Large Filing Separator Sheet

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

Date Filed: 7/25/2008

Section: 3 of 4

Number of Pages: 141

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

(regardless of whether enforceability is considered in a proceeding in equity or at law).

(j) The Notes have been duly authorized and when executed by the Corporation and, when authenticated by the Trustee, in the manner provided in the Indenture and delivered against payment therefor, will constitute valid and legally binding obligations of the Corporation, enforceable against the Corporation in accordance with their terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law) and are entitled to the benefits afforded by the Indenture in accordance with the terms of the Indenture and the Notes.

(k) Any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument filed or incorporated by reference as an exhibit to the Registration Statement or the Annual Report on Form 10-K of the Corporation for the fiscal year ended December 31, 2007, except to the extent that such agreement is no longer in effect or to the extent that neither the Corporation nor any subsidiary of the Corporation is currently a party to such agreement, are all indentures, mortgages, deeds of trust, loan agreements or other agreements or instruments that are material to the Corporation.

(l) The Corporation is not required to be qualified as a foreign corporation to transact business in Indiana, North Carolina, Ohio and South Carolina.

3. *Purchase, Sale and Delivery of Notes.* On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Corporation agrees to sell to the Underwriters, and the Underwriters agree, severally and not jointly, to purchase from the Corporation, at a purchase price of (i) 99.203% of the principal amount of the 2013 Notes plus accrued interest from June 16, 2008 (and in the manner set forth below) and (ii) 99.093% of the principal amount of the 2018 Notes plus accrued interest from June 16, 2008 (and in the manner set forth below), the respective principal amount of Notes set forth opposite the names of the Underwriters in Schedule A hereto plus the respective principal amount of additional Notes which each such Underwriter may become obligated to purchase pursuant to the provisions of Section 8 hereof. The Underwriters hereby agree to reimburse the Corporation in an amount equal to $1,125,000, including in respect of expenses incurred by us in connection with the offering

Payment of the purchase price for the Notes to be purchased by the Underwriters and the reimbursement shall be made at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W. Washington, D.C. 20005, or at such other place as shall be mutually agreed upon by the Representatives and the Corporation, at 10:00 a.m., New York City time, on June 16, 2008 or such other time and date as shall be agreed upon in writing by the Corporation and the Representatives (the "Closing Date"). All other documents referred to herein that are to be delivered at the Closing Date shall be delivered at that time at the offices of Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019. Payment shall be made to the Corporation by

wire transfer in immediately available funds, payable to the order of the Corporation against delivery of the Notes, in fully registered form, to you or upon your order. The 2013 Notes and the 2018 Notes shall each be delivered in the form of one or more global certificates in aggregate denomination equal to the aggregate principal amount of the respective 2013 Notes and 2018 Notes upon original issuance and registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC").

4. *Offering by the Underwriters.* It is understood that the several Underwriters propose to offer the Notes for sale to the public as set forth in the Pricing Disclosure Package and the Prospectus.

5. *Covenants of the Corporation.* The Corporation covenants and agrees with the several Underwriters that:

(a) The Corporation will cause any Preliminary Prospectus and the Prospectus to be filed pursuant to, and in compliance with, Rule 424(b) of the 1933 Act Regulations, and advise the Underwriters promptly of the filing of any amendment or supplement to the Registration Statement, any Preliminary Prospectus or the Prospectus and of the institution by the Commission of any stop order proceedings in respect of the Registration Statement, and will use its best efforts to prevent the issuance of any such stop order and to obtain as soon as possible its lifting, if issued.

(b) If at any time when a prospectus relating to the Notes (or the notice referred to in Rule 173(a) of the 1933 Act Regulations) is required to be delivered under the 1933 Act any event occurs as a result of which the Pricing Disclosure Package or the Prospectus as then amended or supplemented would include an untrue statement of a material fact, or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Pricing Disclosure Package or the Prospectus to comply with the 1933 Act, the Corporation promptly will prepare and file with the Commission an amendment, supplement or an appropriate document pursuant to Section 13 or 14 of the 1934 Act which will correct such statement or omission or which will effect such compliance.

(c) The Corporation, during the period when a prospectus relating to the Notes is required to be delivered under the 1933 Act, will timely file all documents required to be filed with the Commission pursuant to Section 13 or 14 of the 1934 Act.

(d) Without the prior consent of the Underwriters, the Corporation has not made and will not make any offer relating to the Notes that would constitute a "free writing prospectus" as defined in Rule 405 of the 1933 Act Regulations, other than a Permitted Free Writing Prospectus; each Underwriter, severally and not jointly, represents and agrees that, without the prior consent of the Corporation, it has not made and will not make any offer relating to the Notes that would constitute a

"free writing prospectus" as defined in Rule 405 of the 1933 Act Regulations, other than a Permitted Free Writing Prospectus or a free writing prospectus that is not required to be filed by the Corporation pursuant to Rule 433 of the 1933 Act Regulations; any such free writing prospectus (which shall include the pricing term sheet discussed in Section 5(e) below), the use of which has been consented to by the Corporation and the Underwriters, is listed on Schedule B and herein called a "Permitted Free Writing Prospectus." The Corporation represents that it has treated or agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus," as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

(e) The Corporation agrees to prepare a term sheet specifying the terms of the Notes not contained in any Preliminary Prospectus, substantially in the form of Schedule C hereto and approved by the Representatives on behalf of the Underwriters, and to file such pricing term sheet as an "issuer free writing prospectus" pursuant to Rule 433(b) of the 1933 Act Regulations prior to the close of business two business days after the date hereof.

(f) The Corporation agrees that if at any time following the issuance of a Permitted Free Writing Prospectus any event occurs as a result of which such Permitted Free Writing Prospectus would conflict with the information (not superseded or modified as of the Effective Date) in the Registration Statement, the Pricing Disclosure Package or the Prospectus or would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances then prevailing, not misleading, the Corporation will give prompt notice thereof to the Underwriters and, if requested by the Underwriters, will prepare and furnish without charge to each Underwriter a free writing prospectus or other document, the use of which has been consented to by the Underwriters, which will correct such conflict, statement or omission.

(g) The Corporation will make generally available to its security holders, in each case as soon as practicable but not later than 60 days after the close of the period covered thereby, earnings statements (in form complying with the provisions of Rule 158 under the 1933 Act, which need not be certified by independent certified public accountants unless required by the 1933 Act) covering (i) a twelve-month period beginning not later than the first day of the Corporation's fiscal quarter next following the effective date of the Registration Statement and (ii) a twelve-month period beginning not later than the first day of the Corporation's fiscal quarter next following the date of this Agreement.

(h) The Corporation will furnish to you, without charge, copies of the Registration Statement (four of which will include all exhibits other than those incorporated by reference), the Pricing Disclosure Package and the Prospectus, and all

amendments and supplements to such documents, in each case as soon as available and in such quantities as you reasonably request.

(i) The Corporation will arrange or cooperate in arrangements for the qualification of the Notes for sale under the laws of such jurisdictions as you designate and will continue such qualifications in effect so long as required for the distribution; provided, however, that the Corporation shall not be required to qualify as a foreign corporation or to file any general consents to service of process under the laws of any state where it is not now so subject.

(j) The Corporation will pay all expenses incident to the performance of its obligations under this Agreement including (i) the printing and filing of the Registration Statement and the printing of this Agreement and any Blue Sky Survey, (ii) the preparation and printing of certificates for the Notes, (iii) the issuance and delivery of the Notes as specified herein, (iv) the fees and disbursements of counsel for the Underwriters in connection with the qualification of the Notes under the securities laws of any jurisdiction in accordance with the provisions of Section 5(i) and in connection with the preparation of the Blue Sky Survey, such fees not to exceed $5,000, (v) the printing and delivery to the Underwriters, in quantities as hereinabove referred to, of copies of the Registration Statement and any amendments thereto, of any Preliminary Prospectus, of the Prospectus, of any Permitted Free Writing Prospectus and any amendments or supplements thereto, (vi) any fees charged by independent rating agencies for rating the Notes, (vii) any fees and expenses in connection with the listing of the Notes on the New York Stock Exchange, (viii) any filing fee required by the Financial Industry Regulatory Authority, (ix) the costs of any depository arrangements for the Notes with DTC or any successor depositary and (x) the costs and expenses of the Corporation relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Notes, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Corporation, travel and lodging expenses of the Underwriters and officers of the Corporation and any such consultants, and the cost of any aircraft chartered in connection with the road show; provided, however, the Underwriters shall reimburse a portion of the costs and expenses referred to in this clause (x).

6. *Conditions of the Obligations of the Underwriters.* The obligations of the several Underwriters to purchase and pay for the Notes will be subject to the accuracy of the representations and warranties on the part of the Corporation herein, to the accuracy of the statements of officers of the Corporation made pursuant to the provisions hereof, to the performance by the Corporation of its obligations hereunder and to the following additional conditions precedent:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) within the applicable time period prescribed for filing by the 1933 Act Regulations and in accordance herewith and each Permitted Free Writing

Prospectus shall have been filed by the Corporation with the Commission within the applicable time periods prescribed for such filings by, and otherwise in compliance with, Rule 433 of the 1933 Act Regulations.

(b) On or after the Applicable Time and prior to the Closing Date, no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose or pursuant to Section 8A of the 1933 Act shall have been instituted or, to the knowledge of the Corporation or you, shall be threatened by the Commission.

(c) On or after the Applicable Time and prior to the Closing Date, the rating assigned by Moody's Investors Service, Inc. or Standard & Poor's Ratings Services to any debt securities or preferred stock of the Corporation as of the date of this Agreement shall not have been lowered.

(d) Since the respective most recent dates as of which information is given in the Pricing Disclosure Package and the Prospectus and up to the Closing Date, there shall not have been any material adverse change in the condition of the Corporation, financial or otherwise, except as reflected in or contemplated by the Prospectus, and, since such dates and up to the Closing Date, there shall not have been any material transaction entered into by the Corporation other than transactions contemplated by the Pricing Disclosure Package and the Prospectus and transactions in the ordinary course of business, the effect of which in your reasonable judgment is so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Notes on the terms and in the manner contemplated by the Pricing Disclosure Package and the Prospectus.

(e) You shall have received an opinion of Robert T. Lucas III, Esq., Associate General Counsel of the Corporation, dated the Closing Date, to the effect that:

(i) Each of the Principal Subsidiaries, other than Duke Energy Carolinas, LLC, has been duly incorporated and is validly existing in good standing under the laws of the jurisdiction of its incorporation has the respective corporate power and authority and foreign qualifications necessary to own its properties and to conduct its business as described in the Pricing Disclosure Package and the Prospectus. Duke Energy Carolinas, LLC has been duly organized and is validly existing and in good standing as a limited liability company under the laws of the State of North Carolina and has full limited liability company power and authority necessary to own its properties and to conduct its business as described in the Pricing Disclosure Package and the Prospectus.

(ii) Each of the Corporation and the Principal Subsidiaries is duly qualified to do business in each jurisdiction in which the ownership or leasing of its property or the conduct of its business requires such qualification, except where the failure to so qualify, considering all such cases in the aggregate,

does not have a material adverse effect on the business, properties, financial condition or results of operations of the Corporation and its subsidiaries taken as a whole.

(iii) The Registration Statement became effective upon filing with the Commission pursuant to Rule 462 of the 1933 Act Regulations, and, to the best of such counsel's knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or threatened under the 1933 Act.

(iv) The descriptions in the Registration Statement, the Pricing Disclosure Package and the Prospectus of any legal or governmental proceedings are accurate and fairly present the information required to be shown, and such counsel does not know of any litigation or any legal or governmental proceeding instituted or threatened against the Corporation or any of its Principal Subsidiaries or any of their respective properties that would be required to be disclosed in the Registration Statement, the Pricing Disclosure Package or the Prospectus and is not so disclosed.

(v) This Agreement has been duly authorized, executed and delivered by the Corporation.

