs. However, Owner or its third party auditor shall have no right to audit records or books concerning the make-up of any agreed upon *** or fixed rates or multipliers. As part of any such audit, Contractor shall provide data in the appropriate electronic native file format (i.e. Microsoft Word, Excel, Primavera, etc.) such that the data may be effectively sorted, summed, and evaluated. If any audit by the auditor reveals charges or costs charged to or paid by Owner as costs or fees which are not proper or exceed the rates or amounts permitted hereunder for any such matters, then Owner shall be entitled upon demand for a refund from Contractor of all such amounts, plus interest thereon from the date of payment by Owner until the date of refund by Contractor at a rate of the lesser of (a) the Prime Interest Rate plus 1% or (b) the maximum rate allowed by applicable law. Likewise, if any audit or if any examination by any state or local taxing agency reveals additional Sales Tax to be imposed upon Contractor for under collection of tax from Owner on a taxable sale to Owner, then Contractor shall be entitled, upon demand, for a refund from Owner of all such amounts, plus interest at the foregoing rate.

26.4 Sales Tax and Privilege Tax Records. Contractor shall provide to Owner all information and data Owner may from time to time reasonably request and otherwise fully cooperate with Owner in connection with the reporting of (a) any Sales Taxes and Privilege Taxes payable with respect to the Work and (b) any assessment, refund claim or proceeding relating to Taxes payable with respect to the Work. Contractor shall require its Subcontractors to provide to Contractor all information and data Contractor may reasonably request for purposes of complying with the preceding sentence and otherwise fully cooperate with Owner. Contractor shall retain, and shall require Subcontractors to retain, copies of such documentation and all documentation relating to purchases relating to the Work or the payment of Sales Taxes and Privilege Taxes, if any, for a period of not less than four (4) years from the latest of the Final Completion Dates of Unit 6 and the Unit 5 Scrubber. Contractor shall ensure that its contracts with all Subcontractors effectuate the provision of this Section. Contractor's and Owner's obligations under this Section shall survive the termination, cancellation or expiration of this

Agreement for any reason and shall last so long as is necessary to resolve any and all matters regarding Taxes attributable to the Work; provided, that if Owner requires Contractor to take action under this Section at any time after the later of (i) two (2) years after delivery of the piece of Equipment or (ii) two (2) years after completion of the particular item of Work, Owner shall reimburse Contractor for all actual and reasonable expenses Contractor incurs in taking those actions.

27. TAXES

27.1 Employment Taxes. Neither Owner nor its officers, employees, agents, consultants or other representatives shall have any liability for any payroll or employment compensation taxes, for Social Security taxes, or for labor-related withholding taxes, for Contractor and its Subcontractors (including manufacturers); or any of their employees; and Contractor agrees to hold Owner, his Consultants, and his other contractors harmless against any claim or liability therefore.

27.2 Sales and Use Taxes on Contractor Tools. Contractor shall have the responsibility to pay all taxes on Contractor's purchases of goods, tools, equipment, supplies and other consumables which are not permanently incorporated into the Project and which remain the property of Contractor. Contractor shall also pay all taxes attributable to Contractor's construction equipment, temporary buildings and other property used by Contractor in its performance of this Agreement. Allowance for such taxes is included in the Contract Price, and Contractor shall pay those taxes when assessed. Contractor shall impose a similar obligation on all Subcontractors, and shall ensure that no Subcontractor shall have any claim against Owner for reimbursement of those taxes.

27.3 Sales and Use Tax on Equipment; Privilege Tax. Notwithstanding the above, the Contract Price does not include monies for the payment of any sales and use taxes on Equipment incorporated into the Facility. Contractor, on behalf of itself and all of its Subcontractors (including manufacturers), is therefore responsible for consulting with Owner on Equipment purchases and working with Owner to obtain the appropriate sales and use tax and privilege tax benefits for Owner. Owner is currently authorized under the North Carolina General Statutes to purchase certain Equipment exempt from the sales and use tax, but subject to the privilege tax at a rate of 1% with a maximum tax of eighty dollars (\$80) per article. Owner will specifically identify property which will be subject to the privilege tax. Owner will issue Form E-595E to Contractor to support the exemption from the sales and use tax. Contractor shall register with the state of North Carolina for payment of the privilege tax. Contractor will issue Form E-595E to its suppliers to facilitate exempt purchases of property subject to the privilege tax. As required by law, Contractor will accrue the privilege tax on these purchases and remit the appropriate amount to the State. Sales tax should be billed by the supplier on Contractor's purchases of property subject to the North Carolina sales tax.

(a) Contractor, its Subcontractors, manufacturers and suppliers shall make reasonable commercial efforts to purchase Equipment to minimize the tax, but shall not be restricted from making out-of-state purchases of such Equipment. Contractor shall use its best efforts to ensure that Owner is afforded the appropriate sales/use and privilege tax treatment by the State of North Carolina. Contractor shall use all reasonable efforts to ensure that all out-of-state purchases made by Contractor and its Subcontractors

(including manufacturers) are shipped FOB the Facility (North Carolina) free of Sales Taxes. Owner shall reimburse Contractor for all sales and use taxes and privilege taxes paid by Contractor and its Subcontractors (including manufacturers) upon written confirmation from Contractor that the items purchased could not reasonably be purchased free of Sales Taxes.

(b) Contractor agrees that it and its Subcontractors, suppliers, and manufacturers will clearly identify on each original Invoice covering the purchase of Equipment, the amount of sales and use tax. Should additional information and detail be required by Owner and the North Carolina Department of Revenue to verify amounts paid for purchases of Equipment under this Agreement, Contractor and its Subcontractors, suppliers, and manufacturers shall supply such additional information and invoices in sufficient detail to verify:

(i) That such Equipment was purchased free of State sales and use taxes; or that for out-of-state purchases, the invoices indicate the amount of foreign sales and use tax separately stated and paid;

(ii) The privilege tax was accrued and remitted to North Carolina for such Equipment;

(iii) The actual purchase prices of such Equipment;

(iv) The date of delivery to the Site of such Equipment;

(v) A description of the function of such Equipment; and

(vi) The Federal Energy Regulatory Commission (FERC) Code identification for such Equipment.

(c) As a condition to Final Completion of Unit 6 or the Unit 5 Scrubber, Contractor shall provide Owner with an affidavit that all invoices which include sales and use taxes or privilege tax have been paid and that Contractor and all its Subcontractors, suppliers, and manufacturers have no outstanding claims or expenses relating to sales and use tax or privilege tax.

(d) Both Parties shall provide to the other any documentation or information requested in order to submit and obtain a refund of any taxes erroneously paid as part of this Agreement. The Parties agree that any refunds received shall belong to the Party which bore the economic burden of paying the tax. The Parties' obligations under this Section shall survive termination or expiration of the Agreement.

27.4 State Property Taxes. Contractor and Owner agree that Owner shall be responsible for the filing requirements and payment obligations for all state and local taxes on the Site and the Equipment incorporated into the Facility; provided, that Contractor shall be responsible for the filing of property tax returns and the payment of State and local property taxes on construction equipment, tools and material which is not incorporated into the Project and which is owned, used or leased by Contractor to perform the Services. Owner and Contractor acknowledge that construction equipment property tax costs are included in the

leasing costs included in the Fixed Prices. If Contractor owns construction equipment and leases such construction equipment to Owner, Contractor shall remain responsible for the filing and payment of all property taxes due on such construction equipment.

27.5 Tax Indemnification.

(a) Except in cases where such tax assessment is the result of the Gross Negligence or willful or wanton misconduct by Contractor, Owner shall defend, reimburse, indemnify and hold Contractor harmless for all costs and expenses incurred by Contractor as a result of Owner's formal protest of any sales and use taxes paid or assessed and property taxes paid or assessed on the Site or the Equipment, or any other similar tax, whether local, state or federal, including any litigation expenses in the event Owner decides to protest a sales or use tax assessment. Owner shall not be responsible for any costs incurred by Contractor necessary to substantiate or verify information for any tax audit conducted in the normal course of business.

(b) Contractor shall defend, reimburse, indemnify and hold Owner harmless for all costs and expenses incurred by Owner as a result of Contractor's formal protest of any employment taxes, or any sales and use taxes and property taxes paid or assessed on Contractor's equipment or tools, or of any payroll or employment compensation taxes, or Social Security taxes, or for labor-related withholding taxes, or any other similar tax, whether local, state or federal for Contractor, its Subcontractors (including manufacturers); or any of their employees, paid or assessed, including any litigation expenses in the event Contractor decides to protest the said employment, withholding, and similar taxes.

27.6 Pollution Control Equipment Information. Contractor shall supply Owner with all reasonable information and cost analyses requested by Owner for qualifying air, water or noise pollution control equipment for exemption from sales and use taxes, property taxes and any other tax credits, refunds or exemptions available to Owner. Contractor shall supply any further information as requested by Owner to apply for a certificate from the North Carolina Department of Environment and Natural Resources (DNHR) or other appropriate Government Authority to qualify for the above exemptions.

28. DISPUTE RESOLUTION

28.1 Resolution by the Parties: Mediation. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Disputes") promptly by negotiation and mediation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute which has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within five (5) Days after delivery of the notice, the receiving Party shall respond with (i) a statement of that Party's position and a summary of arguments supporting such position, and (ii) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within ten (10) Days after delivery of the summary positions, the Parties shall select a mutually agreeable

neutral mediator and the executives of both Parties shall meet with the mediator at a mutually acceptable time and place, and shall meet thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All negotiations pursuant to this clause are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

28.2 Arbitration Proceedings.

(a) Demand for Arbitration. If the Dispute has not been resolved by negotiation within *** Days of the disputing Party's initial notice (or such longer period as the Parties may reasonably agree), or if the Parties failed to meet for the first time within *** Days of the initial notice, the Parties shall fully and finally settle the Dispute by binding arbitration. All arbitration proceedings shall take place in Charlotte, North Carolina under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA Construction Industry Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. For all Disputes where the amount in controversy is less than ***, the arbitration proceedings shall be conducted by a *** selected by the Parties (or by the AAA, if the Parties cannot agree on an arbitrator within *** Days following the delivery of a demand for arbitration to the other Party). For all Disputes where the amount in controversy is equal to or more than ***, the arbitration proceedings shall be conducted by a ***. If the Parties have not agreed on the selection of *** on or before *** Days following the delivery of a demand for arbitration to the other Party, then each Party, by notice to the other Party, may designate *** (who shall not be a current or former officer, director, employee or agent of such Party or any of its Affiliates). The *** designated by the Parties shall endeavor to designate promptly a ***. If either Party fails to designate an initial *** on or before *** Days following the delivery of an arbitration notice to the other Party, or if the *** initially designated *** have not designated *** within *** Days of the date for designation of the *** initially designated, either Party may request that the AAA designate the remaining *** pursuant to its Construction Industry Arbitration Rules. If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, then the Party entitled to designate that arbitrator shall designate a successor. The demand for arbitration shall be served on the other Party to this Agreement. No demand for arbitration shall be made or permitted after the date when the institution of a civil action based on the Dispute would be barred by the applicable statute of limitations or repose of the State.

(b) Consolidation. No arbitration arising under this Agreement shall include, by consolidation, joinder or any other manner, any Person not a Party to this Agreement unless (i) such Person is substantially involved in a common question of fact or Laws, (ii) the presence of the Person is required if complete relief is to be accorded in the arbitration, and (iii) the Person has consented to be included.

(c) Equitable Remedies. The procedures specified in this Article shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a complaint in a court of competent jurisdiction on issues of statute of limitations or repose or to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver.

Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties will continue to participate in good faith in and be bound by the dispute resolution procedures specified in this Article.

(d) Award, Binding Nature. The arbitrator(s)' decision shall be by majority vote and shall be issued in a writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. In the absence of bias, fraud, or willful misconduct by an arbitrator, any decision rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in any court of competent jurisdiction. The cost of all arbitrators shall be borne equally by the Parties.

(e) Discovery. Either Party may apply to the arbitrators for the privilege of conducting discovery. The right to conduct discovery shall be granted by the arbitrators in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the course of the arbitration.

28.3 Continuation of Work. Pending the final resolution of any Dispute, Contractor shall proceed diligently with the performance or provision of the Work and its other duties and obligations and Owner shall continue to compensate Contractor as set forth under this Agreement without diminution of effort, including payment to Contractor provisionally on a time and material basis for all disputed work.

29. MISCELLANEOUS PROVISIONS

29.1 Governing Laws. This Agreement shall be governed by and construed in accordance with the laws of the State, without reference to its conflict of laws principles.

29.2 Entire Agreement. This Agreement represents the entire agreement between Owner and Contractor with respect to the subject matter hereof, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral, with respect to the subject matter hereof, including the JPDA and the Original EPC Agreement. This Agreement may be amended or modified only by a written instrument duly executed by each of the Parties.

29.3 Successors and Assigns. Neither this Agreement nor any right, interest or obligation hereunder may be assigned by Contractor without the prior written consent of Owner, and any attempt to do so shall be void, except that the whole of this Agreement may be assigned by Contractor upon prior written notice to Owner (a) to a parent company or a wholly-owned Affiliate, provided that Contractor shall not be relieved of any of its obligations hereunder, or (b) to a transferee who acquires all or substantially all of the assets of Contractor and whose market capitalization exceeds *** and whose long term senior unsecured, uninsured debt is rated at least Baa3 by Moody's or BBB- by Standard & Poor's at the time of the transfer, or whose creditworthiness is otherwise reasonably satisfactory to Owner. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and assigns. Nothing herein shall be construed to limit in

any way Contractor from assigning the performance of any Services to an affiliate properly licensed to perform engineering work in the State of North Carolina but without relieving Contractor from its obligations hereunder. Owner, including any Party constituting Owner, may assign this Agreement or any benefit, interest, right or cause of action arising under this Agreement to any Person with notice to, but without the consent of, Contractor under the following circumstances: (a) the assignee is an Affiliate or subsidiary of the Owner and the assignee has a credit rating that is at least S&P BBB-, Moody's Baa3 or whose creditworthiness is otherwise reasonably satisfactory to Contractor, (b) the assignee has acquired ownership of, or the right to operate, the Facility for which an assignment is being made and the assignee's senior unsecured debt has a credit rating of S&P BBB-, Moody's Baa3, or (c) such assignee is otherwise reasonably acceptable to Contractor. Owner (or the assigning Party that constitutes a part of Owner, as applicable) shall obtain written assurances from the assignee of limitation of and protection against liability following the proposed transfer at least equivalent to that afforded Contractor and Subcontractors hereunder. Any transfer contrary to this Section shall make the assigning Party constituting Owner the indemnitor of Contractor against any liabilities incurred in excess of those that would have been incurred had no such transfer taken place.

29.4 No Third Party Beneficiaries. Except as expressly set forth in this Agreement, the provisions of this Agreement are intended for the sole benefit of Owner and Contractor, and there are no third party beneficiaries.

29.5 Rights Exclusive. The rights and remedies of Owner or Contractor as set forth in this Agreement shall be the exclusive rights or remedies of the Parties.

29.6 No Waiver. No course of dealing or failure of Owner or Contractor to enforce strictly any term, right or condition of this Agreement shall be construed as a waiver of that term, right or condition. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition.

29.7 Survival. Article 14 (Indemnification), Article 17 (Limitations of Liability), Article 19 (Intellectual Property), Article 20 (Confidential Information), Article 26 (Records and Audit), Article 27 (Taxes), Article 28 (Dispute Resolution), Article 29 (Miscellaneous Provisions) and all other Sections providing for indemnification or limitation of or protection against liability of either Party shall survive the termination, cancellation, or expiration of this Agreement.

29.8 Severability. If any provision of this Agreement or the application of this Agreement to any Person or circumstance shall to any extent be held invalid or unenforceable by a court of competent jurisdiction or arbitrators under Article 28, then (i) the remainder of this Agreement and the application of that provision to Persons or circumstances other than those as to which it is specifically held invalid or unenforceable shall not be affected, and every remaining provision of this Agreement shall be valid and binding to the fullest extent permitted by Laws, and (ii) a suitable and equitable provision shall be substituted for such invalid or unenforceable provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

29.9 Notices. All notices permitted or required under this Agreement shall be deemed given if hand delivered, sent by certified mail, return receipt requested, sent by Federal Express or another recognized overnight delivery service, or sent by facsimile (with transmission confirmed) and confirmed by first class mail, to the addresses listed below or the subsequent addresses of which the Parties give each other notice:

If to Owner: Duke Energy Carolinas, LLC
Mail Code EC11T
P. O. Box 1006
Charlotte, NC 28201-1006
Attn: Gary Moore
Facsimile No: 704-382-5275

with a copy to: Duke Energy Carolinas, LLC
Mail Code EC11X
P.O. Box 1006
Charlotte, NC 28201-1006
Attn: ***
Facsimile No.: 704-382-5715

Duke Energy Carolinas, LLC
Mail Code EC03T
526 South Church Street
Charlotte, NC 28202
Attn: ***
Facsimile No.: ***

If to Contractor: Shaw North Carolina, Inc.
Attn: ***
Vice President - Fossil Power
128 South Tryon Street, Suite 600
Charlotte, NC 28202
Facsimile No.: 704-331-1310
Telephone No.: 704-331-***

With a copy to: Shaw North Carolina, Inc.
Attn: Richard Obadiah
Assistant General Counsel
100 Technology Center Drive
Stoughton, MA 02072
Facsimile No.: 617-589-7575
Telephone No.: 617-589-1829

Shaw North Carolina, Inc.
Attn: Bobby Smith
Project Manager
128 South Tryon Street, Suite 600
Charlotte, NC 28202
Facsimile No.: 704-331-***
Telephone No.: 704-331-6474

or to such other address, attention or facsimile number as such Party to whom such notice is to be addressed shall have hereafter furnished to the other Party in writing as provided in this Article.

29.10 Vienna Convention. The Parties hereby expressly agree to exclude and disclaim the application of the provisions of United Nations Convention on Contracts for the International Sale of Goods (also referred to as the Vienna Convention), and any successor convention or legislation, to this Agreement.

29.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

DUKE ENERGY CAROLINAS, LLC

By: /s/ James L. Turner
Name: James L. Turner
Title: President & COO, U.S. Franchised Electric & Gas

SHAW NORTH CAROLINA, INC.

By: /s/ Richard F. Gill
Name: Richard F. Gill
Title: President, Shaw Power

EXHIBIT A

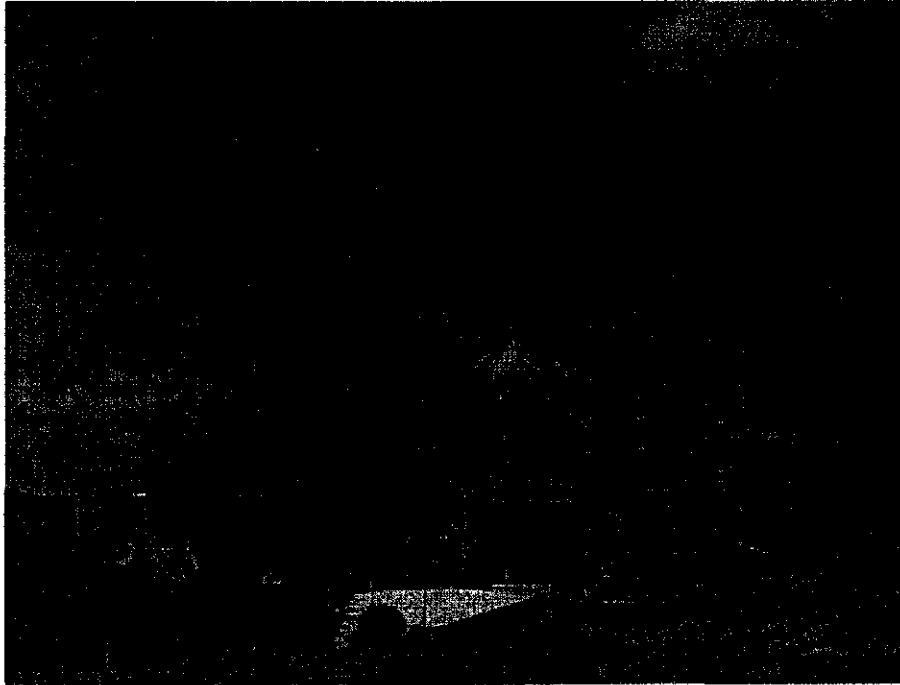
Specifications, including the Scope of Work, Drawings, and Training Procedures

EXHIBIT B

Site Description

EXHIBIT B

Site Description



LOCATION:

The station is located in Rutherford and Cleveland counties of North Carolina,

DIRECTIONS:

I-85 S, take exit 95 (Road 150) just before reaching Gaffney; Road 150 will parallel I-85 for two miles. At stop sign, turn right still staying on Road 150. Cross over NC-SC state line into North Carolina. At the crossroads, turn left on McCraw Rd, go 5.5 miles, Cliffside steam station on right.

ADDRESS:

Street Address: 573 Duke Power Road, Cliffside, NC 28024
Mailing Address: 573 Duke Power Road, Mooresboro, NC 28114

PHONE:

(828) 657-2000

MAJOR EQUIPMENT LIST:

- Unit 1, 2 & 4 Turbines - General Electric
- Unit 3 Turbine - Westinghouse
- Unit 5 Turbine - General Electric
- Unit 1 - 5 Boilers - Combustion Engineering

GENERAL INFORMATION:

- Unit 1 Commercial Operation date - 07/09/1940
- Unit 2 Commercial Operation date - 08/11/1940
- Unit 3 Commercial Operation date - 05/19/1948
- Unit 4 Commercial Operation date - 10/31/1948
- Unit 5 Commercial Operation date - 06/20/1972
- The nameplate rating (MW) is:
 - Unit 1 & 2 - 38 MW each
 - Unit 3 & 4 - 61 MW each
 - Unit 5 - 562 MW

EXISTING SITE CONDITIONS

- The existing condition of the paved plant roads (main entrance and around powerhouse) shall be considered deteriorated.
- The Contractor may use all plant roadways to move materials as required. Movement of material inside the main gate access will require station coordination.
- The grounds around the Station are currently bounded completely by a chain link fence.
- The Station does not have adequate lighting to support nighttime operations and maintenance activities.
- The Contractor shall not at any time block traffic flow in or out of the main entrance to the Station without prior approval from the Owner's Project Director.
- No activities are to be conducted East of Suck Creek.
- Jersey barriers will be placed around the Anhydrous Ammonia storage tanks. Entrance into this area is strictly forbidden without written authorization from Station Management. Violation of this requirement will result in dismissal from the project.
- The Station Main Gate is staffed 7 days per week and 24 hours a day. Proper identification will be required to enter this gate.
- Requests for special deliveries to the Contractor through the Main Gate are required in advance and are subject to the Owner's approval.
- The Contractor shall be aware that other contractors executing work at the Station not related to New Generation or FGD work may use the Main Entrance road. Areas designated for employee parking by the Owner for use by the Contractor may also be used by other contractors for employee parking. The Contractor will be provided adequate parking space and will not be displaced by other projects. Union and non-union parking shall be segregated by the Contractor.
- The Contractor shall be aware of contract flyash disposal trucks using the Main Entrance road. Truck traffic for this operation could range from 10-20 trucks per day.

- Access to the Flyash silos and scales on the North side of the Station is to remain open and free of interference at all times.
- At grade crossing of the railroad tracks shall conform to approved procedure currently in force.

STATION ACTIVITIES POTENTIALLY INTERACTING WITH THE UNIT 5 SCRUBBER PROJECT:

Table B-1 provides a summary of other Station activities that may potentially interact with the FGD and New Gen projects. The Owner and Contractor will demonstrate cooperative efforts to minimize the impact of these activities with respect to the Contractor's Site construction and commissioning activities.

SECURITY THREAT LEVELS

The Contractor shall be aware of the Security Threat Level System employed by the Owner at the Cliffside Steam Station.

SECURITY PLAN DURING CONSTRUCTION

Temporary fencing will be installed during the construction phase. The intent is to isolate the Contractor's site activities and protect material and equipment which the Contractor will have on site to execute the project work. The Contractor will be permitted to work inside the Station fencing for construction activities as required. Access will be granted on an as needed basis. The Contractor shall be held accountable for controlling access through the project's gates while they are being used for either employee or material movement. The Contractor shall permit Station employees access into the construction areas to commission, operate, and maintain equipment as necessary.

Specific examples for Contractor access inside the Station security fence include, but are not limited to, the following:

- Rail modifications around the coal yard and the North and East side of the Station
- Fire water tank and pumping station construction
- Ash line modification
- Relocation of the Club House
- Duct ties to ID fans
- Balance of plant process system ties
- Ties to existing plant controls systems
- Ties to Station provided construction power



Table B-1

Other Station Activities Potentially Interacting with the FGD Project

<u>Innage/Outage</u>	<u>Activity</u>	<u>Location (s) of Activities in Station</u>	<u>Remarks</u>
Spring 2008	Catalyst Layer Installation	Northeast and Southwest of Unit 5 SCR	Large cranes will be located on NE and SW side of Unit 5 SCR for installation of another catalyst layer.
Spring 2009	Turbine Overhaul and Preheater Replacement	Work will be inside the Unit 5 facility. Workforce increase and material laydown will be needed.	Work will be accomplished inside the Unit 5 Powerhouse. Increased workforce traffic and material receipt will impact space around the Station.
Spring 2009	Replace Final Reheat	Unit 5 Boiler	Work will be accomplished inside the Unit 5 Boiler. Increased workforce traffic and material receipt will impact space around the Station.
Spring 2009	ESP Upgrade (Possible)	Northeast and Southwest of Unit 5 SCR	Large cranes will be located on NE and SW side of Unit 5 SCR for installation of another catalyst layer.

EXHIBIT C – Unit 5 Key Milestones

Activity ID

Activity Description

Start/Finish

Date

EXHIBIT C – Unit 6 Key Milestones

Activity ID

Activity Description

Start/Finish

Date

EXHIBIT D

List of Contractor Supplied Permits and Approvals

Type of Permit	Date to be Obtained	Responsible Party	Comments
Construction Permits	Rock crushing and blasting permits received.	EPC Contractor	To include demolition, burning, blasting, and fueling (if required) permits. No building permits are required.
Temporary Construction Power Supply Inspection	N/A	EPC Contractor	Contractor will verify with Rutherford County and Cleveland County inspections are not required
Over the road hauling permits for Station Material	As needed	EPC Contractor	Required for material delivered to the station.
Over the road hauling permits for Contractor eqpt.	As needed	EPC Contractor	Contractor construction equipment will be permitted by Contractor.
NC DOT Permit for temporary construction entrance	As needed		If new driveway required, Contractor to prepare documents for submittal to NC DOT. NC DOT requires at least 1 month to review submittals.
FAA Notification for Temporary Structures or Equipment	As required	EPC Contractor	Permit required for any crane exceeding the height of the existing chimney. NOTE: FAA permitting for the stack to be by Owner.
Air Quality Permit for FRP Composite Liner Fabrication	In progress	EPC Contractor	Allows FRP contractor to use resins, styrene and other solvents in FRP fabrication facility. Submit application to Duke for review and approval two weeks prior to submitting to NC DENR
Air Quality Permit for Ready-Mix Concrete Batch Plant	Permit received.	EPC Contractor	Permit will be obtained by concrete supplier. Duke to review and approve permit application prior to application.
Erosion Control	Permit received.	EPC Contractor	Required prior to start of site clearing activities
Boiler Inspections; Required for Aux Boiler	Prior to start up of boiler	EPC Contractor	Permit/certification required prior to startup of boiler, NOTE: Duke to obtain for main Hitachi boiler
Elevators	As required	EPC Contractor	Inspection/permits for all elevators installed by EPC Contractor

EXHIBIT E

List of Owner Supplied Permits

Owner Supplied PermitsComments

Title V Air Permit Modification

Permit is required prior to construction of any permanent foundation for the Work. Contractor will provide drawing and data for each emission source. Unit 5 PSD permit is final. Unit 6 PSD permit granted ***.