(vi) The execution, delivery and performance by the Corporation of this Agreement, the Indenture and the issue and sale of the Notes will not violate or contravene any of the provisions of the Certificate of Incorporation or By-Laws of the Corporation or any statute or any order, rule or regulation of which such counsel is aware of any court or governmental agency or body having jurisdiction over the Corporation or any of its Principal Subsidiaries or any of their respective property, nor will such action conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument known to such counsel to which the Corporation or any of its Principal Subsidiaries is a party or by which any of them or their respective property is bound or to which any of its property or assets is subject which affects in a material way the Corporation's ability to perform its obligations under this Agreement, the Indenture and the Notes.

(vii) The Indenture has been duly authorized, executed and delivered by the Corporation and, assuming the due authorization, execution and delivery thereof by the Trustee, constitutes a valid and legally binding instrument of the Corporation, enforceable against the Corporation in accordance with its terms.

(viii) The Notes have been duly authorized, executed and issued by the Corporation and, when authenticated by the Trustee, in the manner

provided in the Indenture and delivered against payment therefor, will constitute valid and legally binding obligations of the Corporation enforceable against the Corporation in accordance with their terms, and are entitled to the benefits afforded by the Indenture in accordance with the terms of the Indenture and the Notes.

(ix) No consent, approval, authorization, order, registration or qualification is required to authorize, or for the Corporation to consummate the transactions contemplated by this Agreement, except for such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Notes by the Underwriters and except as required in Condition 41 of the order of the North Carolina Utilities Commission dated March 24, 2006, in Docket No. E-7, sub 795, which consent has been obtained.

Such counsel may state that his opinions in paragraphs (vii) and (viii) are subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law). Such counsel shall state that nothing has come to his attention that has caused him to believe that each document incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, when filed, was not, on its face, appropriately responsive, in all material respects, to the requirements of the 1934 Act and the 1934 Act Regulations. Such counsel shall also state that nothing has come to his attention that has caused him to believe that (i) the Registration Statement, including the Rule 430B Information, as of its effective date and at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) of the 1933 Act Regulations, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Pricing Disclosure Package at the Applicable Time contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading or (iii) that the Prospectus or any amendment or supplement thereto, as of the date it was filed with, or transmitted for filing to, the Commission and at the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Such counsel may also state that, except as otherwise expressly provided in such opinion, he does not assume any responsibility for the accuracy, completeness or fairness of the statements contained in or incorporated by reference into the Registration Statement, the Pricing Disclosure Package or the Prospectus and does not express any opinion or belief as to (i) the financial statements or other financial data contained or incorporated by reference therein, (ii) the statement of the eligibility and qualification of the Trustee included in the Registration Statement (the "Form T-1") or (iii) the information in the Prospectus under the caption "Book-Entry System."

In rendering the foregoing opinion, such counsel may state that he does not express any opinion concerning any law other than the law of the State of North Carolina and may rely as to

all matters of the laws of the States of South Carolina, Ohio and Indiana on appropriate counsel reasonably satisfactory to the Representatives, which may include the Corporation's other "in-house" counsel). Such counsel may also state that he has relied as to certain factual matters on information obtained from public officials, officers of the Corporation and other sources believed by him to be responsible.

(f) You shall have received an opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Corporation, dated the Closing Date, to the effect that:

(i) This Agreement has been duly authorized, executed and delivered by the Corporation.

(ii) The execution and delivery by the Corporation of this Agreement and the consummation by the Corporation of the transactions contemplated hereby, including the issuance and sale of the Notes, will not (i) conflict with the Corporation's certificate of incorporation or Bylaws, (ii) constitute a violation of, or a breach of or default under, the terms of any of the contracts set forth on Schedule D hereto or (iii) violate or conflict with, or result in any contravention of, any Applicable Law. "Applicable Law" means the General Corporation Law of the State of Delaware and those laws, rules and regulations of the State of New York and those federal laws, rules and regulations of the United States of America, in each case that, in such counsel's experience, are normally applicable to transactions of the type contemplated by this Agreement (other than the United States federal securities laws, state securities or blue sky laws, antifraud laws and the rules and regulations of the Financial Industry Regulatory Authority).

(iii) (a) To such counsel's knowledge, no Governmental Approval of a federal court, a New York court or a Delaware court acting pursuant to General Corporation Law of the State of Delaware, which has not been obtained or taken and is not in full force and effect, is required to authorize, or is required for, the execution or delivery of this Agreement by the Corporation or the consummation by the Corporation of the transactions contemplated hereby, and (b) no other Governmental Approval, which has not been obtained or taken and is not in full force and effect, is required to authorize, or is required for, the execution or delivery of this Agreement by the Corporation or the consummation by the Corporation of the transactions contemplated hereby. "Governmental Approval" means any consent, approval, license, authorization or validation of, or filing, qualification or registration with, any Governmental Authority required to be made or obtained pursuant to Applicable Laws, other than any consent, approval, license, authorization, validation, filing, qualification or registration that may have become applicable as a result of the involvement of any party (other than the Corporation) in the transactions contemplated by this Agreement or because of such parties' legal or regulatory status or because of any other facts specifically pertaining to

such parties and "Governmental Authority" means any court, regulatory body, administrative agency or governmental body of the State of New York or the State of Delaware or the United States of America having jurisdiction over the Corporation under Applicable Law.

(iv) The Corporation has been duly incorporated and is validly existing in good standing under the laws of the State of Delaware, and has the corporate power and corporate authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby.

(v) The Indenture has been duly authorized, executed and delivered by the Corporation and, assuming the due authorization, execution and delivery thereof by the Trustee, is a valid and binding agreement of the Corporation, enforceable against the Corporation in accordance with its terms.

(vi) The Notes have been duly authorized and executed by the Corporation and, when duly authenticated by the Trustee and issued and delivered by the Corporation against payment therefor in accordance with the terms of this Agreement and the Indenture, will constitute valid and binding obligations of the Corporation entitled to the benefits of the Indenture and enforceable against the Corporation in accordance with their terms.

(vii) The statements (i) under the caption "Description of Debt Securities" (other than under the caption "Book-Entry Debt Securities") that are included in the Base Prospectus and (ii) under the caption "Description of the Notes" in the Pricing Disclosure Package and the Prospectus Supplement, insofar as such statements purport to summarize certain provisions of the Indenture and the Notes, fairly summarize such provisions in all material respects.

(viii) The Corporation is not and, solely after giving effect to the offering and sale of the Notes and the application of the proceeds thereof as described in the Prospectus, will not be an "investment company," as such term is defined in the Investment Company Act of 1940, as amended.

You shall also have received a statement of Skadden, Arps, Slate, Meagher & Flom LLP, dated the Closing Date, to the effect that:

(i) no facts have come to such counsel's attention that have caused such counsel to believe that the documents filed by the Corporation under the 1934 Act and the 1934 Act Regulations that are incorporated by reference in the Preliminary Prospectus Supplement that forms a part of the Pricing Disclosure Package and the Prospectus, were not, on their face, appropriately responsive in all material respects to the requirements of the 1934 Act and the 1934 Act Regulations (except that in each case such counsel need not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom or the Form T-1) (ii) the Registration Statement, at the

Applicable Time and the Prospectus, as of its date, appeared on their face to be appropriately responsive in all material respects to the requirements of the 1933 Act and the 1933 Act Rules and Regulations (except that in each case such counsel need not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom or the Form T-1) and (iii) no facts have come to such counsel's attention that have caused such counsel to believe that the Registration Statement, at the Applicable Time, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus, as of its date and as of the Closing Date, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that in each case such counsel need not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom or the statements contained in the exhibits to the Registration Statement, including the Form T-1). Such counsel shall further state that, in addition, no facts have come to such counsel's attention that have caused such counsel to believe that the Pricing Disclosure Package, as of the Applicable Time, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that such counsel need not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom or the statements contained in the exhibits to the Registration Statement, including the Form T-1).

In addition, such statement shall confirm that the Prospectus has been filed with the Commission within the time period required by Rule 424 of the 1933 Act Regulations and any required filing of a Permitted Free Writing Prospectus pursuant to Rule 433 of the 1933 Act Regulations has been filed with the Commission within the time period required by Rule 433(d) of the 1933 Act Regulations. Such statement shall further state that the Registration Statement became effective upon filing under the 1933 Act and, pursuant to Section 309 of the Trust Indenture Act of 1939, as amended (the "1939 Act"), the Indenture has been qualified under the 1939 Act, and that such counsel has been orally advised by the Commission that no stop order suspending the effectiveness of the Registration Statement has been issued and, to such counsel's knowledge, no proceedings for that purpose have been instituted or are pending or threatened by the Commission.

Skadden, Arps, Slate, Meagher & Flom LLP may state that its opinions in paragraphs (v) and (vi) are subject to the effects of bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law). In addition, such counsel may state that they have relied as to certain factual matters on information obtained from public officials, officers and representatives of the Corporation and that the signatures on all documents examined by them are genuine, assumptions which such counsel have not independently verified.

(g) You shall have received an opinion of Sidley Austin LLP, counsel for the Underwriters, dated the Closing Date, with respect to the validity of the Notes, the Registration Statement, the Pricing Disclosure Package and the Prospectus, as

amended or supplemented, and such other related matters as you may require, and the Corporation shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(h) On or after the Applicable Time, there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally or of the securities of the Corporation, on the New York Stock Exchange; or (ii) a general moratorium on commercial banking activities in New York declared by either Federal or New York State authorities or a material disruption in commercial banking services or securities settlement or clearance services in the United States; or (iii) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war, if the effect of any such event specified in this subsection (h) in your reasonable judgment makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Notes on the terms and in the manner contemplated in the Pricing Disclosure Package and the Prospectus. In such event there shall be no liability on the part of any party to any other party except as otherwise provided in Section 7 hereof and except for the expenses to be borne by the Corporation as provided in Section 5(j) hereof.

(i) You shall have received a certificate of the Chairman of the Board, the President, any Vice President, the Secretary or an Assistant Secretary and any financial or accounting officer of the Corporation, dated the Closing Date, in which such officers, to the best of their knowledge after reasonable investigation, shall state that the representations and warranties of the Corporation in this Agreement are true and correct as of the Closing Date, that the Corporation has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date, that the conditions specified in Section 6(c) and Section 6(d) have been satisfied, and that no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are threatened by the Commission.

(j) At the time of the execution of this Agreement, you shall have received a letter dated such date, in form and substance satisfactory to you, from Deloitte & Touche LLP, the Corporation's independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference into the Registration Statement, the Pricing Disclosure Package and the Prospectus, including specific references to inquiries regarding any increase in long-term debt, decrease in net current assets (defined as current assets less current liabilities) or member's equity, and decrease in revenues or net income for the period subsequent to the latest financial statements incorporated by reference in the Registration Statement, as of a specified date not more than three business days prior to the date of this Agreement.

(k) At the Closing Date, you shall have received from Deloitte & Touche LLP, a letter dated as of the Closing Date, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (j) of this Section 6, except that the specified date referred to shall be not more than three business days prior to the Closing Date.

The Corporation will furnish you with such conformed copies of such opinions, certificates, letters and documents as you reasonably request.

7. *Indemnification.* (a) The Corporation agrees to indemnify and hold harmless each Underwriter, their respective officers and directors, and each person, if any, who controls any Underwriter or within the meaning of Section 15 of the 1933 Act, as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto) including the Rule 430B Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact contained in the Pricing Disclosure Package, the Prospectus (or any amendment or supplement thereto), any Permitted Free Writing Prospectus or any issuer free writing prospectus as defined in Rule 433 of the 1933 Act Regulations, or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, unless such statement or omission or such alleged statement or omission was made in reliance upon and in conformity with written information furnished to the Corporation by the Representatives on behalf of the Underwriters expressly for use in the Registration Statement (or any amendment thereto), the Pricing Disclosure Package, the Prospectus (or any amendment or supplement thereto) or any Permitted Free Writing Prospectus;

(ii) against any and all loss, liability, claim, damage and expense whatsoever to the extent of the aggregate amount paid in settlement of any litigation, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission or any such alleged untrue statement or omission, if such settlement is effected with the written consent of the Corporation; and

(iii) against any and all expense whatsoever reasonably incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) of this Section 7.