Certification to DENR-Air

Owner will submit notifications as required by air permit. Owner will provide schedule of notifications to Contractor. Contractor will ensure required notification events are included in the Schedule.

NPDES Permit Modification

Permit modification will incorporate additional waste streams generated by operation of the Unit 5 FGD System. NPDES permit received in ***, 2007.

FAA Notification for Stack

Owner will be responsible for obtaining permit for new stack.

NC DOT

Permits, as required, for state road modifications, crossings or bridge.

CSX

Permits, as required, for rail track modifications, under borings, etc.

Building Permits

State, county or municipal building permits. EPC Contractor will coordinate any required inspections by issuing authority.

Septic Field Permit and Zoning Permit

Contractor to provide design and drawings to support permit application. County to perform perk tests.

<u>Owner Supplied Utilities and Equipment</u>	<u>Description</u>
Commissioning Consumables for Start-up and Testing	Owner will provide all fuel, limestone, CEMS calibration gases for start-up and testing.
Construction Electrical Power	Owner will supply electrical power. Cost of power will be paid by Owner. Contractor will provide all on-Site power distribution for construction purposes.
Construction (Service) Water	Owner will provide a source for Contractor to fill tanker truck with service water. Plant makeup water system will be used for construction service water upon installation of permanent service water tap.
Potable Water	Owner will supply potable water via tie-in to Grassy Pond Water System on site. Contractor will provide any materials and equipment necessary for its capacity and distribution requirements.
Spoil Disposal Area	Areas for placement of soil and rock spoil will be provided by Owner within the limits of clearing identified in Exhibit A. Contractor will place soil and rock spoils in identified areas. Contractor will dispose of concrete and asphalt off-Site.
Asbestos and Lead Paint Abatement/Disposal	Owner is responsible for all asbestos and lead paint abatement and disposal. EPC Contractor is responsible for identifying all areas requiring asbestos and lead paint abatement.
Railroad Ties Disposal	Owner is responsible for disposal of all railroad ties removed as part of rail upgrade work. Contractor is responsible for providing number of ties expected to Owner and stockpiling ties at an on-Site location to be determined by Owner. Stockpile will be maintained in orderly manner by Contractor at the designated location.
Parking, Laydown, Construction Trailer Areas	Owner will provide space onsite for parking, laydown, construction trailers, etc. EPC Contractor is responsible for preparation and maintenance (grading, paving, etc.) of these areas.

Exhibit F-1

Exhibit F-2
*** Cash Flow Plan

Including:
F-2a ***

Exhibit F-3
***** Cash Flow Plan**

Including:
F-3a ***

Exhibit F-4
*** Cash Flow Plan

Including:

F-4a ***

F-4b ***

F-4c ***

F-4d ***

F-4e ***

Exhibit F-5

*** Cash Flow Plan

Including:

F-5a ***

F-5b ***

F-5c ***

F-5d ***

F-5e ***

Exhibit G
Contractor's Key Personnel

Project Management Leadership

Responsibility	Name	Roll-off Date
Project Manager	Bobby Smith	3 rd Qtr 2011
Project Manager AQCS	Tom Hinrichs	3 rd Qtr 2011
Project Manager Power Island	Andy Lefin	3 rd Qtr 2011
Project Controls Manager	Randy Hudson	3 rd Qtr 2012
Procurement Manager	Leon Talley	3 rd Qtr 2010
Subcontracts Manager	Burns Elkes	1 st Qtr 2012

Home Office Engineering

Responsibility	Name	Roll-off Date
Project Engineering Manager - Coal	Charles Worthington	1 st Qtr 2011
Project Engineering Manager - AQCS	Curtis Jacobs	3 rd Qtr 2010
CSA Material Handling Lead Engineer	Wade Byrum	3 rd Qtr 2009
Mechanical Systems Lead Engineer	Brent Pressley	2 nd Qtr 2011
Mechanical Equipment Lead Engineer	Randy Peacock	2 nd Qtr 2011
Layout & Piping Lead Engineer	Lowell Nelson	2 nd Qtr 2011
I&C Lead Engineer	Steve Jansen	4 th Qtr 2011
Electrical Lead Engineer	Mike Henderson	3 rd Qtr 2011

Construction Management Leadership

Responsibility	Name	Roll-off Date
Construction Site Representative	Terry Gray	3 rd Qtr 2011
Site Manager	Bob Lynch	2 nd Qtr 2012
Area Manager Balance of Plant (BOP)	Tom Gibson	2 nd Qtr 2011
Boiler Area Manager	TBD	2 nd Qtr 2011
STG Area Manager	Frank Marshall	2 nd Qtr 2011
AQCS Area Manager	Kim Hornbuckle	2 nd Qtr 2011
Project Controls Manager Field	Donny Sims	3 rd Qtr 2012
Quality Control Manager	Dave Cowart	2 nd Qtr 2011
Construction Engineering Manager	John Fehr	3 rd Qtr 2011

Commissioning Management

Responsibility	Name	Roll-off Date
Commissioning Manager	Phil Iddings	2 nd Qtr 2012

EXHIBIT H

EXHIBIT I

EXHIBIT J-1

***** GUARANTY**

***Guaranty

THIS GUARANTY is given this *** by *** a corporation organized under the laws of *** ("Guarantor"), for the benefit of DUKE ENERGY CAROLINAS, LLC, a limited liability company organized under the laws of the State of North Carolina ("Owner").

WITNESSETH:

WHEREAS, Owner plans to have constructed a new nominally-rated 800 MW supercritical generating Unit 6 and a new flue gas desulfurization system on the existing Unit 5 at its electric generating facility known as Cliffside Steam Station (the "Project"); and

WHEREAS, Owner has entered into a Engineering, Procurement and Construction Agreement dated July 11, 2007 (the "Original EPC Agreement") with Stone and Webster National Engineering P.C. ("Contractor's Predecessor"), whereby Contractor's Predecessor will provide certain services for the Project; and

WHEREAS, in connection with the Original EPC Agreement, Guarantor entered into that certain Guaranty, pursuant to which Guarantor guaranteed the obligations of Contractor's Predecessor under the Original EPC Agreement; and

WHEREAS, pursuant to that certain Assignment and Assumption Agreement, dated as of the date hereof, (i) Contractor's Predecessor assigned to Shaw North Carolina, Inc. (the "Contractor") all of its right, title, interest and obligations in, to and under the Original EPC Agreement and all of its right, title and interest in the Documentation (as defined in the Original EPC Agreement), and (ii) Contractor accepted such assignment and assumed and agreed to pay and otherwise undertake, observe, perform and discharge in accordance with its terms all of Contractor's Predecessor's obligations and other liabilities under, arising out of or relating to the Original EPC Agreement (the "Assignment and Assumption"); and

WHEREAS, immediately upon the Assignment and Assumption, Owner and Contractor entered into that certain First Amended and Restated Engineering, Procurement and Construction Agreement, dated as of the date hereof (the "Contract"), pursuant to which the Original EPC Agreement was amended and restated in its entirety by the Contract; and

WHEREAS, Guarantor has a substantial economic interest in the Contract and has agreed, as a material inducement to Owner to consent to the Assignment and Assumption and to enter into the Contract, to enter into this Guaranty, pursuant to which Guarantor shall guaranty the obligations of Contractor under the Contract in accordance with the terms set forth herein; and

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. **GUARANTEE.** Guarantor absolutely, unconditionally and irrevocably guarantees to Owner that:

(a) ***

(b) ***

2. **UNCONDITIONAL OBLIGATION.** This is a guarantee of payment and performance and not of collection. The liability of Guarantor under this Guaranty is direct, irrevocable and not conditional or contingent upon the pursuit of any remedies against Contractor or any other person or entity, nor upon any other recourse available to Owner, its successors, endorsees, transferees, or assigns. Guarantor waives any and all rights it may now or in the future have under law or in equity to require either that an action be brought against Contractor or any other person or entity as a condition to proceeding against Guarantor.

3. ABSOLUTE OBLIGATION. The obligations of Guarantor under this Guaranty are absolute and without regard to lack of power or authority of Contractor to enter into the Contract or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor. Guarantor agrees that Owner and Contractor may modify or amend the Contract and that Owner may delay or extend the date on which any guaranteed obligation must be paid or performed, or release Contractor from any guaranteed obligation or waive any right thereunder, all without notice to or further assent by Guarantor, which shall remain bound by this Guaranty notwithstanding any such act by Owner. The obligations of Guarantor under this Guaranty shall not be affected, reduced, or impaired upon the happening of any of the following events:

(a) the failure to give notice to Guarantor of the occurrence of a default under the terms and provisions of the Contract, provided Owner has complied with the notice requirements of the Contract;

(b) the change, modification or amendment of any obligation, duty, guarantee, warranty, responsibility, covenant or agreement (including without limitation Change Orders) set forth in the Contract;

(c) any failure, omission, delay by or inability on the part of Owner to assert or exercise any right, power or remedy conferred upon Owner under the Contract;

(d) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of any of Contractor's assets, the receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization of, or similar proceedings affecting Contractor or any of the assets of Contractor;

(e) the merger or consolidation of Contractor into or with any corporation or other entity, or Contractor's loss of its separate corporate identity or its ceasing to be an affiliate of Guarantor;

(f) any action by Owner under the Contract granting indulgence or extension of time for payment to Contractor or any other surety except as so granted; or

(g) the assignment of any right, title or interest of Owner in the Contract pursuant to the terms thereof to any other person or entity.

4. ***

5. WAIVER OF NOTICE. Guarantor hereby waives notice of (a) Owner's acceptance and reliance on this Guaranty; (b) default or demand in the case of default, provided such notice or demand has been given to or made upon Contractor; and (c) any indulgences, extensions or consents granted to Contractor or any other surety. Guarantor waives promptness, diligence, presentment, demand of payment or enforcement and any other notice with respect to any of the guaranteed obligations and this Guaranty.

6. SUBROGATION RIGHTS. Any subrogation rights of Guarantor arising by reason of any payments made under this Guaranty shall be subordinate to the performance in full by Contractor of all obligations under the Contract, including, without limitation, payment in full of all amounts which may be owing by Contractor to Owner thereunder.

7. ***

8. ASSIGNMENT. This Guaranty shall inure to the benefit of Owner, its successors and permitted assigns and shall be binding upon Guarantor and its successors and permitted assigns. Owner may at any time assign this Guaranty to any person or entity to whom Owner assigns the Contract in accordance with the terms thereof, including a collateral assignment of Owner's right, title and interest in and to this Guaranty in connection with obtaining financing for the Project. Guarantor may not assign this Guaranty without the prior written consent of Owner, which may be withheld in Owner's sole discretion.

9. REPRESENTATIONS AND WARRANTIES. Guarantor hereby represents, warrants and covenants that:

(a) entering into this Guaranty and performance hereunder (i) is not an event of default or otherwise contrary to any obligation by which Guarantor may be bound, and (ii) will not result in the creation or imposition of any lien upon any property of Guarantor;

(b) Guarantor is a corporation duly incorporated, validly existing and in good standing under the laws of Louisiana and is in good standing in each jurisdiction where the failure to be in good standing would materially and adversely affect its ability to perform its obligations under this Guaranty, and Guarantor will maintain its existence and remain in good standing under such laws;

(c) the execution and delivery by Guarantor of this Guaranty, and the performance by Guarantor of its obligations hereunder (i) are within Guarantor's corporate powers, (ii) have been duly authorized by all necessary action, (corporate or otherwise), (iii) do not contravene any law or regulation applicable to or binding on Guarantor or any of its properties, and (iv) do not require the consent or approval of any person or entity which has not already been obtained;

(d) this Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms.

10. **SEVERABILITY.** The invalidity or unenforceability of any provision of this Guaranty shall not affect the validity or enforceability of the remaining provisions of this Guaranty, which shall be enforced to the greatest extent permitted by law.

11. **EXERCISE OF REMEDIES.** No single or partial exercise by Owner or its successors or assigns of any right or remedy shall preclude any further exercise thereof.

12. **WAIVERS.** No delay or omission to exercise any right or power of Owner shall impair any such right or power or shall be construed to be a waiver thereof. No waiver of any right of Owner under this Guaranty shall be effective unless made pursuant to an instrument in writing duly executed by Owner.

13. **NOTICES.** All notices permitted or required to be given under this Guaranty shall be in writing and shall be deemed duly given when sent by telefacsimile transmission, by overnight courier, by personal delivery or on the seventh (7th) day following the date on which such notice is deposited in the mail, postage prepaid, certified, return receipt requested. All notices shall be delivered or sent to the parties at their respective address(es) or number(s) shown below or to such other address(es) or number(s) as a party may designate by prior written notice given in accordance with this provision to the other party:

If to Owner:

If to Duke: Duke Energy Carolinas, LLC
Mail Code EC11T
P. O. Box 1006
Charlotte, NC 28201-1006
Attn: Dan Herzberg
Facsimile No: 704-382-5275

with a copy to: Duke Energy Carolinas, LLC
Mail Code EC03T
P. O. Box 1006
Charlotte, NC 28201-1006
Attn: General Counsel, Franchise Electric & Gas
Facsimile No: 704-382-5690

If to Guarantor:

14. AMENDMENT. No amendment of this Guaranty shall be effective unless made pursuant to an instrument in writing duly executed by both Owner and Guarantor.

15. GOVERNING LAW; CONSENT TO JURISDICTION. This Guaranty shall in all respects be governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to any choice of law rules thereof which may direct the application of the laws of another jurisdiction.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

"Guarantor"

By: _____

Name: _____

Title: _____

EXHIBIT J-2

PERFORMANCE LETTER OF CREDIT

EXHIBIT A
FORM OF DRAWING CERTIFICATE

(DATE)

[NAME AND ADDRESS OF ISSUER]

Attention:

Re: Performance Letter of Credit No. _____
Dated _____

Ladies and Gentlemen:

1. Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the above-referenced letter of credit (the "Letter of Credit").

2. The undersigned certifies that the undersigned is an authorized officer representative of [INSERT NAME OF BENEFICIARY], the beneficiary of the Letter of Credit, and hereby further certifies as follows:

(a) [INSERT NAME OF BENEFICIARY] is the beneficiary of the Letter of Credit (the "Beneficiary"), and hereby demands the payment of U.S. \$_____ to the following account:

[Insert wire instructions (to include name and account number of the Beneficiary)]

(b) The amount demanded in this Drawing Certificate does not exceed the amount of the Letter of Credit on the date hereof.

(c) Pursuant to the terms and provisions of that certain [STATE AGREEMENT BETWEEN BENEFICIARY AND APPLICANT TO WHICH THIS LETTER OF CREDIT RELATES] (the "Contract"), Stone & Webster National Engineering P.C. has failed to fulfill certain of its obligations under the Contract and Beneficiary is entitled to the draw of the funds requested under this Drawing Certificate.

(d) Stone & Webster National Engineering P.C. has received our written notification as required by the Contract specifying the non-compliance and has failed to correct the same within the applicable cure period, if any, set forth in the Contract.

IN WITNESS WHEREOF, the undersigned has executed this Drawing Certificate as of the ___ day of _____, _____.

[INSERT NAME OF BENEFICIARY]

By: _____
Name: _____
Title: _____

EXHIBIT B
FORM OF REDUCTION CERTIFICATE

(DATE)

[NAME AND ADDRESS OF ISSUER]

Attention:

Re: Performance Letter of Credit No. _____
Dated _____

Ladies and Gentlemen:

1. Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the above-referenced letter of credit (the "Letter of Credit").

2. The undersigned certifies that the undersigned is an authorized officer representative of [INSERT NAME OF BENEFICIARY], the beneficiary of the Letter of Credit, and hereby further certifies as follows:

[INSERT NAME OF BENEFICIARY] is the beneficiary of the Letter of Credit (the "Beneficiary"), and hereby authorizes a reduction of the amount of the Letter of Credit, and the Issuer is hereby instructed and authorized to reduce the amount of the Letter of Credit to _____ US dollars (US\$_____).

IN WITNESS WHEREOF, the undersigned has executed this Reduction Certificate as of the __ day of _____, _____.

[INSERT NAME OF BENEFICIARY]

By: _____
Name: _____
Title: _____

EXHIBIT J-3

Change Order Costs/Reimbursable Costs

EXHIBIT L-1

Unit 5 Scrubber
Performance Test and Guarantees

Performance Conditions

- 1.1 Section 1.0 presents performance conditions for the Unit 5 Scrubber.
- 1.2 The guaranteed values provided are valid only when the volumetric flow rate of the flue gas from the boiler entering Unit 5 Scrubber, the flue gas temperature, sulfur dioxide, sulfur trioxide, and particulate concentrations are less than or equal to the values stated in Exhibit A.
- 1.3 Guarantee values are applicable only when the fuels, limestone, and water are within the range as defined in Exhibit A. The guaranteed values are also predicated upon operation of the Unit 5 Scrubber at or below a steady state chlorides concentration of ***, Unit 5 guarantees are limited to operation with fuels with up to ***when not using DBA in the scrubber, and *** when using DBA in the scrubber.
The guaranteed values are conditioned upon: operation of the Equipment by the Owner in accordance with generally accepted industry practice and the following guidelines as set forth in ASME PTC 40; and in accordance with the specified conditions of service and operating instructions furnished by the Contractor; and the proper maintenance of the Equipment.
- 1.4 Guaranteed values are to be determined by testing in accordance with the conditions and protocols provided in Section 4.0 entitled "Performance Testing."

Emissions Guarantees

- 2.1 The following emissions guarantees are applicable to the Unit 5 Scrubber based on the general conditions in Section 1.0. The flue gas flow rate shall be measured simultaneously with all emissions testing using US EPA Methods 1-4. Where removal guarantees are provided, flue gas flow rate measured upstream of the WFGD scrubber shall be measured simultaneously using US EPA Methods 1-4.
- 2.2 *SO₂ Emission Limit:* The Unit 5 Scrubber shall achieve a minimum SO₂ removal efficiency of ***, with an SO₂ inlet concentration equal to or less than ***SO₂/MMBtu, without organic acid addition, under all boiler load conditions from ***MCR. The Unit 5 Scrubber shall be capable of operating

at the guaranteed removal efficiency with inlet particulate concentrations up to ***lb/MMBtu. SO₂ Emission is a Make Right Performance Guarantee. Testing will be via EPA Method 6 or 6C as measured upstream and downstream of the Unit 5 Scrubber.

- 2.3 **Particulate Matter Emission (excluding condensables):** The particulate emission at the exit of the Unit 5 Scrubber shall be *** removal or ***lb/MMBtu (24 hour rolling average as measured by the average of three 4 hour tests); whichever is less stringent, up to an inlet particulate load of ***lb/MMBtu. Particulate matter emission is a Liquidated Damages Performance Guarantee. Testing will be via EPA Method 5B.

Other Performance Guarantees

- 3.1 The following Performance Guarantees are applicable based on the performance conditions in Section 1.0. All guarantees described in this section shall be achieved simultaneously with the emissions guarantees.

Gypsum Composition: The gypsum cake leaving the Unit 5 Scrubber shall possess the characteristics shown in Table 3.1 as verified using the procedures given in Table 3.1. Gypsum Composition is a Make Right Performance Guarantee.

Table 3.1 Gypsum Characteristics

(b) Characteristics	(c) Values	(d) Units	Test Method
Purity (CaSO ₄ ·2H ₂ O)	***	wt.%, dry	ASTM C471 or EPRI L1, F1, J3 or L2, M1, or M2; with calibrated instrument at elevated temperature (e.g. Arizona Instruments Computrac Max 2000XL, Thermogravimetric Analysis or similar)
Residual Moisture, (maximum)	***	wt.% free water	Solids content measured by EPRI F1, (e.g. Arizona Instruments Computrac Max 2000XL, Thermogravimetric Analysis or similar)
Mean particle size, (range)	***	µm	EPRI G1, Wet Screening or Laser Diffraction, (e.g., Microtrac or similar)

Table 3.1 Gypsum Characteristics

Heavy Metals (applies to heavy metals only)	***		EPA SW846, Method 1311
Free Silica	***	wt.%, dry	ASTM C471, or, ASTM C-25-29
Aspect Ratio Z To Y	***		NGC 19-4-14
Acid Insoluble Inerts	***	wt.%, dry	ASTM C471 or ASTM C25-8
Chloride (maximum)	***	ppmd	ASTM C471 or EPRI O4, Ion-specific electrode; or Ion Chromatograph
pH	***		EPRI C1, pH meter
Sulfite ($\text{CaSO}_3 \cdot \text{H}_2\text{O}$), maximum	***	ppmd	EPRI M2, Titration; Ion Chromatograph, or Thermogravimetric Analysis
Sodium (water soluble)	***	ppmd	ASTM C471 or Ion Chromatograph
Magnesium (water soluble)	***	ppmd	ASTM C471/EPRI J3; or Ion Chromatography
Nickel (water soluble)	***	ppmd	ASTM D1976
Vanadium (water soluble)	***	ppmd	ASTM D1976
Ammonia (NH_4 ion)	***	ppmd	ASTM D1426-B or Ion Chromatography

Chloride Purge Stream: Based on fuel chloride concentration, the chloride purge stream from the Unit 5 Scrubber shall meet the requirements specified in Tables 3.1.2-a and 3.1.2-b at the Contractor's discharge to the Unit 5 Purge Stream Waste Water Treatment System (PSWWTs). Chloride Purge Stream discharge composition, except Mercury and Selenium, is a Make Right Performance Guarantee. Remediation, which includes modifications to the system design and requirements due to failure to meet the guaranteed Purge Stream Composition, are subject to approval by the Owner.

Table 3.1.2-a Unit 5 Scrubber Purge Stream Characteristics

(excluding 2-day surge events)

For Low Fuel Chloride Concentration (***)

Characteristic	Units	Value
pH	pH SU	***
TSS	wt%	***
Chloride (Cl)	Ppm	***
Temperature	°F	***
TDS	mg/l	***
Volumetric Flow Rate	Gpm	***

Table 3.1.2-b Unit 5 Scrubber Purge Stream Characteristics

(excluding 2-day surge events)

For High Fuel Chloride Concentration (***)

Characteristic	Units	Value
pH	pH SU	***
TSS	wt%	***
Chloride (Cl)	Ppm	***
Temperature	°F	***
TDS	mg/l	***
Volumetric Flow Rate	Gpm	***

Electric Power Consumption: The 24-hour average electrical power consumption for the entire Unit 5 Scrubber shall not exceed *** kW based on the following:

***MCR; up to *** acfm at ***°F

3 spray levels operating;

*** lbs SO₂/MMBtu coal;

***SO₂ removal.

The guaranteed value has been developed using a listing of electric power users (documented in the Electric Load List for Unit 5), a methodology for assigning duty factors to account for time of usage during the test period, and the portion of common equipment that applies to Unit 5. The methodology and associated duty factors may be modified to account for common equipment that only operates part time (such as ball mills and belt filters) in a manner representative to the Unit 5 usage during the 24-hour period. Corrections may also be required, depending on final method of measurement that corrects for equipment and line losses not in Contractor's scope. The methodology and associated adjustments will be agreed upon and documented in the Performance Test Procedure.

Electric Power Consumption is a Liquidated Damages Performance Guarantee. Passing this consumption guarantee at one (1) condition is all that is required.

Limestone Consumption: The stoichiometric ratio as measured in representative gypsum samples for the Unit 5 Scrubber shall not exceed *** on a total plant basis while operating at steady state conditions. This guarantee is predicated on *** wt% (minimum) of the limestone being reactive calcium carbonate equivalent. Reactive calcium carbonate shall be determined based on the total calcium carbonate in limestone corrected for unreactive dolomitic limestone by removing a molar equivalent of calcium carbonate for each mole of magnesium in the limestone. The limestone will also meet the minimum requirements of the Alstom Power Limestone Reactivity Test (included with Alstom contract). Calculation of the limestone consumption

will be based on the actual tested fuel firing rate, measured SO₂ inlet to the AQCS system, and the amount of excess limestone for Liquidated Damages purposes (if the stoichiometric ratio exceeds the guarantee) will be based on these values only and the excess stoichiometry above the guarantee value. Gypsum is tested for stoichiometric ratio per the equation below that corrects for unreactive dolomitic limestone remaining in the gypsum by removing a molar equivalent of calcium for each mole of magnesium remaining in the byproduct. Results are to be based on the average of 3 valid samples.

Liquid carryover: Liquid carryover shall not exceed 0.01 grains per acf as determined by hot wire anemometer (developed by KLD) method using the Army Insecticide Monitoring System (AIMS-DC111 Probe) or agreed upon alternative method.

Gypsum Solids: Gypsum solids product minimum oxidation fraction shall be no less than ***. Method of verification to be mutually agreed to by Owner and Contractor.

Performance Testing

- 4.1 The Performance Test Procedures will define the conditions and procedures for executing the tests required to determine satisfaction of the Emissions and Performance Guarantees. For more detailed information on performance testing, refer to the Cliffside Modernization Project Testing Procedure.
- 4.2 Contractor shall be responsible for providing all permanent testing instrumentation and sample test ports/valves required to conduct the Performance Testing. The responsibility for submittal of any regulatory certification of emissions monitoring equipment required by Government Authority will be borne by the Owner.

-
- 4.3 Performance Testing Procedures shall be developed by the Contractor with approval by the Owner no less than *** Days prior to Contractor's Substantial Completion of the Unit 5 Scrubber. Testing Procedures shall include identification of all sample/measurement points, specific test methods where applicable, calibration requirements for all instrumentation and data collection devices specified in the Testing Procedure. Contractor shall provide correction or guarantee curves or equations *** Days prior to commencement of Performance Testing, approved by the Owner, for determining compliance with guarantee parameters where the basis of design conditions cannot be duplicated. At a minimum, the following correction curves are to be provided:

- 4.4 Performance Testing shall be conducted by a mutually agreed upon third-party testing Subcontractor hired by the Contractor for performing all Performance Testing.
- 4.5 Performance Testing will commence no less than *** Days after Mechanical Completion for the Unit 5 Scrubber and in accordance with the approved Test Procedures. Prior to the start of the Performance Testing, the Unit 5 Scrubber is to operate at steady-state conditions with *** for a duration of at least ***, or as otherwise agreed upon by Owner and Contractor to allow testing to proceed.
- 4.6 Testing shall be performed by the Contractor-provided third party testing Subcontractor with the Owner's and Contractor's full participation in accordance with the approved Test Procedures. Testing shall be performed without cleaning or adjustment of equipment except for that which is normally carried out while in operation or which is approved by the Owner.
- 4.7 Test Locations: Contractor will provide test ports, sampling valves and suitable access as required for all Contractor-supplied Equipment. Testing/sampling locations will be noted on General Arrangement Drawings and are provided in accordance with the Agreement.
- 4.8 During the Performance Testing, the Unit 5 Boiler shall be operated in a steady-state mode at a *** of the design fuel firing rate and design flue gas flow rate defined in Exhibit A for a minimum of ***and for the duration of the testing. Operation of the boiler will be controlled to the maximum extent possible to comply with the conditions listed above and the Owner's specification.
- 4.9 A draft test report will be prepared by the testing Subcontractor and submitted simultaneously to the Owner and/or its agent and to Contractor for review and comment. A final report incorporating any comments will then be prepared and submitted by the testing Subcontractor. Reports will include, as a minimum, a full discussion of the Testing Procedures, sample data reduction calculations, raw data sheets and logs, tabulations of reduced data and results, a discussion of potential uncertainty and error, and a discussion of the results.

4.10 Not used.

4.11 Notification: The Contractor shall be notified within *** Days of Owner receiving the test results in writing if, in the opinion of the Owner, there is evidence that any Performance Guarantees are not being met.