In no case shall the Corporation be liable under this indemnity agreement with respect to any claim made against any Underwriter or any such controlling person unless the Corporation shall be notified in writing of the nature of the claim within a reasonable time after the assertion thereof, but failure so to notify the Corporation shall not relieve it from any liability which it may have otherwise than under subsections 7(a) and 7(b). The Corporation shall be entitled to participate at its own expense in the defense, or, if it so elects, within a reasonable time after receipt of such notice, to assume the defense of any suit brought to enforce any such claim, but if it so elects to assume the defense, such defense shall be conducted by counsel chosen by it and approved by the Underwriter or Underwriters or controlling person or persons, or defendant or defendants in any suit so brought, which approval shall not be unreasonably withheld. In any such suit, any Underwriter or any such controlling person shall have the right to employ its own counsel, but the fees and expenses of such counsel shall be at the expense of such Underwriter or such controlling person unless (i) the Corporation and such Underwriter shall have mutually agreed to the employment of such counsel, or (ii) the named parties to any such action (including any impleaded parties) include both such Underwriter or such controlling person and the Corporation and such Underwriter or such controlling person shall have been advised by such counsel that a conflict of interest between the Corporation and such Underwriter or such controlling person may arise and for this reason it is not desirable for the same counsel to represent both the indemnifying party and also the indemnified party (it being understood, however, that the Corporation shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for all such Underwriters and all such controlling persons, which firm shall be designated in writing by you). The Corporation agrees to notify you within a reasonable time of the assertion of any claim against it, any of its officers or directors or any person who controls the Corporation within the meaning of Section 15 of the 1933 Act, in connection with the sale of the Notes.

(b) Each Underwriter severally agrees that it will indemnify and hold harmless the Corporation, its directors and each of the officers of the Corporation who signed the Registration Statement and each person, if any, who controls the Corporation within the meaning of Section 15 of the 1933 Act to the same extent as the indemnity contained in subsection (a) of this Section, but only with respect to statements or omissions made in the Registration Statement (or any amendment thereto) the Pricing Disclosure Package, the Prospectus (or any amendment or supplement thereto) or any Permitted Free Writing Prospectus, in reliance upon and in conformity with written information furnished to the Corporation by the Representatives on behalf of the Underwriters expressly for use in the Registration Statement (or any amendment thereto), the Pricing Disclosure Package, the Prospectus (or any amendment or supplement thereto) or any Permitted Free Writing Prospectus. In case any action shall be brought against the Corporation or any person so indemnified based on the Registration Statement (or any amendment thereto), the Pricing Disclosure Package, the Prospectus (or any amendment or supplement thereto) or any Permitted Free Writing Prospectus and in respect of which indemnity may be sought against any Underwriter, such Underwriter shall have the rights and duties given to the Corporation, and the

Corporation and each person so indemnified shall have the rights and duties given to the Underwriters, by the provisions of subsection (a) of this Section.

(c) No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 7 is unavailable to or insufficient to hold harmless an indemnified party in respect of any and all loss, liability, claim, damage and expense whatsoever (or actions in respect thereof) that would otherwise have been indemnified under the terms of such indemnity, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Corporation on the one hand and the Underwriters on the other from the offering of the Notes. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Corporation on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Corporation on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Corporation bear to the total compensation received by the Underwriters in respect of the underwriting discount as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Corporation on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Corporation and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section. The amount paid or payable by an indemnified party as a result of the losses, liabilities, claims, damages or expenses (or actions in respect thereof) referred to above in this Section shall be deemed to include any legal or

other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Notes underwritten by it and distributed to the public were offered to the *public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such* untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute are several in proportion to their respective underwriting obligations and not joint.

8. *Default by One or More of the Underwriters.* (a) If any Underwriter shall default in its obligation to purchase the 2013 Notes or the 2018 Notes which it has agreed to purchase hereunder on the Closing Date, you may in your discretion arrange for you or another party or other parties to purchase such 2013 Notes and/or 2018 Notes, as applicable, on the terms contained herein. If within thirty-six hours after such default by any Underwriter you do not arrange for the purchase of such Notes, then the Corporation shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to you to purchase such Notes on such terms. In the event that, within the respective prescribed periods, you notify the Corporation that you have so arranged for the purchase of such Notes, or the Corporation notifies you that it has so arranged for the purchase of such Notes, you or the Corporation shall have the right to postpone such Closing Date for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement, the Pricing Disclosure Package or the Prospectus, or in any other documents or arrangements, and the Corporation agrees to file promptly any amendments to the Registration Statement, the Pricing Disclosure Package or the Prospectus which may be required. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to this Agreement with respect to such Notes.

(b) If, after giving effect to any arrangements for the purchase of the Notes of a defaulting Underwriter or Underwriters by you or the Corporation as provided in subsection (a) above, the aggregate amount of such Notes which remains unpurchased does not exceed one-tenth of the aggregate amount of all the Notes to be purchased at such Closing Date, then the Corporation shall have the right to require each non-defaulting Underwriter to purchase the amount of Notes which such Underwriter agreed to purchase hereunder at such Closing Date and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the amount of Notes which such Underwriter agreed to purchase hereunder) of the Notes of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Notes of a defaulting Underwriter or Underwriters by you or the Corporation as provided in

subsection (a) above, the aggregate amount of such Notes which remains unpurchased exceeds one-tenth of the aggregate amount of all the Notes to be purchased at such Closing Date, or if the Corporation shall not exercise the right described in subsection (b) above to require non-defaulting Underwriters to purchase Notes of a defaulting Underwriter or Underwriters, then this Agreement shall thereupon terminate, without liability on the part of any non-defaulting Underwriter or the Corporation, except for the expenses to be borne by the Corporation as provided in Section 5(j) hereof and the indemnity and contribution agreement in Section 7 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

9. *Representations and Indemnities to Survive Delivery.* The respective indemnities, agreements, representations, warranties and other statements of the Corporation or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter or the Corporation, or any of its officers or directors or any controlling person, and will survive delivery of and payment for the Notes.

10. *Reliance on Your Acts.* In all dealings hereunder, the Representatives shall act on behalf of each of the Underwriters, and the Corporation shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by the Representatives.

11. *No Fiduciary Relationship.* The Corporation acknowledges and agrees that (i) the purchase and sale of the Notes pursuant to this Agreement is an arm's-length commercial transaction between the Corporation on the one hand, and the Underwriters on the other hand, (ii) in connection with the offering contemplated hereby and the process leading to such transaction, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Corporation or its shareholders, creditors, employees, or any other party, (iii) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Corporation with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Corporation on other matters) and no Underwriter has any obligation to the Corporation with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement, (iv) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Corporation, and (v) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the transaction contemplated hereby and the Corporation has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

12. *Notices.* All communications hereunder will be in writing and, if sent to the Underwriters, will be mailed or telecopied and confirmed to Credit Suisse Securities (USA) LLC, Attn: LCD-IBD, facsimile number (212) 325-4296, Goldman, Sachs & Co., Attn: Registration Department, facsimile number (212) 902-3000 and Lehman Brothers Inc., Attn: Debt Capital Markets, Global Power Group, 745 Seventh Avenue, New York, NY 10019, facsimile number (646) 834-8133 (with a copy to the General Counsel at the same address) or, if sent to the Corporation, will be mailed or telecopied and confirmed to it at 526 South Church

Street, Charlotte, N.C. 28202, facsimile number (980) 373-3699, attention of Treasurer. Any such communications shall take effect upon receipt thereof.

13. *Business Day.* As used herein, the term "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business.

14. *Successors.* This Agreement shall inure to the benefit of and be binding upon the Underwriters and the Corporation and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the parties hereto and their respective successors and the controlling persons, officers and directors referred to in Section 7 and their respective successors, heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained; this Agreement and all conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and their respective successors and said controlling persons, officers and directors and their respective successors, heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Notes from any Underwriter shall be deemed to be a successor or assign by reason merely of such purchase.

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

16. *Applicable Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

If the foregoing is in accordance with your understanding, kindly sign and return to us two counterparts hereof, and upon confirmation and acceptance by the Underwriters, this letter and such confirmation and acceptance will become a binding agreement between the Corporation, on the one hand, and each of the Underwriters, on the other hand, in accordance with its terms.

Very truly yours,

DUKE ENERGY CORPORATION

By: /s/ M. Allen Carrick
Name: M. Allen Carrick
Title: Assistant Treasurer

The foregoing Underwriting Agreement is hereby confirmed and accepted as of the date first above written.

CREDIT SUISSE SECURITIES (USA) LLC
GOLDMAN, SACHS & CO.
LEHMAN BROTHERS INC.

On behalf of each of the Underwriters

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ Gavin H. Wolfe
Name: Gavin H. Wolfe
Title: Managing Director

GOLDMAN, SACHS & CO.

/S/ GOLDMAN, SACHS & CO.
(GOLDMAN, SACHS & CO.)

LEHMAN BROTHERS INC.

By: /s/ Christopher F. Winchenbaugh
Name: Christopher F. Winchenbaugh
Title: Managing Director

SCHEDULE A

Underwriter	Principal Amount of 2013 Notes to be Purchased	Principal Amount of 2018 Notes to be Purchased
Credit Suisse Securities (USA) LLC	$ 67,500,000	$ 67,500,000
Goldman, Sachs & Co.	67,500,000	67,500,000
Lehman Brothers Inc.	67,500,000	67,500,000
Citigroup Global Markets Inc.	11,875,000	11,875,000
Lazard Capital Markets LLC	11,875,000	11,875,000
Scotia Capital (USA) Inc.	11,875,000	11,875,000
Sun Trust Robinson Humphrey, Inc.	11,875,000	11,875,000
Total	$ 250,000,000	$ 250,000,000

SCHEDULE B

PRICING DISCLOSURE PACKAGE

1) Base Prospectus

2) Preliminary Prospectus Supplement dated June 11, 2008

3) Permitted Free Writing Prospectuses

   a) Pricing Term Sheet attached as Schedule C hereto

SCHEDULE C

Filed pursuant to Rule 433
June 11, 2008

Relating to
Preliminary Prospectus Supplement dated June 11, 2008 to
Prospectus dated October 3, 2007
Registration Statement No. 333-146483

Duke Energy Corporation
5.65% Senior Notes due 2013
6.25% Senior Notes due 2018

Pricing Term Sheet

Issuer:	Duke Energy Corporation	
Ratings (Moody's/ S&P):	Baa2/BBB+	
Settlement:	June 16, 2008 (T+3)	
Trade Date:	June 11, 2008	
Interest Payment Dates:	Semi-annually on June 15 and December 15, commencing December 15, 2008	
Security Description:	5.65% Senior Notes Due 2013	6.25% Senior Notes Due 2018
Principal Amount:	$250,000,000	$250,000,000
Maturity:	June 15, 2013	June 15, 2018
Coupon:	5.65%	6.25%
Benchmark Treasury:	3.500% due 5/31/2013	3.875% due 5/15/2018
Benchmark Treasury Yield:	3.496%	4.085%
Spread to Benchmark Treasury:	+220 bps	+220 bps
Yield to Maturity:	5.696%	6.285%
Initial Price to Public:	99.803% per Note	99.743% per Note
Redemption Provisions:		
Make-Whole Call:	+40 bps	+40 bps

Source: Duke Energy Holding , 8-K, June 16, 2008

Denominations:	$2,000 or any integral multiple of $1,000 in excess thereof	$2,000 or any integral multiple of $1,000 in excess thereof
CUSIP:	26441C AA3	26441C AB1
Joint Book-Running Managers:	Credit Suisse Securities (USA) LLC Goldman, Sachs & Co. Lehman Brothers Inc.	
Co-Managers	Citigroup Global Markets Inc. Lazard Capital Markets LLC Scotia Capital (USA) Inc. Sun Trust Robinson Humphrey, Inc.	