4.12 Retuning or modifications required as a result of failure to meet Guaranteed Emission Limits shall be cause for retesting of the Unit 5 Scrubber at the discretion of the Owner in accordance with the approved Test Procedures conducted by the Owner provided third party testing Subcontractor at the expense of the Contractor. Retesting will be limited to specific failed items and those items that are significantly related if it can be reasonably demonstrated by Contractor and accepted by Owner that the retuning and/or correction of the failed components would not impact the Contractor's achievement of the Minimum Performance Guarantees and the Performance Guarantees.

4.13 Availability of Supporting Data: The Owner and/or its agent agree to make available to Contractor all pertinent facility operating logs and data obtained during the performance test period, such as, but not limited to: ***.

Performance Liquidated Damages

5.1 Values for Unit 5 Scrubber Liquidated Damages (LD) Performance Guarantees are listed in Table 5.1 below:

Characteristic	Measure	Value
***	Based on scale of performance achieved	***
***	Exceeding Performance ***	***
***	Exceeding Performance ***	***

EXHIBIT L-2

PERFORMANCE TESTING of UNIT 6

GUARANTEED UNIT NET HEAT RATE, OUTPUT, STEAM FLOW CAPACITY & EMISSIONS

And

PERFORMANCE VERIFICATION of PLANT EQUIPMENT

1.0 INTRODUCTION

1.1 Objective

This Exhibit establishes conditions, parameters and methods for *** of *** guarantees established by the Agreement, corrected to the Base Performance Conditions identified in Section 7 of this Exhibit.

Unit 6 *** will be tested, calculated and corrected based on the *** steam flow, identified in the Section 7. Main Steam Flow Capacity Testing will be at the ***.

Additionally, Performance Verification of the Steam Generator, Steam Turbine, and AQCS along with major plant equipment and systems is addressed.

Consumptive guarantees subject to Performance Liquidated Damages shall also be tested in accordance with this Exhibit and measured while simultaneously achieving Guaranteed Emission Limits and Guaranteed Gypsum Quality.

Unit 6 will not exceed Permitted Emissions Limits as identified in Exhibit M, and measured in accordance with Table L-2.1 during Performance Testing. Emission Compliance Testing, including CEMS Certification testing, may occur prior to Substantial and Final Completion, with Guaranteed Emission Limits verified during Performance Testing of the Unit 6 using the certifiable CEMS (defined in Section 8.3).

If tuning or other adjustments to Unit 6 that may effect emissions occur after non-CEMS monitored emission acceptance and prior to Substantial and/or Final Completion, the Owner may require re-testing of emission compliance of non-CEMS monitored parameters to verify that tuning has not violated emission compliance.

Guaranteed Emission Limits and Guaranteed Removal (%) found in Exhibit M are Make Right Performance Guarantees.

1.2 Performance Test Program Philosophy

Table L-2 summarizes the Performance Testing and Equipment Verification Program. The purpose of the Performance Test and Equipment Verification Program is fivefold:

1.2.1 ASME Code Testing

***Unit Performance Testing** - Confirm that individual Unit 6 Net *** guarantees contained in the Agreement are met, using ASME Performance Test Codes listed in Table L-2. If these values are not met, to establish the shortfall value for application of remedies or damages addressed in the Agreement with the Contractor.*

Steam Generator, Steam Turbine and AOCs Testing - Confirm the performance guarantees of Owner Equipment are met, using Performance Test Codes listed in Table L-2. If these values are not met, to establish the shortfall value. These may be run concurrently with the Unit 6 Performance Test, where appropriate.

1.2.2 Non Code Testing

Major Equipment Verification - Report the performance of major equipment, using data collected either during Unit 6 Performance Testing or individual Equipment Verification Testing. If performance guarantees are not met, to establish an estimate of the shortfall value, for possible Code Testing.

Plant Baseline Data - Establish the overall Unit 6 Baseline Performance Data for key operating parameters based on a combination of data taken during the Unit 6 Performance Test, Steam Generator and Steam Turbine Performance Test and DCS collected data.

Emissions Compliance Test and CEMS Certification - Perform emission compliance test and certify CEMS in accordance with Cliffside Air Permit and referenced regulatory requirements.

1.3 Agreement Authority

The Agreement contains specific information concerning guarantees, results, re-testing, schedule, remedies, liquidated damages and warranties, and is not addressed in this Performance Testing Exhibit.

1.4 Performance of Owner Equipment

The Contractor's Net *** Performance Guarantees are based on the guaranteed performance of the Owner Equipment. Plant performance test results shall be corrected for Owner Equipment performance shortfalls that are not attributable to Contractor responsibility. It will be the Contractor's responsibility to test, document and verify any such claimed performance shortfall.

1.5 Substantial Completion Testing

The initial Performance Testing is used to satisfy the Minimum Performance Guarantee. This Test shall be satisfied by the same methods as the Unit 6 Performance Test methodology, except where a substitute test method is approved by the Owner.

A substitute test using installed plant permanent instrumentation in lieu of calibrated temporary test instrumentation may be approved after Owner review. The pricing defined in Exhibit I is based on the Contractor using plant permanent instrumentation for the

initial Performance Testing to satisfy the Minimum Performance Guarantee. Additional temporary high accuracy instrumentation will be used by Contractor for purposes of verifying compliance with the Guaranteed Performance.

The initial Performance Test may satisfy the requirement of the Performance Guarantees if performed in accordance with Section 6. of this Exhibit.

2.0 TEST RESPONSIBILITY

All testing described in this Exhibit is in Contractor's scope of supply.

Test Contractor approved by the Owner, shall conduct the Unit 6 Performance Test, Steam Generator and Steam Turbine Performance Test, and compile the Plant Baseline Data. The Contractor and the Test Contractor may share the responsibility for the Major Equipment Verification as outlined in Table L-2.

The Test Contractor shall be responsible for the Performance Test Plan (PTP), test instrumentation including calibration and set up, pre and post test uncertainty analysis, conduct of the testing, data acquisition, data reduction, post test calculations, and test report for Unit 6 Performance Testing, Steam Generator and Steam Turbine Testing, Plant Baseline Data and Major Equipment Verification (except where excluded in Table L-2).

3.0 PERFORMANCE TEST PLAN

The Contractor will submit *** days prior to commencement of the Performance Test a complete detailed Performance Test Plan (PTP) mutually approved by Owner, Test Contractor, Contractor and Owner Equipment Contractor's. The PTP will constitute an agreement for the Performance Testing by the Parties to the test. Differences between the Test Procedures or methods contained in/or developed in accordance with the PTP and the respective Agreements or established industry test codes are by mutual agreement of the Parties to the test, as approved in the PTP.

The PTP form and contents shall specifically meet the requirements of ASME PTC 46 – 1996, Section 3.2 "Test Plan", where ASME Code Testing procedures are being applied. The actual test methods and corrections for each test shall be in accordance with Codes identified in Table L-2.

4.0 TEST UNCERTAINTY

*** test tolerances or uncertainties shall be applied to any Performance Test results for the satisfaction of Unit 6 Performance Guarantees, or Steam Generator or Steam Turbine Tests.

Pre-Test uncertainties (for ASME Code Tests) will be calculated in accordance with applicable ASME Codes, and shall not exceed ASME PTC requirements for the applicable Code Test. Post test field verifications will be performed on instruments measuring parameters where there is no redundancy or for which the data is questionable.

5.0 DEGRADATION

Degradation shall be applied to the Unit 6 *** Tests, in accordance with Owner Equipment guarantees. An *** test in accordance with *** requirements, shall be performed on the steam turbine by the Test Contractor as soon as practical after startup, and prior to the Net ***. Degradation attributed to the *** shall be based on enthalpy drop test results in accordance with Steam Turbine Generator guarantees.

Corrections to test results due to *** that are attributable to Contractor's actions shall not be applied. This includes both equipment scope and schedule effects.

6.0 PERFORMANCE TESTING – ASME CODE TESTING

6.1 Test Runs and Corrections

Performance Testing involves set-up, testing, measurements and data collection, subsequent calculations and corrections. A series of three (3) individual Test Runs meeting the Code requirements for duration (no less than 2 hours each), shall be performed at the test conditions, which Unit 6 is subject to at the time of the testing. Test operational and data stability requirements set forth in ASME Codes shall be met.

Results of the three (3) Test Runs shall be corrected to Base Performance Conditions and averaged for comparison. The Unit 6 Performance Test will be compared to the Performance Guarantee values. The Steam Generator and Steam Turbine will be corrected to Owner Equipment Contract conditions and compared to contract values.

Demonstration of the Steam Generator and Steam Turbine performance will require the Test Contractor to perform measurement/correction methodology required by the governing ASME PTC.

Contractor shall provide all required ASME PTC 46, PTC 4 and PTC 6 correction data. At a minimum, raw source data for curves or correction curve equations shall be supplied. Curves may be additionally supplied as well, but priority of test correction source will be, in order of preference; Manufacturer provided source data or curve equations, best fit equations of Manufacturer provided data or curves, visual reads of Manufacturer provided data or curves, and Contractor supplied data, curves, and equations. Contractor shall submit all correction calculations, correction data and any thermal models for review and approval 60 days prior to commencement of testing.

6.2 Instrument Calibration

Instrument calibration shall meet ASME PTC Code requirements. Test Contractor shall submit all instrument calibration data to the Contractor and Owner for review prior to the commencement of the Performance Test. Flow devices meeting the requirements set forth by ASME Code to measure primary parameters and variables need not undergo inspection following the performance test if the devices have not experienced conditions that would violate their integrity. Such conditions include steam blows and chemical cleaning.

6.3 Test Equipment and Instruments

The Contractor will have the responsibility for providing all test instrumentation and equipment, whether temporary or permanently installed. Instrumentation shall meet the

requirements of the applicable ASME PTC Code, in order that the calculated pre test uncertainty does not exceed ASME Code requirements. Primary condensate flow instrumentation shall be supplied and calibrated in accordance with ASME PTC 6 – 2004, and shall remain the property of the Owner after the completion of Performance Testing.

6.4 Test Interruption

Test runs are not required to be continuous, but shall occur within the same 72 hour period, in order to assure that the Unit 6 configuration and the test conditions are relatively similar. The Owner may waive this requirement.

6.5 Unit 6 Performance Testing

The Unit 6 Performance Test will be in accordance with ASME PTC 46-1996 "Performance Code on Overall Plant Performance", except where modified by the Contract, or by mutual agreement by the Parties to the Test.

For a coal fired unit, this will require determination of steam generator efficiency, in order to calculate primary heat input, in accordance with ASME PTC 4 - 1998, Energy Balance method, except as noted in this Exhibit.

The Performance Guarantee applies to the testing of Unit 6. Common loads shared with Unit 5 will be proportioned to each Unit.

6.5.1 Electrical Terminal Point of Guarantees – Unit 6

Performance Testing

The electrical terminal point of the Unit 6 Performance Guarantee is as measured at the high side of the main step up transformers. Transformer losses (main step up and aux) due to corrections to Base Performance Conditions will be included as part of the post test corrections.

Material Handling auxiliary load terminal point will be considered the inlet (delivery point from truck or rail carrier) of the coal, limestone and lime unloading hoppers or transport piping. For gypsum and ash, the terminal point will be the ash silos and gypsum storage pile.

6.5.2 Unit 6 Performance Test Auxiliary Loads

The Unit 6 Net Output and Heat Rate Guarantee shall include all auxiliary loads, including pumps, fans, motors, heaters, air conditioning, lighting, material handling and miscellaneous equipment that are required to operate the equipment in a normal plant configuration.

The Unit 6 Net Output and Heat Rate Guarantees are based on the electrical auxiliary loads for major JPDA equipment as listed in Table L-2.2. The Performance Guarantees will be revised to incorporate changes in any of the Table L-2.2 values due to final equipment selections.

The auxiliary load methodology for the Unit 6 Performance Test will be

based on operation of Unit 6 during the Base Performance Condition (summer day). As part of the PTP, the Contractor will submit, for approval, a load list, indicating the test operating status of all plant electrical equipment greater than 2 hp (valve motor operators need not be accounted for). The following is the type of operation that is expected:

All normal interior lighting shall be energized.

All air conditioning/heating/ventilation required to maintain the plant environment on the test day will be operating.

All equipment required for normal full load operation will be energized.

Redundant or surge capacity equipment shall be energized.

Material handling, water treatment and other loads of a cycling nature shall be characterized prior to the Unit 6 Performance Test. The Contractor will submit as part of the PTP, procedures for the determination of these cycling loads, for Owner approval. Fuel, Ash, Limestone, Lime, Gypsum, make up and waste water handling (except AQCS purge stream treatment) auxiliary loads will be determined based on testing done prior to the Unit 6 Performance Testing. The methodology shall also contain procedures and calculations for the proportioning of auxiliary loads to Unit 6 and the Unit 5 Scrubber.

Auxiliary loads for major Owner Equipment will be individually measured for determining satisfaction of Owner Equipment Contract guarantees.

Preliminary testing and results calculations shall occur prior to commencement of Unit 6 Performance Testing (this testing is not required for Substantial Completion). Results shall be submitted to the Owner and approved prior to Unit 6 Performance Testing.

Testing will determine the kw-hr consumed per unit of material, for correction to the plant auxiliary loads measured. Where appropriate, and approved by the Owner, operation of cycling loads during the test can be substituted. For example, coal reclaim auxiliary load could be determined by characterization test or by returning the coal silo to pre test levels prior to the end of the test runs.

6.5.3 Unit Configuration

During the Unit 6 Performance Test, Unit 6 will be aligned and operated in the normal plant configuration – as approved by the Owner, with regards to mechanical and electrical components and systems. All steam and water drains and traps will be aligned for safe system operation.

The DCS will be in automatic operation, except where approved by the Owner. Setpoints, system limits, alarms and trips will be in normal plant configuration and will not be deviated from, for the purpose of the Unit 6 Performance Test.

6.6 Main Steam Flow Capacity Test

As part of Unit 6 Performance Testing, a *** will be performed to assure that Unit 6 can achieve this steam flow operating condition on a continuous basis. Although not specifically addressed in ASME PTC 46, the Main Steam Flow Capacity will be verified using the ASME PTC 46 governed Unit 6 Performance Test instrumentation and calibration methods, except where approved by the Owner.

The test duration will be an 8 hour continuous run.

Fuel and sorbent corrections will not be applied unless outside the range of the Agreement specified design range for these materials.

*Condenser exhaust pressure will be controlled as close as possible to *** by operation of the cooling tower fans. Corrections will be made to adjust results to ***.*

Equipment will not exceed EPC Agreement (Exhibit A) or Manufacturer ratings.

Spare/redundant equipment shall not be operated. These include, but are not limited to:

- Spare hotwell and condensate booster pumps
- Spare pulverizer, unless allowed by Steam Generator guarantee
- Spare closed cooling water pump and heat exchanger
- Spare limestone ball mill
- Spare gypsum dewatering train

Contractor shall report test results for the *** and the corresponding net electrical output (which is not guaranteed for this test). Net electrical output shall be corrected to Base Performance Conditions for power factor, and wet bulb.

6.7 Steam Generator, Steam Turbine and AQCS Testing

A Steam Turbine Test (Full Test) in accordance with ASME PTC 6 - 2004 will be required to demonstrate the steam turbine performance. Likewise, the performance of the Steam Generator will be demonstrated using ASME PTC 4 - 1998. These Tests shall be in accordance with the subject Owner Equipment Contracts and the mutually agreed to test procedures. Test procedures shall also provide for demonstration of individual auxiliary loads for Steam Turbine, Steam Generator and AQCS. See Table L-2 of this Exhibit.

6.8 Test and Data Report

The Contractor shall provide a complete report in accordance with ASME PTC 46 (PTC 4 and 6 for the Steam Generator and Steam Turbine respectively), and will be submitted

within the time specified in the Agreement. A preliminary report of results shall be submitted within the time specified in the Agreement. The report shall be submitted in both electronic and paper format. Final report contents shall be defined in the Performance Test Plan. This shall include, but not be limited to:

Calibration data for all instruments used in calculations

Raw and summary averaged data for each Test Run

All fuel, ash, sorbent, gypsum and emission sample reports

Key Plant DCS data during each Test Run, as identified by the Owner prior to the Test

All calculations and corrections, including correction curves and data.

Final performance correction calculations shall be in Excel and submitted as an Excel format file.

7.0 BASE PERFORMANCE CONDITIONS

Unit 6 Performance Guarantees are based on the following reference conditions. Test results for the Unit 6 Performance Testing will be corrected to these conditions as detailed in the Performance Test Plan:

*Power Factor (high side of main step up) = ****

Fuel – Performance Fuel as identified in EPC Agreement

*Ambient dry-bulb temperature – ****

*Ambient wet-bulb temperature – ****

Sorbent (limestone and lime) – per EPC Agreement

*Barometric Pressure – ****

8.0 PERFORMANCE TESTING – NON CODE TESTING

8.1 Major Equipment Verification

The Contractor shall report the performance of major equipment, using data collected either during Unit 6 Performance Testing or individual Equipment Verification Testing. This testing is not required to be in strict accordance with applicable Test Codes referenced in Manufacturer contracts, but shall be of sufficient accuracy to give indication of the equipment performance. The results shall be corrected to Manufacturer contract conditions as part of the Test Report. The Contractor shall supply all raw data and calculations as part of the Test Report.

The Owner will use these reports to make a determination concerning the need for further detailed Code testing of equipment, outside of the Contractor's scope.

These tests can be run concurrently with the Unit 6 Performance Test, where appropriate:

8.2 Plant Baseline Data

The Contractor shall report the overall Unit 6 baseline performance data for key operating parameters (to be identified with Owner agreement, in the Performance Test Plan) based on a combination of data taken during the Unit 6 Performance Test, Steam Generator and Steam Turbine Performance Test and DCS collected data. The goal is to establish initial Plant Baseline Data for comparison for future operation.

The basis of the report shall be uncorrected averaged data from both the DCS and temporary performance test instrumentation from one of the Unit 6 Performance Testing Test Runs selected by the Owner.

8.3 Emissions Compliance Test and CEMS Certification

Once Mechanical Completion has occurred and Unit 6 is sufficiently complete so that all systems are capable of safe operation in accordance with applicable Laws, Good Practices and the Project Manuals, Contractor shall test Unit 6 in accordance with the requirements of applicable Government Approvals, applicable regulations and Exhibit M to verify compliance with the Permitted Emission Limits and to certify the Part 75 CEMS systems (the "Emissions Compliance Test"). The Emissions Compliance Test shall be undertaken by the Contractor in compliance with all federal, state, local, and Contract requirements; including schedule.

The Emissions Compliance Test shall be completed successfully prior to initiation of Performance Testing. Stack emissions, including opacity, will be measured for Unit 6 during the Performance Test. Sulfur dioxide (SO₂), nitrogen oxide (NO_x), and mercury (Hg) will be verified using the Unit 6 "certifiable" CEMS or by a certified leased CEM system. A certifiable CEMS is defined as a CEMS that has been installed, calibrated, tested (40 CFR, Part 75 Certification Test) and maintained in accordance with the requirements of the air permit and appropriate regulatory requirements. The "certifiable" CEMS are not required to have received formal regulatory approval. Opacity will be verified using the Unit "certifiable" continuous opacity monitoring system (COMS).

The Contractor shall develop a schedule for providing the Owner necessary forms, data

and reports well in advance of regulatory required Owner notifications and submittals. Contractor shall prepare forms, data and reports in accordance with Applicable Permits and regulatory requirements.

9.0 AQCS Performance Liquidated Damages

Limestone Consumption— *** exceeding Performance Guarantee.

Lime Consumption— *** exceeding Performance Guarantee

Electric Power Consumption— *** exceeding Performance Guarantee

Table L-2

Cliffside Unit 6 Field Performance Testing & Equipment Verification Program Matrix

Parameter	Guarantee	Test Method Note 1	Steam Flow/Load	Part of		Notes
				Unit Test	Verification Test	
UNIT PERFORMANCE GUARANTEES						
***	EPC	PTC 46 –1996 PTC 4 – 1998	***	X		Note 2
***	EPC	PTC 46 –1996	***	X		
***	EPC	PTC 6 – 2004	***	X		Note 3
STEAM TURBINE, STEAM GENERATOR, AQCS PERFORMANCE						
Steam Turbine	Manuf. Contract	PTC 6 – 2004				Note 4
• ***			***	X		
• ***			***	X		
• ***			***	X		
Steam Generator	Manuf. Contract (Note 6)					Note 4
• Efficiency		PTC 4 – 1998	***	X		
• Steaming Capacity		PTC 4 – 1998	***	X		Note 5
• Auxiliary Load		PTC 4 – 1998 PTC 4 – 1998	*** ***	X X		
• SH and RH Outlet Temp		PTC 4 – 1998	***	X		
• SH and RH dP		See L-2.1 See L-2.1	*** ***	X X		Note 5 Note 5
• NOx		See L-2.1	***	X		Note 5
• CO		PTC 4 – 1998	***	X		
• VOC						
• Air Heater Leakage		Unit Test	*** ***	X		
• Pulverizer Capacity (1 spare)		Unit Test			X	Note 5
• Ammonia Consumption						
AQCS						
• PM10 (Filterable and Condensable)		See L-2.1	***	X		
• SO ₂		See L-2.1	***	X		
• H ₂ SO ₄		See L-2.1	***	X		
• Hg		See L-2.1	***	X		
• Limestone		Unit Test	***	X		
• Lime		Unit Test	***	X		
• Auxiliary		PTC - 40 PTC - 40	*** ***	X		
					X	

Cliffside Unit 6 Field Performance Testing & Equipment Verification Program Matrix

Parameter	Guarantee	Test Method Note 1	Steam Flow/Load ***	Part of		Notes
				Unit Test	Verification Test	
Load			***		X	
• SO2 Removal			***		X	
• Gypsum Quality						
• Forced Oxidation Rate						

MAJOR EQUIPMENT VERIFICATION

Cooling Tower	Manuf.		***		
• WB Approach	Contract	Unit Test		X	
• Aux Load		Unit Test		X	
• Flow		n/a			X
Condenser	Manuf.		***		
• Exhaust Press	Contract	Unit Test		X	
• TTD		Unit Test		X	
• Tube Side dP		n/a			X
• O2 and Non – Condensables		n/a			X
Feedwater Heater	Manuf.				
• FWH TTD	Contract	Unit Test	***	X	
• FWH DCA		Unit Test		X	
• Tubeside dP		Unit Test		X	
FW Pump Turbine	Manuf.				
• Efficiency	Contract	Unit Test	***	X	
Feedwater, Condensate Booster, Hotwell & Circulating Water Pumps	Manuf.	Unit Test	***		
	Contract			X	
• Efficiency				X	
• Capacity				X	
• TDH				X	
Main Step Up Transformers	Manuf.	Unit Test	***		
• Electrical Loss	Contract			X	
Ash Handling System	EPC	Test Plan	***		X
• Bottom, Fly & Economizer Ash Conveying Rates	Contract	(to be developed)			
Water Treatment	EPC	Test Plan	***		X
• System Flow	Contract	(to be developed)			
• Effluent Quality					

NOTES

- All ASME Code Tests will require application of additional ASME Test Code requirements such as PTC I and the PTC 19 Series. Where conflict exists, the most recent approved PTC will govern. Plant Performance will be based on the ASME 1967 Steam Tables.

2. ASME PTC 4 – 1998 Energy Balance Method for determination of Steam Generator Efficiency used as part of and in accordance with ASME PTC 46.
3. Unit Steam Flow Capacity Guarantee will be tested utilizing appropriate sections and corrections from PTC 6—2004.
4. Steam Generator and Steam Turbine efficiency and capacity testing will be Code Tests capable of supporting potential claims of liquidated damages against Manufacturers, if applicable.
5. Steam Generator guarantees associated with MCR will be satisfied by steam turbine VWO flow values, if the steam generator cannot reach MCR due to turbine flow capacity.
6. For steam generator guarantees, steam flows are as identified in the steam generator contract

TABLE L-2.1

Cliffside Unit 6 Field Performance Testing & Equipment Verification Matrix

<u>Steam Generator Supplied</u>	<u>Guarantee</u>	<u>Test Method or Code</u>
NOx	Manufacturer's contract	Certified CEMS
CO	Manufacturer's contract	EPA Reference Test Method 10
VOC	Manufacturer's contract	EPA Reference Test Methods 25 A or 18
AQCS Supplied		
SO2	Manufacturer's contract	Certified CEMS
Mercury	Manufacturer's contract	Certified CEMS
PM10 (Filterable and Condensable)	Manufacturer's contract	As dictated by Manufacturer's Contract
Sulfuric Acid	Manufacturer's contract	As dictated by Manufacturer's Contract
Opacity	Manufacturer's contract	Certified COMS

Table L-2.2: Auxiliary Loads - Basis for Output/Heat Rate Guarantee

AQCS	***
Boiler	***
Condenser Circulating Water Pumps	***
Cooling Tower	***
Generator Step-Up Transformer Loss	***
Condensate Booster Pumps	***
Hotwell Pumps	***
Air Compressors	***
Closed Cooling Water Pumps	***
Fly Ash Handling	***
Raw Water Pumps	***
Material Handling	***
D Heater Drain Pump	***
Auxiliary Transformer Losses	***
Bottom Ash Handling	***
Demineralized Water System	***
F Heater Drain Pump	***
Boiler SBS Injection System (based on 1200 cfm compressed air demand))	***
Removal of Air Compressor from AQCS Scope	***
Feedwater Pump Efficiency	***
Feedwater Pump Turbine Efficiency	***
Coal Unloading/Crushing	***
Sootblowing	***
Reheater Spray	***

EXHIBIT L-3
RELIABILITY TESTING

The Contractor shall perform the following tests prior to Final Completion. Contractor shall submit test procedures, measurement points, acceptance criteria and operating parameters for Owner approval, *** Days prior to the commencement of testing. Use of permanently installed plant instrumentation, in lieu of temporary test instrumentation, where appropriate, is acceptable. Failure to satisfy Test Requirements due to Owner Furnished Equipment shall not be the Contractor's responsibility. It will be the Contractor's responsibility to test, document and verify any such claimed shortfall.

Emission limits provided in the EPC Agreement shall be satisfied at all times during the test.

Contractor shall submit a report of the results of each test required. This report will include the test procedure, measurement data and any calculations or other data required to support successful completion of this test.

1.0 Part Load Test

(Four hour test) – Contractor shall demonstrate Unit 6 will operate in a stable and reliable manner within equipment Manufacturers' specifications.

2.0 Warm and Hot Start Tests

Contractor shall demonstrate that the Unit 6 is able to meet startup and synchronization requirements indicated in Table L-3. The values in Table L-3 represent manufacturer's predictions for the Owner Supplied Steam Generator, Steam Turbine and AQCS equipment. The Test Plan will state actual (but not guaranteed) values. Two warm and two hot start-up tests shall be conducted.

3.0 Ramp Loading and Unloading Tests

Contractor shall demonstrate that Unit 6 is able to meet load ramp rates indicated in Table L-3 under automatic control. The values in Table L-3 represent manufacturer's predictions for the Owner Supplied Steam Generator, Steam Turbine and AQCS equipment. The Test Plan will state actual (but not guaranteed) values.

4.0 Load Change Tests

Contractor shall demonstrate that Unit 6 is able to respond to block load increases in accordance with requirements set forth in Table L-3. The values in Table L-3 represent manufacturer's predictions for the Owner supplied Steam Generator, Steam Turbine and AQCS equipment. The Test Plan will state actual (but not guaranteed) values.

5.0 Governor Droop Tests

Contractor shall demonstrate using specific droop setting values that the turbine control system responds as expected to specific changes in the speed (frequency) of the turbine-generator. Governor Droop Tests shall be specified by turbine-generator manufacturer and approved by Owner.

6.0 AVR Performance Tests

Contractor shall demonstrate the ability of automatic voltage regulation equipment to maintain stability under varying system frequency and voltage conditions within the limits of manufacturer's specifications and in accordance with Owner's system standards, (to be provided later).