The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling Credit Suisse Securities (USA) LLC at (800) 221-1037, Goldman, Sachs & Co. at (866) 471-2526 or Lehman Brothers Inc. toll-free at (888) 603-5847.

Schedule D

1. Fifteenth Supplemental Indenture, dated as of April 3, 2006, among the registrant, Duke Energy and JPMorgan Chase Bank, N.A. (as successor to Guaranty Trust Company of New York), as trustee (the "Trustee"), supplementing the Senior Indenture, dated as of September 1, 1998, between Duke Energy Carolinas, LLC (formerly Duke Energy Corporation) and the Trustee.

2. $2,650,000,000 Amended and Restated Credit Agreement, dated as of June 28, 2007, among Duke Energy Corporation, Duke Energy Carolinas, LLC, Duke Energy Ohio, Inc., Duke Energy Indiana, Inc. and Duke Energy Kentucky, Inc., as Borrowers, the banks listed therein, Wachovia Bank, National Association, as Administrative Agent, JPMorgan Chase Bank, National Association, Barclays Bank PLC, Bank of America, N.A. and Citibank, N.A., as Co-Syndication Agents and The Bank of Tokyo-Mitsubishi, Ltd., New York Branch and Credit Suisse, as Co-Documentation Agents, as amended by Amendment No. 1 thereto, dated as of March 10, 2008.

FORM 10-Q

Duke Energy Holding Corp. - duk

Filed: May 09, 2008 (period: March 31, 2008)

Quarterly report which provides a continuing view of a company's financial position

Table of Contents

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended March 31, 2008 Or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission file number 1-32853

DUKE ENERGY CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware	20-2777218
(State or Other Jurisdiction of Incorporation)	(IRS Employer Identification No.)
526 South Church Street Charlotte, NC	28202-1803
(Address of Principal Executive Offices)	(Zip Code)

704-594-6200
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒	Accelerated filer ☐
Non-accelerated filer ☐	Smaller reporting company ☐
(Do not check if a smaller reporting company)	

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Securities Exchange Act of 1934). Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Number of shares of Common Stock, par value $0.001, outstanding as of May 2, 2008 1,264,614,744

Table of Contents
INDEX

DUKE ENERGY CORPORATION
FORM 10-Q FOR THE QUARTER ENDED
MARCH 31, 2008

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

This document includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements are based on management's beliefs and assumptions. These forward-looking statements are identified by terms and phrases such as "anticipate," "believe," "intend," "estimate," "expect," "continue," "should," "could," "may," "plan," "project," "predict," "will," "potential," "forecast," "target," and similar expressions. Forward-looking statements involve risks and uncertainties that may cause actual results to be materially different from the results predicted. Factors that could cause actual results to differ materially from those indicated in any forward-looking statement include, but are not limited to:

- State, federal and foreign legislative and regulatory initiatives, including costs of compliance with existing and future environmental requirements;
- State, federal and foreign legislative and regulatory initiatives and rulings that affect cost and investment recovery or have an impact on rate structures;
- Costs and effects of legal and administrative proceedings, settlements, investigations and claims;
- Industrial, commercial and residential growth in Duke Energy Corporation's (Duke Energy) service territories;
- Additional competition in electric markets and continued industry consolidation;
- Political and regulatory uncertainty in other countries in which Duke Energy conducts business;
- The influence of weather and other natural phenomena on Duke Energy's operations, including the economic, operational and other effects of hurricanes, ice storms, droughts and tornados;
- The timing and extent of changes in commodity prices, interest rates and foreign currency exchange rates;
- Unscheduled generation outages, unusual maintenance or repairs and electric transmission system constraints;
- The performance of electric generation and of projects undertaken by Duke Energy's non-regulated businesses;
- The results of financing efforts, including Duke Energy's ability to obtain financing on favorable terms, which can be affected by various factors, including Duke Energy's credit ratings and general economic conditions;
- Declines in the market prices of equity securities and resultant cash funding requirements for Duke Energy's defined benefit pension plans;
- The level of creditworthiness of counterparties to Duke Energy's transactions;
- Employee workforce factors, including the potential inability to attract and retain key personnel;
- Growth in opportunities for Duke Energy's business units, including the timing and success of efforts to develop domestic and international power and other projects;
- The effect of accounting pronouncements issued periodically by accounting standard-setting bodies; and

- The ability to successfully complete merger, acquisition or divestiture plans.

In light of these risks, uncertainties and assumptions, the events described in the forward-looking statements might not occur or might occur to a different extent or at a different time than Duke Energy has described. Duke Energy undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Source: Duke Energy Holding , 10-Q, May 09, 2008

DUKE ENERGY CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(in millions, except per-share amounts)

Item 1. ***Financial Statements.***

	Three Months Ended March 31,	
	2008	*2007*
Operating Revenues		
Regulated electric	$ 2,233	$ 2,052
Non-regulated electric, natural gas and other	747	644
Regulated natural gas	357	339
Total operating revenues	3,337	3,035
Operating Expenses		
Fuel used in electric generation and purchased power	952	820
Cost of natural gas and coal sold	279	260
Operation, maintenance and other	795	749
Depreciation and amortization	413	433
Property and other taxes	165	174
Total operating expenses	2,604	2,436
Gains (Losses) on Sales of Other Assets and Other, net	18	(11)
Operating Income	751	588
Other Income and Expenses		
Equity in earnings of unconsolidated affiliates	43	19
Other income and expenses, net	74	34
Total other income and expenses	117	53
Interest Expense	182	163
Minority Interest Expense	1	2
Income From Continuing Operations Before Income Taxes	685	476
Income Tax Expense from Continuing Operations	222	139
Income From Continuing Operations	463	337
Income From Discontinued Operations, net of tax	2	20
Net Income	$ 465	$ 357
Common Stock Data		
Weighted-average shares outstanding		
Basic	1,263	1,257
Diluted	1,267	1,268
Earnings per share (from continuing operations)		
Basic	$ 0.37	$ 0.27
Diluted	$ 0.37	$ 0.27
Earnings per share (from discontinued operations)		
Basic	$ —	$ 0.01
Diluted	$ —	$ 0.01
Earnings per share		
Basic	$ 0.37	$ 0.28
Diluted	$ 0.37	$ 0.28
Dividends per share	$ 0.22	$ 0.21

See Notes to Unaudited Consolidated Financial Statements

DUKE ENERGY CORPORATION
CONSOLIDATED BALANCE SHEETS
(Unaudited)
(In millions)

	March 31, 2008	December 31, 2007
ASSETS		
Current Assets		
Cash and cash equivalents	$ 642	$ 378
Short-term investments	—	437
Receivables (net of allowance for doubtful accounts of $57 at March 31, 2008 and $67 at December 31, 2007)	1,652	1,767
Inventory	946	1,012
Assets held for sale	2	2
Other	965	1,320
Total current assets	4,207	4,916
Investments and Other Assets		
Investments in unconsolidated affiliates	710	696
Nuclear decommissioning trust funds	1,836	1,829
Goodwill	4,650	4,642
Intangibles, net	703	720
Notes receivable	145	153
Assets held for sale	1,200	115
Other	3,144	2,944
Total investments and other assets	12,388	11,099
Property, Plant and Equipment		
Cost	47,318	46,056
Less accumulated depreciation and amortization	15,626	14,946
Net property, plant and equipment	31,692	31,110
Regulatory Assets and Deferred Debits		
Deferred debt expense	255	255
Regulatory assets related to income taxes	568	552
Other	1,725	1,654
Total regulatory assets and deferred debits	2,548	2,461
Total Assets	$ 50,835	$ 49,586

See Notes to Unaudited Consolidated Financial Statements

DUKE ENERGY CORPORATION
CONSOLIDATED BALANCE SHEETS—(Continued)
(Unaudited)
(In millions, except per-share amounts)

	March 31, 2008	December 31, 2007
LIABILITIES AND COMMON STOCKHOLDERS' EQUITY		
Current Liabilities		
Accounts payable	[illegible]	[illegible]
Notes payable and commercial paper	687	742
Taxes accrued	[illegible]	[illegible]
Interest accrued	168	145
Liabilities associated with assets held for sale	[illegible]	[illegible]
Current maturities of long-term debt	1,332	1,526
Other	[illegible]	[illegible]
Total current liabilities	4,931	5,698
Long-term Debt	[illegible]	[illegible]
Deferred Credits and Other Liabilities		
Deferred income taxes	4,743	4,751
Investment tax credits	158	161
Liabilities associated with assets held for sale	[illegible]	3
Asset retirement obligations	2,392	2,351
Other	[illegible]	[illegible]
Total deferred credits and other liabilities	13,039	13,110
Commitments and Contingencies		
Minority Interests	185	181
Common Stockholders' Equity		
Common Stock, $0.001 par value, 2 billion shares authorized; 1,264 million and 1,262 million shares outstanding at March 31, 2008 and December 31, 2007, respectively	1	1
Additional paid-in capital	[illegible]	[illegible]
Retained earnings	1,574	1,398
Accumulated other comprehensive loss	[illegible]	[illegible]
Total common stockholders' equity	21,409	21,199
Total Liabilities and Common Stockholders' Equity	[illegible]	[illegible]

See Notes to Unaudited Consolidated Financial Statements

DUKE ENERGY CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In millions)

	Three Months Ended March 31,	
	2008	2007
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	$ 465	$ 357
Adjustments to reconcile net income to net cash provided by operating activities		
Depreciation and amortization (including amortization of nuclear fuel)	452	461
(Gains) losses on sales of other assets	(17)	(1)
Deferred income taxes	14	29
Minority interest	1	2
Equity in earnings of unconsolidated affiliates	(43)	(19)
(Increase) decrease in		
Net realized and unrealized mark-to-market and hedging transactions	(30)	209
Receivables	161	(30)
Inventory	66	15
Other current assets	135	(68)
Increase (decrease) in		
Accounts payable	(91)	(258)
Taxes accrued	10	20
Other current liabilities	(159)	(269)
Other, assets	78	116
Other, liabilities	(27)	325
Net cash provided by operating activities	1,012	907
CASH FLOWS FROM INVESTING ACTIVITIES		
Capital expenditures	(1,067)	(803)
Investment expenditures	(22)	(6)
Purchases of available-for-sale securities	(10,336)	(6,943)
Proceeds from sales and maturities of available-for-sale securities	10,350	7,147
Net proceeds from the sales of other assets and sales of and collections on notes receivable	15	8
Settlement of net investment hedges and other investing derivatives	—	(10)
Purchases of emission allowances	(9)	(52)
Sales of emission allowances	18	25
Change in restricted cash	(14)	10
Other	(10)	30
Net cash used in investing activities	(1,075)	(594)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from the:		
Issuance of long-term debt	998	2
Issuance of common stock related to employee benefit plans	8	9
Payments for the redemption of long-term debt	(539)	(370)
Notes payable and commercial paper	(61)	323
Distributions to minority interests	—	(18)
Contributions from minority interests	3	47
Cash distributed to Spectra Energy	—	(395)
Dividends paid	(278)	(265)
Other	(14)	(24)
Net cash provided by (used in) financing activities	27	(691)
Changes in cash and cash equivalents included in assets held for sale	—	—
Net decrease in cash and cash equivalents	(36)	(378)
Cash and cash equivalents at beginning of period	678	948
Cash and cash equivalents at end of period	$ 642	$ 570
Supplemental Disclosures:		
Significant non-cash transactions:		
Distribution of Spectra Energy to shareholders	$ —	$ 6,200
Accrued capital expenditures	$ 279	$ 199