7.0 Auxiliary Trip Tests

Contractor shall demonstrate the capability of Unit 6 (with operator intervention) to automatically runback load upon the sudden loss of an operating auxiliary. Such test shall demonstrate that Unit 6 is capable of maintaining expected available capacity with particular auxiliaries out of service. Test shall be conducted with Unit 6 running at maximum load achievable for the configuration prior to the trip. The tests are the following:

Trip one induced draft fan

Trip one forced draft fan

Trip one primary air fan

Trip one pulverizer/feeder without initiation of standby

Trip one circulating water pump

Trip one condensate pump

Bypass each closed feedwater heater, one at a time, with Unit 6 at VWO and normal pressure

8.0 Minimum Stable Load

Coal (twenty-four hour test firing coal)—This test will identify minimum stable load which can be maintained indefinitely without fuel oil support using two (2) mills. Minimum load on coal shall be no greater than 30% of BMCR for fuels as specified in Steam Generator Performance Guarantees.

9.0 Reliability Demonstration

Reliability Demonstration shall mean the operation of Unit 6 by Owner under the technical oversight of Contractor for a period of *** after the Minimum Performance Guarantees with respect to Unit 6 have been met [but prior to Final Completion of Unit 6] by which the Contractor demonstrates to Owner that Unit 6 shall be capable of meeting the reliability criteria set forth in this Exhibit. Notification requirements for this test are the same as Performance Test notification.

The average net electrical output during the Reliability Demonstration shall be maintained and measured at the high side of the main step up transformer. The time

weighted average net electrical output of Unit 6 generated during the Reliability Demonstration period shall be utilized in determining the Demonstration Results. Test results will only be corrected to ambient wet and dry bulb base reference conditions and power factor. This correction procedure may be done using an integrated plant computer model (such as Thermoflow Steam Master).

The acceptance criteria shall be an average of *** during the *** period. This criteria is based on the electrical auxiliary load for major *** equipment as listed in Table L-2.2 of Exhibit L-2. The acceptance criteria will be revised to incorporate changes in any of the Table L-2.2 values due to final equipment selections. Operation is not limited to the ***. Fuels used during the test shall be as specified in the Boiler Performance Guarantees.

If the test is aborted or acceptance criteria electrical demand is not maintained by the Owner, this period shall be exempted from the test results, without extending the required test duration of ***. For example, if Owner cannot provide electrical demand for *** of the *** period, then *** will be used in the calculation of test results.

Table L-3

RELIABILITY TEST TABLE

Test	Criteria
Dispatch Ramp Rate ***	*** (note 1)
Cold Start ***	*** STG Synchronization (note 2)
Warm Start ***	*** STG Synchronization (note 2)
Hot Start ***	*** STG Synchronization (note 2)
STG Sync to Full Load ***	
***	*** (note 2)
***	*** (note 2)

Note 1: "Hot" conditions defined as continuous stable load operation. Excludes startup sequence prior to STG sync.

Note 2: Expected (not guaranteed) values from vendor data. Excludes variable water clean-up time. Values to be revised later, if needed, due to final equipment design.

Exhibit M
Emission Limits

Below is a table showing the guaranteed air emission limits for Units 5.

Unit 5 Emission Limits

Pollutant	Guaranteed Emission Limit (lb/MMBtu)**
Sulfur Dioxide (SO ₂)	*** with *** SO ₂ /MMBtu inlet loading, down to *** outlet concentration, without the addition of organic acid, *** *** removal with *** lb SO ₂ /MMBtu inlet loading, down to *** outlet concentration, with the addition of organic acid, *** Testing will be via EPA Method 6 or 6C based on actual SO ₂ measured upstream of WFGD and in the stack.
Particulates - PM10 (filterable)	*** lb/MMBtu, *** – based on *** lb/MMBtu or lower leaving the existing ID fans *** Testing will be via EPA Method 5B for filterable particulate in the stack. Method 5 or other suitable method to be agreed upon will be used for particulate inlet to the WFGD.

* This is based on all three (3) Recycle levels in operation

** As measured by the average of three 4-hour (nominal) tests

Below is a table showing the guaranteed and the final air permit emission limits for Unit 6.

Unit 6 Emission Limits

Pollutant	Final Permit Emission Limit ¹ (lb/MMBtu)	Guaranteed Emission Limit * (lb/MMBtu)	Guaranteed Removal * (%)	Reference Test Method
Sulfur Dioxide (SO ₂)	***	***	***	Reference Test Method 6 or 6C. Removal efficiency is based on actual SO ₂ measured at AQCS inlet.
Nitrogen Oxide (NO _x)	***	***	N/A	Reference Test Method 7 or 7E
PM10 (filterable)	***	***	N/A	Reference Test Method 5B
PM10 (filterable & condensable)	***	***	N/A	EPA Reference Test Method 5B (front half catch) for filterable particulate only and condensables per EPA Method 25A for the VOC portion and the Controlled Condensate Method (CCM) for the sulfuric acid contribution.
Volatile Organic Compounds (VOC's)	***	***	N/A	EPA Reference Method 25A or Method 18 ***
Pollutant	Final Permit Emission Limit ² (lb/MMBtu)	Guaranteed Emission Limit * (lb/MMBtu)	Guaranteed Removal * (%)	Reference Test Method
Carbon Monoxide (CO)	***	***	N/A	EPA Reference Method 10 ***
Sulfuric Acid (H ₂ SO ₄)	***	***	N/A	EPA Reference Method 8 or controlled condensation method as described in the EPA publication "Miniature Acid Condensation System: Design and Operation" EPA/600/3-84/056 April 1984, (NTIS PB8418288230) or ASTM D3226 controlled condensation procedure.. In lieu of controlled condensation method, EPA method 039 may be used if demonstrated and proven to ALSTOM's satisfaction prior to the time of testing. Minimum 6 hours

1 ***

* As measured by three 4-hour tests and subject to approval from Owner Equipment Contracts

2 ***

* As measured by three 4-hour tests and subject to approval from Owner Equipment Contracts

Pollutant	Final Permit Emission Limit ³ (lb/MMBtu)	Guaranteed Emission Limit *	Guaranteed Removal * (%)	Reference Test Method
Mercury (Hg)	***		***	The total mercury content in the coal as fired shall be determined using ASTM method D6414-01 or ASTM Method D3684 -01, and the stack mercury emissions shall be measured using ASTM D6784-02, EPA 40CFR60 part 75, Appendix K (Ontario Hydro Method) or mutually agreed Certified Mercury CEMS if available. The total mercury content of the coal shall be determined from a representative, composite as fired fuel, sample that is collected over the mercury stack emission test duration and shall be converted and expressed in terms of lb/10 ¹² Btu (HHV) of the composite fuel blend sample tested. The mercury stack emissions shall be converted to and expressed in terms of EPA F- Factor methodology in accordance with 40CFR 60 Appendix A, methods 2,3 and 5 and based on the composite fuel blend analysis.
Opacity	***		***	Certified opacity monitors will be used downstream of the fabric filter and upstream of the WFGD. The measured value will be related to the stack diameter for compliance with guarantee value. Stack diameter is to be 29.0 diameter or less.

3 ***

* As measured by three 4-hour tests and subject to approval from Owner Equipment Contracts

<u>Pollutant</u>	<u>Final Permit Emission Limit⁴ (lb/MMBtu) ***</u>	<u>Guaranteed Emission Limit * (lb/MMBtu) ***</u>	<u>Guaranteed Removal * (%) ***</u>	<u>Reference Test Method</u>
Lead (Pb)				Minimum 6 hours

Other considerations

- * The recommended federal guidance for location of opacity monitoring in ducts is not met with the current site arrangement. Owner, Contractor and Alstom will work together to demonstrate that the location is acceptable through modeling and this will be submitted to DENR for acceptance.

4 ***

- * As measured by three 4-hour tests and subject to approval from Owner Equipment Contracts

Effluent Characteristics	Discharge Limitations		Monitoring Requirements		
	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type	Sample Location ¹
Flow (MGD)			Weekly	Calculation or similar readings	T
Oil and Grease	***	***	Monthly	Grab	E
Total Suspended Solids ²	***	***	Monthly	Grab	E
Total Recoverable Copper	***	***	See Note 3	Grab	E
Total Recoverable Iron	***	***	See Note 3	Grab	E
Total Recoverable Arsenic			Monthly	Grab	E
Total Recoverable Selenium			Monthly	Grab	E
Chronic Toxicity ⁴			Quarterly	Grab	E
Total Nitrogen (NO ₂ +NO ₃ +TKN)			Quarterly	Grab	E
Total Phosphorus			Quarterly	Grab	E
pH ⁵			2/Month	Grab	E
Total Cadmium ⁶			Weekly	Grab	E
Total Chromium ⁶			Weekly	Grab	E
Total Mercury ⁶			Weekly	Grab	E
Total Nickel ⁶			Weekly	Grab	E
Total Silver ⁵			Weekly	Grab	E
Total Zinc ⁶			Weekly	Grab	E

Notes:

1. ***
2. ***
3. ***
4. ***
5. ***
6. ***

AGREEMENT

This Agreement (the "Agreement"), which is effective as of March 31, 2008, is entered into by and between Henry B. Barron, Jr. (the "Executive") and Duke Energy Corporation, together with its subsidiaries and/or affiliated entities, predecessors, successors or assigns to the foregoing (individually and collectively, "Duke Energy"), with the mutual exchange of promises as consideration (collectively, the "Parties").

Recitals

WHEREAS, the Executive retired on March 31, 2008 (the "Retirement Date") at which time his employment with Duke Energy terminated;

WHEREAS, in connection with the Executive's retirement, Duke Energy is willing to provide certain consideration to the Executive, provided that the Executive (i) executes this Agreement, and (ii) upon presentation by Duke Energy, executes and does not timely revoke a waiver and release, in the form attached to this Agreement as Exhibit A (the "Release"), of all claims that the Executive might assert against Duke Energy and certain other entities and individuals as set forth therein; and

WHEREAS, the Parties have agreed to enter into this Agreement, which has been specifically negotiated between the Executive and Duke Energy.

NOW, THEREFORE, Duke Energy and the Executive enter into the following Agreement:

1. Duke Energy's Waiver. Duke Energy agrees to waive its right to enforce the non-compete provisions and the dividend repayment obligations contained in the equity awards granted to the Executive under the Duke Energy Corporation 1998 Long-Term Incentive Plan and the Duke Energy Corporation 2006 Long-Term Incentive Plan (the "Equity Grants").

2. Executive's Waiver of Claims. The Executive agrees to waive all claims that the Executive might assert against Duke Energy and certain other entities and individuals by executing a waiver in the form of the Release upon Duke Energy's provision of such document.

3. Breach of This Agreement or the Release of Claims. In the event the Executive breaches the terms of this Agreement, fails to execute the Release, revokes his execution of the Release or brings a claim waived in the Release, Duke Energy's waiver of its right to enforce the non-compete and the dividend repayment obligations contained in the Equity Awards shall be null and void and the Executive will be required to immediately repay Duke Energy the \$115,600 of dividends paid in connection with the restricted stock award granted to the Executive on February 1, 2006. In the event that Duke Energy breaches its obligations under this Agreement, any future obligation of the Executive for the repayment of the above-mentioned dividends shall be null and void.

4. Restrictive Covenants

a. Non-Solicitation. The Executive agrees that during the period beginning on the Retirement Date and ending on April 4, 2011 (the "Restriction Period"), he will not in any manner, directly or indirectly, induce or attempt to induce any employee of Duke Energy to quit or abandon his or her employment with Duke Energy. This restriction is not intended to prohibit the Executive's future employer(s) from hiring, or the Executive from participating in the hiring of, any Duke Energy employees who respond to or apply for posted or advertised openings with Executive's future employer(s), or who independently pursue opportunities with the Executive's future employer(s).

b. Non-Disparagement. Except as required by subpoena or other legal process (in which event the Executive will give the Chief Legal Officer of Duke Energy Corporation prompt notice of such subpoena or other legal process in order to permit Duke Energy or any affected individual to seek appropriate protective orders), the Executive further agrees that he will refrain from publishing or providing any oral or written statements about Duke Energy, about any program or policy or initiative of Duke Energy, or about any individual who, at anytime during the period January 1, 2005 through the Retirement Date, served as an executive officer (i.e., an officer subject to the reporting requirements of Section 16(a) of the Securities Exchange Act of 1934, as amended) and/or a member of the Board of Directors of Duke Energy Corporation or its predecessors relating to the performance of any such individual of his or her duties for Duke Energy or anything about him or her personally, which could impact his or her reputation or standing in the community, that are disparaging, slanderous, libelous or defamatory, or that constitute a misappropriation of the name or likeness of any above-mentioned party. Within 30 days of receipt of a written request from the Executive, Duke Energy agrees to provide the Executive with a list of the current and former executive officers and/or members of the Board of Directors of Duke Energy Corporation or its predecessors that are covered by the non-disparagement covenant set forth in the immediately preceding sentence. Similarly, except as required by subpoena or other legal process (in which event Duke Energy will give the Executive prompt notice of such subpoena or other legal process in order to permit Executive to seek appropriate protective orders), Duke Energy further agrees that it will not publish or make any oral or written statements about the Executive regarding the performance of his duties as a Duke Energy employee or otherwise regarding his employment with Duke Energy, or anything about him or his family personally, which could impact his reputation or standing in the community, that are disparaging, slanderous, libelous or defamatory, or that constitute a misappropriation of the name or likeness of the Executive. In the event that Duke Energy breaches this covenant, the Executive has the right to respond to those statements and/or defend himself as necessary and appropriate. In the event that the Executive breaches this covenant, Duke Energy has the right to respond to those statements and/or defend itself as necessary and appropriate.