See Notes to Unaudited Consolidated Financial Statements

DUKE ENERGY CORPORATION
CONSOLIDATED STATEMENTS OF COMMON STOCKHOLDERS' EQUITY AND COMPREHENSIVE INCOME
(Unaudited)
(In millions)

	Common Stock Shares	Common Stock	Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss): Foreign Currency Adjustments	Net Gains (Losses) on Cash Flow Hedges	Other	SFAS No. 158 Adjustment	Total
Balance December 31, 2006	1,257	$ 1	$ 19,854	$ 6,652	$ 949	$ (65)	$ 2	$ [illegible]	[illegible]
Net income	—	—	—	357	—	—	—	—	357
Other Comprehensive Income									
Foreign currency translation adjustments	—	—	—	—	36	—	—	—	36
Net unrealized gains on cash flow hedges[a]	—	—	—	—	—	4	—	—	4
Reclassification into earnings from cash flow hedges[b]	—	—	—	—	—	(3)	—	—	(3)
SFAS No. 158 amortization	—	—	—	—	—	—	—	3	3
Other	—	—	—	—	—	—	1	15	16
Total comprehensive income									[illegible]
Adoption of FIN 48	—	—	—	(25)	—	—	—	—	(25)
Adoption of SFAS No. 158—measurement date provision[d]	—	—	—	(40)	—	—	—	30	(10)
Distribution of Spectra Energy to shareholders	—	—	—	(4,581)	(1,156)	6	—	136	(5,595)
Dividend reinvestment and employee benefits	2	—	14	—	—	—	—	—	14
Common stock dividends	—	—	—	(285)	—	—	—	—	(285)
Balance March 31, 2007	1,259	$ 1	$ 19,868	$ 1,098	$ (171)	$ (38)	$ 3	$ (127)	$ 20,634
Balance December 31, 2007	1,262	$ 1	$ 19,933	$ 1,398	$ (7)	$ (54)	$ 2	$ 174	$ 21,199
Net income	—	—	—	465	—	—	—	—	465
Other Comprehensive Income									
Foreign currency translation adjustments	—	—	—	—	38	—	—	—	38
Net unrealized losses on cash flow hedges[c]	—	—	—	—	—	(10)	—	—	(10)
Reclassification into earnings from cash flow hedges[b]	—	—	—	—	—	1	—	—	1
SFAS No. 158 amortization	—	—	—	—	—	—	—	[illegible]	[illegible]
Unrealized loss on investments in auction rate securities[c]	—	—	—	—	—	—	(12)	—	(12)
Total comprehensive income									[illegible]
Dividend reinvestment and employee benefits	2	—	16	—	—	—	—	—	16
Common stock dividends	—	—	—	(278)	—	—	—	—	(278)
Additional amounts related to the spin-off of Spectra Energy	—	—	—	(11)	—	—	—	—	(11)
Balance March 31, 2008	1,264	$ 1	$ 19,949	$ 1,574	$ 31	$ (63)	$ (10)	$ [illegible]	$ 21,408

(a) Net unrealized gains (losses) on cash flow hedges, net of $5 tax benefit in 2008 and $2 tax expense in 2007.

(b) Reclassification into earnings from cash flow hedges, net of $1 tax expense in 2008 and $1 tax benefit in 2007.

(c) Net of $8 tax benefit in 2008. See Note 19 to the Consolidated Financial Statements for further information.

(d) Net of $3 tax benefit in 2007.

See Notes to Unaudited Consolidated Financial Statements

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements

1. Basis of Presentation

Nature of Operations and Basis of Consolidation. Duke Energy Corporation (collectively with its subsidiaries, Duke Energy) is an energy company located in the Americas. These Unaudited Consolidated Financial Statements include, after eliminating intercompany transactions and balances, the accounts of Duke Energy and all majority-owned subsidiaries where Duke Energy has control and those variable interest entities where Duke Energy is the primary beneficiary. These Consolidated Financial Statements also reflect Duke Energy's proportionate share of certain generation and transmission facilities in South Carolina, Ohio, Indiana and Kentucky.

On January 2, 2007, Duke Energy completed the spin-off of its natural gas businesses (Spectra Energy Corp (Spectra Energy)), including its wholly-owned subsidiary Spectra Energy Capital, LLC (Spectra Energy Capital, formerly Duke Capital LLC), including Duke Energy's 50% interest in DCP Midstream, LLC (DCP Midstream, formerly Duke Energy Field Services, LLC), to shareholders. Assets and liabilities of entities included in the spin-off of Spectra Energy were transferred from Duke Energy on a historical cost basis on the date of the spin-off transaction. No gain or loss was recognized on the distribution of these operations to Duke Energy shareholders. Approximately $20.5 billion of assets, $14.9 billion of liabilities (which included approximately $8.6 billion of debt) and $5.6 billion of common stockholders' equity (which included approximately $1.0 billion of accumulated other comprehensive income (AOCI)) were distributed from Duke Energy as of the date of the spin-off. As discussed further in Note 7, pursuant to the terms of convertible notes outstanding at the date of the spin-off, Duke Energy distributed approximately 2 million shares of Spectra Energy common stock to the holders of the convertible notes, resulting in a pre-tax charge of approximately $21 million during the three months ended March 31, 2007. In addition, as discussed in Note 18, a reduction in income tax expense of approximately $22 million was also recorded during the three months ended March 31, 2007 due to a reduction in the unitary state tax rate in 2007 as a result of the spin-off of Spectra Energy.

These Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles (GAAP) in the United States of America (U.S.) for interim financial information and with the instructions to Form 10-Q and Regulation S-X. Accordingly, these Consolidated Financial Statements do not include all of the information and footnotes required by GAAP for annual financial statements. Because the interim Consolidated Financial Statements and Notes do not include all of the information and footnotes required by GAAP for annual financial statements, the Consolidated Financial Statements and other information included in this quarterly report should be read in conjunction with the Consolidated Financial Statements and Notes in Duke Energy's Form 10-K for the year ended December 31, 2007.

These Consolidated Financial Statements reflect all normal recurring adjustments that are, in the opinion of management, necessary to fairly present Duke Energy's financial position and results of operations. Amounts reported in the interim Consolidated Statements of Operations are not necessarily indicative of amounts expected for the respective annual periods due to the effects of seasonal temperature variations on energy consumption, the timing of maintenance on electric generating units, changes in mark-to-market valuations, changing commodity prices and other factors.

Use of Estimates. To conform with GAAP in the U.S., management makes estimates and assumptions that affect the amounts reported in the Consolidated Financial Statements and Notes. Although these estimates are based on management's best available knowledge at the time, actual results could differ.

Reclassifications. Certain prior period amounts on the Consolidated Balance Sheets have been reclassified in connection with the adoption of Financial Accounting Standards Board (FASB) Staff Position (FSP) No. FIN 39-1, *"Amendment of FASB Interpretation No. 39, Offsetting of Amounts Related to Certain Contracts,"* (FSP No. FIN 39-1) on January 1, 2008, as discussed below, the effects of which require retrospective application to the Consolidated Balance Sheets.

Netting of Cash Collateral and Derivative Assets and Liabilities Under Master Netting Arrangements. On January 1, 2008, Duke Energy adopted FSP No. FIN 39-1. In accordance with FSP No. FIN 39-1, Duke Energy offsets fair value amounts (or amounts that approximate fair value) recognized on its Consolidated Balance Sheets related to cash collateral amounts receivable or payable against fair value amounts recognized for derivative instruments executed with the same counterparty under the same master netting agreement. Prior to the adoption of FSP No. FIN 39-1, Duke Energy offset the fair value amounts recognized for derivative instruments executed with the same counterparty under the same master netting agreement in accordance with FIN 39, *"Offsetting of Amounts Related to Certain Contracts,"* but presented cash collateral on a gross basis within the Consolidated Balance Sheets. At March 31, 2008 and December 31, 2007, Duke Energy had receivables related to the right to reclaim cash collateral of approximately $16 million and $5 million, respectively, and had payables related to obligations to return cash collateral of approximately $34 million and an immaterial amount, respectively, that have been offset against net derivative positions in the Consolidated Balance Sheets. Duke Energy had immate-

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

rial cash collateral receivables under master netting arrangements that have not been offset against net derivative positions at March 31, 2008 and December 31, 2007, respectively. Duke Energy had an immaterial amount of cash collateral payables under master netting arrangements that have not been offset against net derivative positions at March 31, 2008 and December 31, 2007.

Unbilled Revenue. Revenues on sales of electricity and gas are recognized when the service is provided. Unbilled revenues are estimated by applying an average revenue per kilowatt hour or per thousand cubic feet (Mcf) for all customers classes to the number of estimated kilowatt hours or Mcf's delivered but not billed. The amount of unbilled revenues can vary significantly period to period as a result of factors including seasonality, weather, customer usage patterns and customer mix. Unbilled revenues, which are recorded as Receivables in Duke Energy's Consolidated Balance Sheets at March 31, 2008 and December 31, 2007, were approximately $340 million and $380 million, respectively.

2. Business Segments

Duke Energy operates the following business segments, which are all considered reportable business segments under Statement of Financial Accounting Standards (SFAS) No. 131, "*Disclosures about Segments of an Enterprise and Related Information*": U.S. Franchised Electric and Gas (which consists of the regulated operations of Duke Energy Carolinas, LLC (Duke Energy Carolinas), Duke Energy Ohio, Inc. (Duke Energy Ohio), Duke Energy Indiana, Inc. (Duke Energy Indiana) and Duke Energy Kentucky, Inc. (Duke Energy Kentucky)), Commercial Power, International Energy and Crescent, which represents Duke Energy's effective 50% interest in the Crescent JV. Duke Energy's chief operating decision maker regularly reviews financial information about each of these business units in deciding how to allocate resources and evaluate performance. There is no aggregation within Duke Energy's defined business segments.

The remainder of Duke Energy's operations is presented as Other. While it is not considered a business segment, Other primarily includes certain unallocated corporate costs, Bison Insurance Company Limited (Bison), Duke Energy's wholly-owned, captive insurance subsidiary, and DukeNet Communications, LLC and related telecommunications businesses. Additionally, Other includes the remaining portion of the former Duke Energy North America (DENA) businesses that were not disposed or transferred to Commercial Power, primarily Duke Energy Trading and Marketing, LLC (DETM), which management is currently in the process of winding down.

Duke Energy's reportable segments offer different products and services and are managed separately as business units. Accounting policies for Duke Energy's segments are the same as those described in the Notes to the Consolidated Financial Statements in Duke Energy's Annual Report on Form 10-K for the year ended December 31, 2007. Management evaluates segment performance based on earnings before interest and taxes from continuing operations, after deducting minority interest expense related to those profits (EBIT). On a segment basis, EBIT excludes discontinued operations, represents all profits from continuing operations (both operating and non-operating) before deducting interest and taxes, and is net of the minority interest expense related to those profits.

Cash, cash equivalents and short-term investments are managed centrally by Duke Energy, so the associated realized and unrealized gains and losses from foreign currency transactions and interest and dividend income on those balances are excluded from the segments' EBIT.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Segment EBIT includes transactions between reportable segments.

Business Segment Data[a]

	Unaffiliated Revenues	Intersegment Revenues	Total Revenues	Segment EBIT / Consolidated Income From Continuing Operations Before Income Taxes	Depreciation and Amortization
			(in millions)		
Three Months Ended March 31, 2008					
U.S. Franchised Electric and Gas	$2,595	$ 6	$ 2,601	$ 637	$ 332
Commercial Power	447	3	450	146	43
International Energy	289	—	289	114	21
Crescent	—	—	—	2	—
Total reportable segments	3,331	9	3,340	899	396
Other	4	45	21	(26)	17
Eliminations	—	(24)	(24)	—	—
Interest expense	—	—	—	(182)	—
Interest income and other[b]	—	—	—	46	—
Total consolidated	$3,335	$ —	$ 3,337	$ 737	$ 413
Three Months Ended March 31, 2007					
U.S. Franchised Electric and Gas	$2,384	$ 5	$ 2,389	$ 474	$ 361
Commercial Power	377	3	380	13	41
International Energy	245	—	245	94	18
Crescent	—	—	—	2	—
Total reportable segments	3,006	8	3,014	583	420
Other	19	17	36	(84)	13
Eliminations	—	(25)	(25)	—	—
Interest expense	—	—	—	(163)	—
Interest income and other[b]	—	—	—	40	—
Total consolidated	$3,025	$ —	$ 3,025	$ 376	$ 433

(a) Segment results exclude results of entities classified as discontinued operations.