5. Nondisclosure of Confidential Information. The Executive acknowledges that the information, observations and data obtained by him while employed by Duke Energy concerning the business or affairs of Duke Energy (unless and except to the extent the foregoing become generally known to or available for use by other members of the nuclear power industry other than as a result of the Executive's acts or omissions to act) (hereinafter defined as "Confidential Information") are the property of Duke Energy and he was and is prohibited from using, disclosing or misappropriating (on behalf of himself or any other person or entity) such Confidential Information during and after the separation of his employment from Duke Energy. For purposes of clarity, the fact of, or any information regarding any investigation undertaken by Duke Energy or completed on Duke Energy's behalf regarding Duke Energy's business or the conduct of Duke Energy's business relating to legal, compliance, or risk management issues shall be deemed Confidential Information unless and except to the extent the foregoing become generally known to and available for use by the public other than as a result of the Executive's acts or omissions to act. Therefore, the Executive agrees that he shall not use or disclose any Confidential Information without the prior written consent of the Chief Legal Officer or the Chief Executive Officer of Duke Energy Corporation (which may be withheld for any reason or no reason) unless and except to the extent that such disclosure is required by any subpoena or other legal process (in which event the Executive will give the Chief Legal Officer of Duke Energy Corporation prompt notice of such subpoena or other legal process in order to permit Duke Energy to seek appropriate protective orders). The Executive's obligations under this Section 5 are in addition to, and not in limitation of or preemption of, all other obligations of confidentiality which the Executive may have to Duke Energy under general legal or equitable principles, and federal, state or local law. The Parties acknowledge and agree that, notwithstanding any other provision of this Agreement, Executive remains free to report or otherwise communicate any nuclear safety concern, any work place safety concern, or any public safety concern to the Nuclear Regulatory Commission, United States Department of Labor or any other appropriate federal or state government agency.

6. Intellectual Property. The Executive acknowledges that any and all writing, documents, inventions (whether or not patentable), discoveries, trade secrets, computer programs or instructions (whether in source code, object code, or any other form), algorithms, formulae, plans, customer lists, memoranda, tests, research, designs, specifications, models, data, diagrams, flow charts, and/or techniques (whether reduced to written form or otherwise) that the Executive made, conceived, discovered or developed either solely or jointly with any other person, at any time during the term of his employment, whether during working hours or at Duke Energy's facilities or at any other time or location, and whether upon the request or suggestion of Duke Energy or otherwise, that relate to or are useful in any way in connection with any business carried on by Duke

Energy (collectively, "Intellectual Work Product") will be the sole and exclusive property of Duke Energy. The Executive will promptly and fully disclose all Intellectual Work Product to Duke Energy. Any Intellectual Work Product not generally known to or available for use by the other members of the nuclear power industry shall be considered to be Confidential Information as defined herein. The Executive acknowledges that all Intellectual Work Product that is copyrightable will be considered a work made for hire under United States Copyright Law. To the extent that any copyrightable Intellectual Work Product may not be considered a work made for hire under the applicable provisions of the Copyright Law, or to the extent that, notwithstanding the foregoing provisions, the Executive may retain an interest in any Intellectual Work Product that is not copyrightable, the Executive hereby irrevocably assigns and transfers to Duke Energy any and all right, title, or interest that the Executive may have in the Intellectual Work Product under copyright, patent, trade secret and trademark law, in perpetuity or for the longest period otherwise permitted by law, without the necessity of further consideration. Duke Energy will be entitled to obtain and hold in its own name all copyrights, patents, trade secrets and trademarks with respect thereto. At the sole request and expense of Duke Energy, the Executive will assist Duke Energy in acquiring and maintaining copyright, patent, trade secret and trademark protection upon, and confirming its title to, such Intellectual Work Product. The Executive's assistance will include signing all applications for copyright and patent applications and other papers, cooperating in legal proceedings and taking any other steps considered desirable by Duke Energy. The Executive and Duke Energy are not aware of any Intellectual Work Product developed by Executive while employed by Duke Energy, either alone or in conjunction with other Duke Energy employees or agents. Duke Energy acknowledges and agrees that this Section 6 does not apply to intellectual property developed by the Executive after the Retirement Date.

7. Acknowledgement. Executive acknowledges and agrees that his obligations under this Agreement are in addition to, and not in limitation of or preemption of, (a) all other obligations of confidentiality and/or otherwise which Executive may have to Duke Energy as Executive's employer and/or former employer, and (b) all rights and/or protections afforded Duke Energy as Executive's employer and/or former employer, under general legal or equitable principles, and federal, state or local law, including, but not limited to, the North Carolina Trade Secrets Protection Act.

8. Adequate Consideration. The Executive agrees that the benefits described in this Agreement constitute good, valuable and sufficient consideration and exceed in kind and scope that to which the Executive would otherwise have been legally entitled.

9. Governing Law. This Agreement shall be interpreted, construed and governed according to the laws of the State of North Carolina, without reference to conflicts of law principles thereof.

10. Severability. It is understood by Executive and Duke Energy that if any part of this Agreement is held by a court to be invalid, the remaining portions shall not be affected.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, effective as of the date first written above.

DUKE ENERGY CORPORATION

EXECUTIVE

By: Marc E. Manly
Its: Group Executive and Chief Legal Officer

Henry B. Barron, Jr.

IMPORTANT NOTICE-READ BEFORE SIGNING RELEASE OF CLAIMS

Before signing the Release in order to receive severance benefits, you should be aware that a proposed class action is pending in federal district court in South Carolina. It alleges violations of the Age Discrimination in Employment Act and the Employee Retirement Income Security Act ("ERISA") arising out of the conversion of the Duke Power Company Employees' Retirement Plan into the Duke Power Company Retirement Cash Balance Plan and the administration of the Duke Energy Cash Balance Retirement Plan. The plaintiffs seek to represent a proposed class defined as "all present and/or former employees of Duke Energy who participated in the Duke Energy Retirement Cash Balance Plan on or after January 1, 1997." The case is entitled *George et al. v. Duke Energy Cash Balance Retirement Plan and Duke Energy Corporation*, Case No. 806-cv-00373-JFF ("George"). Please note that if you sign and do not revoke the Release within the specified time, the Company will take the position as specified in paragraph 7 of the Release that you have waived your potential claims and damages in that lawsuit. **THE COMPANY STRONGLY ADVISES YOU TO CONSULT LEGAL COUNSEL BEFORE SIGNING THE RELEASE.** The lawyers who filed the class action are as follows:

James R. Gilreath
William M. Hogan
THE GILREATH LAW FIRM, P.A.
110 Lavinia Avenue
P. O. Box 2147
Greenville, SC 29602
(864) 242-4727

Charles W. Whetstone, Jr.
Cheryl F. Perkins
WHETSTONE MYERS PERKINS & YOUNG LLC
1303 Blanding Street (29201)
P. O. Box 8086
Columbia, SC 20202
(893) 799-9400

Mona Lisa Wallace
WALLACE & GRAHAM, P.A.
525 North Main Street
Salisbury, North Carolina 28144
(704) 633-5244

Carl F. Muller
Andrew B. Cogburn
Wallace Lightsey
WYCHE, BURGESS, FREEMAN
& PARHAM, P.A.
44 East Camperdown Way
Greenville, SC 29601
(864) 242-8200

A. Hoyt Rowell, III
Daniel O. Myers
T. Christopher Tuck
Robert S. Wood
RICHARDSON, PATRICK
WESTBROOK & BRICKMAN, LLC
P.O. Box 1007
Mt. Pleasant, SC 29465
(843) 727-6500

RELEASE OF CLAIMS

This RELEASE OF CLAIMS (the "Release") is executed and delivered by Henry B. Barron, Jr. (the "Executive") to DUKE ENERGY CORPORATION (together with its Affiliates and any successors thereto, the "Company"). The term "Company" in this Release also includes any employee benefit plan established or maintained by Duke Energy Corporation or any of its Affiliates, and any administrator, trustee, fiduciary or service provider of any such plan).

In consideration of the agreement by the Company to waive certain rights as set forth in the agreement between Executive and the Company dated March 31, 2008 (the "Agreement"), which the Executive acknowledges is consideration to which he would not otherwise be entitled, the Executive hereby agrees as follows:

Section 1. Release and Covenant. The Executive, of his own free will, voluntarily and unconditionally releases and forever discharges the Company, its subsidiaries, parents, affiliates, their directors, officers, employees, agents, stockholders, successors and assigns (both individually and in their official capacities with the Company) (the "Company Releasees") from any and all past or present causes of action, suits, agreements or other claims which the Executive, his dependents, relatives, heirs, executors, administrators, successors and assigns has or may hereafter have from the beginning of time to the date hereof against the Company or the Company Releasees upon or by reason of any matter, cause or thing whatsoever, including, but not limited to, any matters arising out of his employment by the Company and the cessation of said employment, and including, but not limited to, any alleged violation of the Civil Rights Acts of 1964 and 1991, the Equal Pay Act of 1963, the Employee Retirement Income Security Act of 1974, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Older Workers Benefit Protection Act of 1990, the Americans with Disabilities Act of 1990 and any other federal, state or local law, regulation or ordinance, or public policy, contract or tort law having any bearing whatsoever on the terms and conditions of employment or termination of employment. This Release shall not, however, constitute a waiver of any of the Executive's rights under the Agreement nor a waiver of any claims that might arise after the date the Release is signed.

Section 2. Due Care. The Executive acknowledges that he has received a copy of this Release prior to its execution and has been advised hereby of his opportunity to review and consider this Release for 21 days prior to its execution. The Executive further acknowledges that he has been advised hereby to consult with an attorney prior to executing this Release. The Executive enters into this Release having freely and knowingly elected, after due consideration, to execute this Release and to fulfill the promises set forth herein. This Release shall be revocable by the Executive during the 7-day period following its execution, and shall not become effective or enforceable until the expiration of such 7-day period. In the event of such a revocation, the Executive shall not be entitled to the consideration for this Release set forth above.

Section 3. Nonassignment of Claims; Proceedings. The Executive represents and warrants that there has been no assignment or other transfer of any interest in any claim which the Executive may have against the Company or any of the Company Releasees. The Executive represents that he has not commenced or joined in any claim, charge, action or proceeding whatsoever against the Company or any of the Company Releasees arising out of or relating to any of the matters set forth in this Release. The Executive further agrees that he will not seek or be entitled to any personal recovery in any claim, charge, action or proceeding whatsoever against the Company or any of the Company Releasees for any of the matters set forth in this Release.

Section 4. Reliance by Employee. The Executive acknowledges that, in his decision to enter into this Release, he has not relied on any representations, promises or agreements of any kind, including oral statements by representatives of the Company or any of the Company Releasees, except as set forth in this Release and the Letter Agreement.

Section 5. Nonadmission. Nothing contained in this Release will be deemed or construed as an admission of wrongdoing or liability on the part of the Company or any of the Company Releasees.

Section 6. Communication of Safety Concerns. Notwithstanding any other provision of this Release and the Agreement, the Executive remains free to report any suspected instance of illegal activity of any nature, any nuclear safety concern, any workplace safety concern, or any public safety concern to the United States Nuclear Regulatory Commission, the United States Department of Labor, or any other federal or state governmental agency. Further, nothing in this Release or the Agreement prohibits the Executive from participating in any way in any state or federal administrative, judicial or legislative proceeding or investigation or filing a charge of discrimination with an administrative agency, provided, however, that should an agency pursue any claims on the Executive's behalf, by signing and not revoking this Release the Executive has waived his right to any recovery, monetary or otherwise. Should the Executive receive a subpoena in connection with any federal or state administrative, judicial, or legislative proceeding involving the Company, the Executive shall, if permitted by law, provide the Company with notice of the subpoena, including a copy of the subpoena, with twenty-four (24) hours of receipt of the subpoena. The notice shall be provided to Duke Energy Corporation's Chief Legal Officer.

Section 7. Cash Balance Litigation. Executive may or may not know that a class action lawsuit was commenced on February 6, 2006. Here is the caption of that case: *Kenneth Walton George, Dennis Reed Bowen, Clyde Freeman, George Moyers, Jim Matthews, and Henry Miller, on their own behalf and on behalf of a class of persons similarly situated v. Duke Energy Retirement Cash*

EXHIBIT A

Balance Plan and Duke Energy Corporation, Case No. 3:06-cv-00373-HFF, pending in the United States District Court for the District of South Carolina. This paragraph deals with that lawsuit, and any lawsuit asserting similar claims (the "Cash Balance Plan Litigation"). The Cash Balance Plan Litigation seeks additional benefits under the Duke Energy Retirement Cash Balance Plan (the "Cash Balance Plan"), and other relief. The Company and the Cash Balance Plan intend to defend themselves vigorously in the Cash Balance Plan Litigation and take the position that no damages should result from the litigation. Executive should consider the Cash Balance Plan Litigation in connection with this Release, because the Company and the Cash Balance Plan will take the position that this Release completely releases Executive's rights in the Cash Balance Plan Litigation. Executive is free to consult with counsel representing the plaintiff class in the Cash Balance Plan Litigation, whose names and addresses are attached. Executive may, of course, contact any other lawyer. Executive is encouraged to discuss this matter with the lawyer of his or his own choosing.

Section 8. Governing Law. This Release shall be interpreted, construed and governed according to the laws of the State of North Carolina, without reference to conflicts of law principles thereof.

Section 9. Severability. It is understood by Executive and the Company that if any part of this Release of claims is held by a court to be invalid, the remaining portions shall not be affected.

This RELEASE is executed by the Executive and delivered to the Company on _____.

Henry B. Barron, Jr.

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, James E. Rogers, certify that:

- 1) I have reviewed this quarterly report on Form 10-Q of Duke Energy Corporation;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2008

/s/ JAMES E. ROGERS

James E. Rogers
Chairman, President and
Chief Executive Officer

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, David L. Hauser, certify that:

- 1) I have reviewed this quarterly report on Form 10-Q of Duke Energy Corporation;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2008

/s/ DAVID L. HAUSER

David L. Hauser
Group Executive and
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Duke Energy Corporation ("Duke Energy") on Form 10-Q for the period ending March 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James E. Rogers, Chairman, President and Chief Executive Officer of Duke Energy, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Duke Energy.

/s/ JAMES E. ROGERS

James E. Rogers

Chairman, President and Chief Executive Officer
May 9, 2008

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Duke Energy Corporation ("Duke Energy") on Form 10-Q for the period ending March 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David L. Hauser, Group Executive and Chief Financial Officer of Duke Energy, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Duke Energy.

/s/ DAVID L. HAUSER
David L. Hauser
Group Executive and Chief Financial Officer
May 9, 2008

Created by 10KWizard www.10KWizard.com