(b) Other within Interest Income and Other includes foreign currency transaction gains and losses.
Segment assets in the following table exclude all intercompany assets.

Segment Assets

	March 31, 2008	December 31, 2007
	(in millions)	
U.S. Franchised Electric and Gas	$33,286	$ 33,059
Commercial Power	6,818	6,826
International Energy	3,218	3,107
Crescent	208	206
Total reportable segments	43,530	43,198
Other	2,704	2,970
Reclassifications[a]	3,413	3,518
Total consolidated assets	$49,647	$ 49,686

(a) Primarily represents reclassification of federal tax balances in consolidation.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

3. Acquisitions and Dispositions

Acquisitions. Duke Energy consolidates assets and liabilities from acquisitions as of the purchase date and includes earnings from acquisitions in consolidated earnings after the purchase date. Assets acquired and liabilities assumed are recorded at estimated fair values on the purchase date. The purchase price minus the estimated fair value of the acquired assets and liabilities meeting the definition of a business as defined in Emerging Issues Task Force (EITF) Issue No. 98-3, "*Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business*" is recorded as goodwill. The allocation of the purchase price may be adjusted if additional, requested information is received during the allocation period, which generally does not exceed one year from the consummation date; however, it may be longer for certain income tax items.

In May 2007, Duke Energy acquired the wind power development assets of Energy Investor Funds from Tierra Energy. The purchase included more than 1,000 megawatts (MW) of wind assets in various stages of development in the Western and Southwestern U.S. and supports Duke Energy's strategy to increase its investment in renewable energy. A significant portion of the purchase price was for intangible assets. Three of the development projects, totaling approximately 240 MW, are located in Texas and Wyoming and are anticipated to be in commercial operation in late 2008 or 2009. Duke Energy anticipates total capital expenditures of approximately $430 million through 2009 to complete the first three projects.

Dispositions. In December 2006, Duke Energy Indiana agreed to sell one unit of its Wabash River Power Station (Unit 1) to Wabash Valley Power Association Inc. (WVPA). The sale was approved by the Indiana Utility Regulatory Commission (IURC), the Federal Energy Regulatory Commission (FERC), the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) during 2007. On December 31, 2007, Duke Energy Indiana received proceeds of approximately $114 million, which was equivalent to the net book value of Unit 1 at the time of sale. Since, pursuant to the terms of the purchase and sale agreement, the effective date of the sale was January 1, 2008, the assets of Unit 1 were reflected as Assets Held for Sale within Investments and Other Assets on the Consolidated Balance Sheets at December 31, 2007 and a corresponding liability equal to the cash received was included in Liabilities Associated with Assets Held for Sale within Current Liabilities on the Consolidated Balance Sheets at December 31, 2007. Since the sales price was equal to the net book value of Unit 1 at the transaction date, no gain or loss was recognized on the sale. The sale was completed on January 1, 2008.

For the three months ended March 31, 2008, the sale of other assets resulted in approximately $21 million in proceeds and net pre-tax gains of $18 million recorded in Gains (Losses) on Sales of Other Assets and Other, net on the Consolidated Statements of Operations. This amount primarily relates to Commercial Power's gains on sales of emission allowances.

For the three months ended March 31, 2007, the sale of other assets resulted in approximately $25 million in proceeds and net pre-tax losses of $11 million recorded in Gains (Losses) on Sales of Other Assets and Other, net on the Consolidated Statements of Operations. This amount primarily relates to Commercial Power's losses on sales of emission allowances.

See Note 11 for dispositions related to discontinued operations.

4. Earnings Per Common Share (EPS)

Basic EPS is computed by dividing net income by the weighted-average number of common shares outstanding during the period. Diluted EPS is computed by dividing net income, as adjusted, by the diluted weighted-average number of common shares outstanding during the period. Diluted EPS reflects the potential dilution that could occur if securities or other agreements to issue common stock, such as stock options, stock-based performance unit awards, phantom stock awards and contingently convertible debt, were exercised, settled or converted into common stock.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

The following table illustrates Duke Energy's basic and diluted EPS calculations and reconciles the weighted-average number of common shares outstanding to the diluted weighted-average number of common shares outstanding for the three months ended March 31, 2008 and 2007.

	Income	Average Shares	EPS
	(in millions, except per-share amounts)		
Three Months Ended March 31, 2008			
Income from continuing operations—basic	$ 463	1,263	$ 0.37
Effect of dilutive securities:			
Stock options, phantom, performance and unvested stock		4	
Income from continuing operations—diluted	$ 463	1,267	$ 0.37
Three Months Ended March 31, 2007			
Income from continuing operations—basic	$ 337	1,257	$ 0.27
Effect of dilutive securities:			
Stock options, phantom, performance and unvested stock		6	
Contingently convertible debt	—	5	
Income from continuing operations—diluted	$ 337	1,268	$ 0.27

As of March 31, 2008 and 2007, approximately 15 million and 13 million, respectively, of stock options and performance, phantom and unvested stock awards were not included in the "effect of dilutive securities" in the above table because either the option exercise prices were greater than the average market price of the common shares during those periods, or performance measures related to the awards had not yet been met.

5. Stock-Based Compensation

Duke Energy accounts for stock-based compensation under the provisions of SFAS No. 123(R), "*Share-Based Payment*" (SFAS No. 123(R)). SFAS No. 123(R) establishes accounting for stock-based awards exchanged for employee and certain nonemployee services. Accordingly, for employee awards, equity classified stock-based compensation cost is measured at the grant date, based on the fair value of the award, and is recognized as expense over the requisite service period.

Duke Energy recorded pre-tax stock-based compensation expense included in Income From Continuing Operations for each of the three months ended March 31, 2008 and 2007 as follows:

	Three Months Ended March 31,	
	2008	2007
	(in millions)	
Stock Options	$ 7	$ 7
Phantom Awards	7	6
Performance Awards	6	4
Other Stock Awards	—	1
Total	$ 20	$ 18

The tax benefit associated with the recorded expense in Income From Continuing Operations for each of the three months ended March 31, 2008 and 2007 was approximately $5 million.

Duke Energy's 2006 Long-term Incentive Plan (the 2006 Plan) reserved 60 million shares of common stock for awards to employees and outside directors. The 2006 Plan superseded the 1998 Long-term Incentive Plan, as amended (the 1998 Plan), and no additional grants will be made from the 1998 Plan. Under the 2006 Plan, the exercise price of each option granted cannot be less than the market price of Duke Energy's common stock on the date of grant and the maximum option term is 10 years. The vesting periods range from immediate to five years. The 2006 Plan allows for a maximum of 15 million shares of common stock to be issued under various stock-based awards other than options and stock appreciation rights. Payments for cash settled awards during the period were immaterial.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Duke Energy has historically issued new shares upon exercising or vesting of share-based awards. In 2008, Duke Energy may use a combination of new share issuances and open market repurchases for share-based awards which are exercised or become vested; however, Duke Energy has not determined with certainty the amount of such new share issuances or open market repurchases.

Stock Option Activity

	Options (in thousands)	Weighted-Average Exercise Price
Outstanding at December 31, 2007	22,347	$ 17
Exercised	(505)	15
Forfeited or expired	(167)	19
Outstanding at March 31, 2008	21,675	17
Exercisable at March 31, 2008	19,870	$ 17

There were no stock options granted during the three months ended March 31, 2008 or 2007.

On December 31, 2007, Duke Energy had approximately 20 million exercisable options with a $17 weighted-average exercise price. The total intrinsic value of options exercised during the three months ended March 31, 2008 and 2007 was approximately $2 million and $5 million, respectively. Cash received from options exercised during the three months ended March 31, 2008 and 2007 was approximately $8 million and $9 million, respectively, with a related tax benefit of approximately $1 million and $2 million, respectively. At March 31, 2008, Duke Energy had approximately $1 million of future compensation cost which is expected to be recognized over a weighted-average period of 1 year.

Phantom Stock Awards

Phantom stock awards issued and outstanding under the 2006 Plan generally vest over periods from immediate to three years. Phantom stock awards issued and outstanding under the 1998 Plan generally vest over periods from immediate to five years. Duke Energy awarded 877,380 shares (fair value of approximately $16 million, based on the market price of Duke Energy's common stock at the grant date) during the three months ended March 31, 2008. Duke Energy awarded 1,030,250 shares (fair value of approximately $20 million, based on the market price of Duke Energy's common stock at the grant date) during the three months ended March 31, 2007.

The following table summarizes information about phantom stock awards outstanding at March 31, 2008:

	Shares (in thousands)
Number of Phantom Stock Awards:	
Outstanding at December 31, 2007	2,390
Granted	877
Vested	(520)
Forfeited	(5)
Outstanding at March 31, 2008	2,742

As of March 31, 2008, Duke Energy had approximately $24 million of unrecognized compensation cost which is expected to be recognized over a weighted-average period of 2.4 years.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Performance Awards

Stock-based performance awards issued and outstanding under both the 2006 Plan and the 1998 Plan generally vest over three years if performance targets are met. Duke Energy awarded 2,375,445 shares (fair value of approximately $37 million) during the three months ended March 31, 2008. Duke Energy awarded 1,530,650 shares (fair value of approximately $23 million) during the three months ended March 31, 2007.

The following table summarizes information about stock-based performance awards outstanding at March 31, 2008:

	Shares (in thousands)
Number of Stock-based Performance Awards:	
Outstanding at December 31, 2007	3,911
Granted	2,375
Vested	(739)
Forfeited	(485)
Outstanding at March 31, 2008	5,062

As of March 31, 2008, Duke Energy had approximately $45 million of unrecognized compensation cost which is expected to be recognized over a weighted-average period of 2.0 years.

Other Stock Awards

Other stock awards issued and outstanding under the 1998 Plan vest over periods from three to five years. There were no other stock awards issued during the three months ended March 31, 2008 or 2007.

The following table summarizes information about other stock awards outstanding at March 31, 2008:

	Shares (in thousands)
Number of Other Stock Awards:	
Outstanding at December 31, 2007	324
Vested	(24)
Forfeited	(40)
Outstanding at March 31, 2008	260

As of March 31, 2008, Duke Energy had approximately $3 million of unrecognized compensation cost which is expected to be recognized over a weighted-average period of 2.1 years.

6. Inventory

Inventory consists primarily of materials and supplies and coal held for electric generation and is recorded primarily using the average cost method.

	March 31, 2008	December 31, 2007
	(in millions)	
Materials and supplies	$ 569	$ 555
Coal held for electric generation	355	388
Natural gas	22	69
Total inventory	$ 946	$ 1,012

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

7. Debt and Credit Facilities

In January 2008, Duke Energy Carolinas issued $900 million principal amount of mortgage refunding bonds, of which $400 million carries a fixed interest rate of 5.25% and matures January 15, 2018 and $500 million carries a fixed interest rate of 6.00% and matures January 15, 2038. Proceeds from the issuance were used to fund capital expenditures and for general corporate purposes, including the repayment of commercial paper. In anticipation of this debt issuance, Duke Energy Carolinas executed a series of interest rate swaps in 2007 to lock in the market interest rates at that time. The value of these interest rate swaps, which were terminated prior to issuance of the fixed rate debt, was a pre-tax loss of approximately $18 million, which was recorded as a component of AOCI and will be amortized as a component of interest expense over the life of the debt.

In April 2008, Duke Energy Carolinas issued $900 million principal amount of mortgage refunding bonds, of which $300 million carries a fixed interest rate of 5.10% and matures April 15, 2018 and $600 million carries a fixed interest rate of 6.05% and matures April 15, 2038. Proceeds from the issuance will be used to fund capital expenditures and for general corporate purposes. In anticipation of this debt issuance, Duke Energy Carolinas executed a series of interest rate swaps in 2007 to lock in the market interest rates at that time. The value of these interest rate swaps, which were terminated prior to issuance of the fixed rate debt, was a pre-tax loss of approximately $23 million, which was recorded as a component of AOCI and will be amortized as a component of interest expense over the life of the debt.

In April 2008, Duke Energy Carolinas refunded $100 million of tax-exempt auction rate bonds through the issuance of $100 million of tax-exempt variable-rate demand bonds, which are supported by a direct-pay letter of credit. The variable-rate demand bonds, which are due November 1, 2040, have an initial interest rate of 2.15% which will be reset on a weekly basis.

As discussed in Note 1, in connection with the spin-off of Spectra Energy on January 2, 2007, Duke Energy distributed approximately 2 million shares of Spectra Energy common stock to the holders of convertible notes pursuant to the antidilution provisions of the indenture agreement, resulting in a charge of approximately $21 million, which is recorded in Other Income and Expenses, net in the Consolidated Statements of Operations. Duke Energy repurchased all of the outstanding convertible notes in 2007.

Available Credit Facilities and Restrictive Debt Covenants. In March 2008, Duke Energy entered into an amendment to its $2.65 billion master credit facility whereby the borrowing capacity was increased by $550 million to $3.2 billion. Pursuant to the amendment, the additional credit capacity of $550 million specifically increased the borrowing sub limits for Duke Energy Ohio and Duke Energy Indiana to $750 million and $700 million, respectively. See table below for the borrowing sub limits for each of the Duke Energy entities with borrowing capacity under this credit facility. In May 2008, Duke Energy reallocated the sub limits under its master credit facility by increasing the sub limit of Duke Energy Carolinas $100 million to $900 million and reducing the sub limits of both Duke Energy Ohio and Duke Energy Indiana by $50 million to $700 million and $650 million, respectively.

The issuance of commercial paper, letters of credit and other borrowings reduces the amount available under the available credit facilities.

Duke Energy's debt and credit agreements contain various financial and other covenants. Failure to meet those covenants beyond applicable grace periods could result in accelerated due dates and/or termination of the agreements. As of March 31, 2008, Duke Energy was in compliance with those covenants. In addition, some credit agreements may allow for acceleration of payments or termination of the agreements due to nonpayment, or the acceleration of other significant indebtedness of the borrower or some of its subsidiaries. None of the debt or credit agreements contain material adverse change clauses.

At March 31, 2008 and December 31, 2007, approximately $629 million of pollution control bonds and approximately $300 million of commercial paper, which are short-term obligations by nature, were classified as Long-Term Debt on the Consolidated Balance Sheets due to Duke Energy's intent and ability to utilize such borrowings as long-term financing. As Duke Energy's master credit facility has non-cancelable terms in excess of one year as of the balance sheet date, Duke Energy has the ability to refinance these short-term obligations on a long-term basis.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Credit Facilities Summary as of March 31, 2008 (in millions)

	Expiration Date	Credit Facilities Capacity	Commercial Paper	Letters of Credit	Total
Duke Energy Corporation					
$3,200 multi-year syndicated[a], [b], [c]	June 2012	$ 3,200	$ 671	$ 36	$ 707
Duke Energy Carolinas, LLC					
Total[d]		$ 3,200	$ 971	$ 43	$ 1,014

(a) Credit facility contains an option allowing borrowing up to the full amount of the facility on the day of initial expiration for up to one year.

(b) Credit facility contains a covenant requiring the debt-to-total capitalization ratio to not exceed 65% for each borrower.

(c) Contains sub limits at March 31, 2008 as follows: $850 million for Duke Energy, $800 million for Duke Energy Carolinas, $750 million for Duke Energy Ohio, $700 million for Duke Energy Indiana and $100 million for Duke Energy Kentucky. See above for changes to various sub limits subsequent to March 31, 2008.

(d) This summary excludes certain demand facilities and committed facilities that are immaterial in size or which generally support very specific requirements.

8. Employee Benefit Obligations

Qualified Pension Plans

The following table shows the components of the net periodic pension costs for the Duke Energy U.S. qualified pension plans.

Components of Net Periodic Pension Costs: Qualified Pension Costs—for the three months ended March 31,

	2008[a]	2007[a]
	(in millions)	
Service cost	$ 25	$ 25
Interest cost on projected benefit obligation	62	61
Expected return on plan assets	(76)	(76)
Amortization of prior service cost	2	—
Amortization of loss	6	6
Other	5	5
Net periodic pension costs	$ 24	$ 21

(a) Net periodic qualified pension costs for the three months ended March 31, 2008 and 2007 exclude approximately $2 million and $6 million, respectively, of regulatory asset amortization resulting from purchase accounting associated with Duke Energy's merger with Cinergy Corp. (Cinergy) in April 2006.

Non-Qualified Pension Plans

The following table shows the components of the net periodic pension costs for the Duke Energy U.S. non-qualified pension plans.

Components of Net Periodic Pension Costs: Non-Qualified Pension Costs—for the three months ended March 31,

	2008	2007
	(in millions)	
Service cost	$ 2	$ 2
Interest cost on projected benefit obligation	2	2
Amortization of prior service cost	—	—
Net periodic pension costs	$ 4	$ 4

Duke Energy's policy is to fund amounts for its U.S. qualified pension plans on an actuarial basis to provide assets sufficient to meet benefit payments to be paid to plan participants. Duke Energy did not make contributions to its U.S. qualified or non-qualified pension plans during the three months ended March 31, 2008 or 2007 and Duke Energy does not anticipate making contributions to its qualified or non-qualified pension plans during the remainder of 2008. Duke Energy also sponsors employee savings plans that cover substantially all U.S. employees. Duke Energy expensed pre-tax employer matching contributions of approximately $27 million and $21 million in the three months ended March 31, 2008 and 2007, respectively.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Other Post-Retirement Benefit Plans

The following table shows the components of the net periodic post-retirement benefit costs for the Duke Energy U.S. other post-retirement benefit plans.

Components of Net Periodic Post-Retirement Benefit Costs—for the three months ended March 31,

	2008(a)	2007(a)
	(In millions)	
Service cost	$ 6	$ 6
Interest cost on accumulated post-retirement benefit obligation	13	14
Expected return on plan assets	(3)	(3)
Amortization of net transition liability	3	3
Amortization of prior service (credit)/cost	(2)	1
Amortization of loss	1	1
Net periodic post-retirement benefit costs	$ 18	$ 22

(a) Net periodic other post-retirement benefit costs for both the three months ended March 31, 2008 and 2007 exclude approximately $2 million of regulatory asset amortization resulting from purchase accounting associated with Duke Energy's merger with Cinergy in April 2006.

9. Goodwill and Intangible Assets

The following table shows goodwill by business segment at March 31, 2008 and December 31, 2007:

	Balance December 31, 2007	Changes	Balance March 31, 2008
		(in millions)	
U.S. Franchised Electric and Gas	$3,478	$	$ 3,478
Commercial Power	871	(2)	869
International Energy	293	10	303
Total consolidated	$4,642	$ 8	$ 4,650

The carrying amount and accumulated amortization of intangible assets as of March 31, 2008 and December 31, 2007 are as follows:

	March 31, 2008	December 31, 2007
	(in millions)	
Emission allowances	$ 426	$ 426
Gas, coal and power contracts	296	296
Other	106	116
Total gross carrying amount	828	838
Accumulated amortization—gas, coal and power contracts	(101)	(94)
Accumulated amortization—other	(24)	(24)
Total accumulated amortization	(125)	(118)
Total intangible assets, net	$ 703	$ 720

Emission allowances in the table above include emission allowances acquired by Duke Energy as part of the merger with Cinergy, which were recorded at fair value on the date of the merger, and emission allowances purchased by Duke Energy. Additionally, Duke Energy is allocated certain zero cost emission allowances on an annual basis. Carrying value of emission allowances sold or consumed during the three months ended March 31, 2008 and 2007 were $29 million and $95 million, respectively. See Note 3 for a discussion of gains and losses on sales of emission allowances by Commercial Power during the three months ended March 31, 2008 and 2007.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Amortization expense for gas, coal and power contracts and other intangible assets for the three months ended March 31, 2008 and 2007 was approximately $7 million and $14 million, respectively.

In connection with the merger with Cinergy in April 2005, Duke Energy recorded an intangible liability of approximately $113 million associated with the market based standard service offer (MBSSO) in Ohio, which is being recognized in earnings over the remaining regulatory period that ends on December 31, 2008. During the three months ended March 31, 2008 and 2007, Duke Energy amortized approximately $17 million and less than $1 million, respectively, to income related to this intangible liability. The carrying amount of this intangible liability was approximately $50 million and $67 million at March 31, 2008 and December 31, 2007, respectively. Duke Energy also recorded approximately $56 million of intangible liabilities associated with other power sale contracts in connection with the merger with Cinergy. The carrying amount of this intangible liability was approximately $21 million and $22 million at March 31, 2008 and December 31, 2007, respectively. During the three months ended March 31, 2008 and 2007, Duke Energy amortized approximately $1 million and $4 million, respectively, to income related to these power sale contracts.

10. Severance

During the three months ended March 31, 2008 and 2007, Duke Energy recorded severance charges under its ongoing severance plan of approximately $1 million and $2 million, respectively. Future severance costs under this plan, if any, are currently not estimable.

Severance Reserve

	Balance at December 31, 2007	Provision/ Adjustments	Cash Reductions	Balance at March 31, 2008
		(in millions)		
Other[a]	$ 34	$ 1	$ (9)	$ 26

(a) Severance provisions are expected to be paid within one year from the date that the provision was recorded.

11. Discontinued Operations and Assets Held for Sale

The following table summarizes the results classified as Income From Discontinued Operations, net of tax, in the Consolidated Statements of Operations.

Discontinued Operations (in millions)

		Operating Income (Loss)			Net Gain (Loss) on Dispositions			
	Operating Revenues	Pre-tax Operating (Loss) Income	Income Tax (Benefit) Expense	Operating Income (Loss), Net of Tax	Pre-tax (Loss) Income on Dispositions	Income Tax Expense	Gain (Loss) on Dispositions, Net of Tax	Income From Discontinued Operations, Net of Tax
Three Months Ended March 31, 2008								
Commercial Power	$ 3	$ —	$ (8)	$ 8	$ —	$ —	$ —	$ 8
International Energy	—	(6)	(2)	(4)	—	—	—	(4)
Other	—	(3)	(1)	(2)	—	—	—	(2)
Total consolidated	$ 3	$ (9)	$ (11)	$ 2	$ —	$ —	$ —	$ 2
Three Months Ended March 31, 2007								
Commercial Power	$ 52	$ (22)	$ (34)	$ 12	$ (1)	$ —	$ (1)	$ 11
International Energy	—	8	3	5	—	—	—	5
Other	—	(1)	—	(1)	7	2	5	4
Total consolidated	$ 52	$ (15)	$ (31)	$ 16	$ 6	$ 2	$ 4	$ 20

The following table presents the carrying values of the major classes of Assets Held for Sale and associated Liabilities Associated with Assets Held for Sale in the Consolidated Balance Sheets as of March 31, 2008 and December 31, 2007. Assets held for sale and liabilities associated with assets held for sale at March 31, 2008 relate to Duke Energy's 480 megawatt (MW) natural-gas fired peaking generating station located near Brownsville, Tennessee. In February 2008, Duke Energy entered into an agreement to sell this natural gas-fired peaking generating station to Tennessee Valley Authority for approximately $55 million. This transaction, which was subject to

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

FERC and other regulatory approvals, closed in April 2008 and resulted in Duke Energy recognizing an approximate $23 million pre-tax gain at closing. Assets Held for Sale and Liabilities Associated with Assets Held for Sale at December 31, 2007 primarily relate to Duke Energy Indiana's Wabash River Power Station, the sale of which was completed in January 2008 (see Note 3).

Summarized Balance Sheet Information for Assets and Associated Liabilities Held for Sale (in millions)

	March 31, 2008	December 31, 2007
Current assets	$ 4	$ 2
Property, plant and equipment, net	30	115
Total assets held for sale	$ 34	$ 117
Current liabilities	$ —	$ 114
Deferred credits and other liabilities	—	3
Total liabilities associated with assets held for sale	$ —	$ 117

Three months ended March 31, 2007

Amounts included in Income From Discontinued Operations, net of tax, primarily consist of the following:

Commercial Power. Due to the expiration of certain tax credits, Commercial Power ceased all synthetic fuel (synfuel) operations as of December 31, 2007. Accordingly, the results of operations for synfuel have been reclassified to discontinued operations for the three months ended March 31, 2007. See Note 14 for further information on the synfuel operations.

12. Risk Management Instruments

As discussed in Note 1, on January 1, 2008, Duke Energy adopted FSP No. FIN 39-1. In accordance with FSP No. FIN 39-1, Duke Energy offsets fair value amounts (or amounts that approximate fair value) recognized on its Consolidated Balance Sheets related to cash collateral amounts receivable or payable against fair value amounts recognized for derivative instruments executed with the same counterparty under the same master netting agreement. Amounts presented in the table below exclude cash collateral amounts which are disclosed separately in Note 1.

The following table shows the carrying value of Duke Energy's derivative portfolio as of March 31, 2008, and December 31, 2007.

Net Derivative Portfolio Assets (Liabilities) reflected in the Consolidated Balance Sheets: (in millions)

	March 31, 2008	December 31, 2007
Hedging	$ (48)	$ (34)
Undesignated	88	39
Total	$ 40	$ 5

The amounts in the table above represent the combination of amounts included in the Consolidated Balance Sheets as a component of Other within Current Assets, Other within Investments and Other Assets, Other within Current Liabilities and Other within Deferred Credits and Other Liabilities.

The $14 million decrease in the fair value of the hedging portfolio is due primarily to changes in market rates of forward starting interest rate swaps.

The $49 million increase in the fair value of the undesignated derivative portfolio is due primarily to unrealized mark-to-market gains within Commercial Power, primarily as a result of increasing coal prices.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Commodity Cash Flow Hedges. As of March 31, 2008, approximately $38 million of the pre-tax unrealized net losses on derivative instruments related to commodity cash flow hedges included on the Consolidated Balance Sheet in Accumulated Other Comprehensive Loss are expected to be recognized in earnings during the next 12 months as the hedged transactions occur. However, due to the volatility of the commodities markets, the corresponding values in Accumulated Other Comprehensive Loss will likely change prior to its reclassification into earnings.

No gains or losses due to hedge ineffectiveness were recorded during the three months ended March 31, 2008 or 2007. The amount recognized for transactions that no longer qualified as cash flow hedges was not material for either the three months ended March 31, 2008 or March 31, 2007.

Commodity Fair Value Hedges. No gains or losses due to hedge ineffectiveness were recorded during the three months ended March 31, 2008 or 2007.

See Note 16 for additional information related to the fair value of Duke Energy's derivative instruments.

13. Regulatory Matters

Regulatory Merger Approvals. On April 3, 2006, the merger between Duke Energy and Cinergy was consummated to create a newly formed company, Duke Energy Holding Corp. (subsequently renamed Duke Energy Corporation). As a condition to the merger approval, the Public Utilities Commission of Ohio (PUCO), the Kentucky Public Service Commission (KPSC), the Public Service Commission of South Carolina (PSCSC) and the North Carolina Utilities Commission (NCUC) required that certain merger related savings be shared with consumers in Ohio, Kentucky, South Carolina, and North Carolina, respectively. The commissions also required Duke Energy Holding Corp., Cinergy, Duke Energy Ohio, Duke Energy Kentucky and/or Duke Energy Carolinas to meet additional conditions. While the merger itself was not subject to approval by the IURC, the IURC approved certain affiliate agreements in connection with the merger subject to similar conditions. Key elements of these conditions include:

- The PUCO required that Duke Energy Ohio provide (i) a rate reduction of approximately $15 million for one year to facilitate economic development in a time of increasing rates and market prices and (ii) a reduction of approximately $21 million to its gas and electric consumers in Ohio for one year, with both credits beginning January 1, 2006. During the first quarter of 2007, Duke Energy Ohio completed its merger related rate reductions and filed a report with the PUCO to terminate the merger credit riders. Approximately $2 million of the rate reductions was passed through to customers during the three months ended March 31, 2007.

- The KPSC required that Duke Energy Kentucky provide $8 million in rate reductions to its customers over five years, ending when new rates are established in the next rate case after January 1, 2008. Approximately $1 million of the rate reduction was passed through to customers during each of the three months ended March 31, 2008 and 2007.

- The PSCSC required that Duke Energy Carolinas provide a $40 million rate reduction for one year and a three-year extension to the Bulk Power Marketing (BPM) profit sharing arrangement. The rate reduction ended May 31, 2007. Approximately $9 million of the rate reduction was passed through to customers during the three months ended March 31, 2007.

- The NCUC required that Duke Energy Carolinas provide (i) a rate reduction of approximately $118 million for its North Carolina customers through a credit rider to existing base rates for a one-year period following the close of the merger and (ii) $12 million to support various low income, environmental, economic development and educationally beneficial programs, the cost of which was incurred in the second quarter of 2006. The rate reduction ended June 30, 2007. Approximately $29 million of the rate reduction was passed through to customers during the three months ended March 31, 2007.

- In its order approving Duke Energy's merger with Cinergy, the NCUC stated that the merger will result in a significant change in Duke Energy's organizational structure which constitutes a compelling factor that warrants a general rate review. Therefore, as a condition of its merger approval and no later than June 1, 2007, Duke Energy Carolinas was required to file a general rate case or demonstrate that Duke Energy Carolinas' existing rates and charges should not be changed (see discussion under "Duke Energy Carolinas Rate Case" below).

- The IURC required that Duke Energy Indiana provide a rate reduction of $40 million to its customers over a one year period and $5 million over a five year period for low-income energy assistance and clean coal technology. In April 2006, Citizens Action Coalition of Indiana, Inc., an intervenor in the merger proceeding, filed a Verified Petition for Rehearing and Reconsideration claiming that Duke Energy Indiana should be ordered to provide an additional $5 million in rate reduction to customers to be consistent with the

terms of the NCUC's order approving the merger. In May 2006, the IURC denied the petition for rehearing and reconsideration. As of April 30, 2007, Duke Energy Indiana had completed its merger related reductions and filed a notice with the IURC to terminate the merger credit rider. Approximately $12 million of the rate reduction was passed through to customers during the three months ended March 31, 2007.

- The FERC approved the merger without conditions.

Used Nuclear Fuel. Under provisions of the Nuclear Waste Policy Act of 1982, Duke Energy contracted with the Department of Energy (DOE) for the disposal of used nuclear fuel. The DOE failed to begin accepting used nuclear fuel on January 31, 1998, the date specified by the Nuclear Waste Policy Act and in Duke Energy's contract with the DOE. Duke Energy will continue to safely manage its used nuclear fuel until the DOE accepts it. In 1998, Duke Energy filed a claim with the U.S. Court of Federal Claims against the DOE related to the DOE's failure to accept commercial used nuclear fuel by the required date. Damages claimed in the lawsuit were based upon Duke Energy's costs incurred as a result of the DOE's partial material breach of its contract, including the cost of securing additional used fuel storage capacity. Payments made to the DOE for expected future disposal costs are based on nuclear output and are included in the Consolidated Statements of Operations as Fuel Used in Electric Generation and Purchased Power. On March 5, 2007, Duke Energy Carolinas and the DOJ reached a settlement resolving Duke Energy's used nuclear fuel litigation against the DOE. The agreement provided for an initial payment to Duke Energy of approximately $56 million for certain storage costs incurred through July 31, 2005, with additional amounts reimbursed annually for future storage costs. The settlement agreement resulted in a pre-tax earnings impact of approximately $26 million during the three months ended March 31, 2007, of which approximately $19 million and $7 million were recorded as an offset to Fuel Used in Electric Generation and Purchased Power, and Operation, Maintenance and Other, respectively, in the Consolidated Statements of Operations, with the remaining impact reflected within Inventory and Property, Plant and Equipment in the Consolidated Balance Sheets.

U.S. Franchised Electric and Gas. *Rate Related Information.* The NCUC, PSCSC, IURC and KPSC approve rates for retail electric and gas services within their states. The PUCO approves rates for retail gas and electric service within Ohio, except that non-regulated sellers of gas and electric generation also are allowed to operate in Ohio (see "Commercial Power" below). The FERC approves rates for electric sales to wholesale customers served under cost-based rates.

North Carolina Clean Air Act Compliance. In 2002, the state of North Carolina passed clean air legislation that froze electric utility rates from June 20, 2002 to December 31, 2007 (rate freeze period), subject to certain conditions, in order for North Carolina electric utilities, including Duke Energy Carolinas, to significantly reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_x) from coal-fired power plants in the state. The legislation allows electric utilities, including Duke Energy Carolinas, to accelerate the recovery of compliance costs by amortizing them over seven years (2003-2009). The legislation provides for significant flexibility in the amount of annual amortization recorded, allowing utilities to vary the amount amortized, within limits, although the legislation does require that a minimum of 70% of the originally estimated total cost of $1.5 billion be amortized within the rate freeze period (2002 to 2007). As discussed further below, under the Partial Settlement of the Duke Energy Carolinas rate case, effective January 1, 2008, Duke Energy Carolinas discontinued the amortization of the environmental compliance costs pursuant to North Carolina clean air legislation and began capitalizing all environmental compliance costs above the cumulative amortization charge. From inception through December 31, 2007, Duke Energy Carolinas' had recorded amortization expense related to this clean air legislation of $1,050 million, with approximately $56 million recorded during the three months ended March 31, 2007. As of March 31, 2008, cumulative expenditures totaled approximately $1,343 million, with approximately $97 million and $127 million incurred during the three months ended March 31, 2008 and 2007, respectively, which are included within capital expenditures in Net Cash Used in Investing Activities on the Consolidated Statements of Cash Flows. In filings with the NCUC, Duke Energy Carolinas has estimated the costs to comply with the legislation as approximately $1.8 billion (excluding any allowance for funds used during construction (AFUDC) associated with the non-amortized capital expenditures). Actual costs may be higher or lower than the estimate based on changes in construction costs and Duke Energy Carolinas' continuing analysis of its overall environmental compliance plan. As required by the legislation, the NCUC considered the reasonableness of Duke Energy Carolinas' environmental compliance plan and the method for recovery of the remaining costs in a proceeding it initiated and consolidated with a review of Duke Energy Carolinas' base rates (see "Duke Energy Carolinas Rate Case" below). Additionally, federal and state environmental regulations, including, among other things, the Clean Air Interstate Rule (CAIR) and a likely federal mercury rule, could result in additional costs to reduce emissions from Duke Energy's coal-fired power plants.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Duke Energy Carolinas Rate Case. In June 2007, Duke Energy Carolinas filed an application with the NCUC seeking authority to increase its rates and charges for electric service in North Carolina effective January 1, 2008. This application complied with a condition imposed by the NCUC in approving the Cinergy merger. On October 5, 2007, Duke Energy Carolinas filed an Agreement and Stipulation of Partial Settlement (Partial Settlement), a settlement agreement among Duke Energy Carolinas, the NCUC Public Staff, the North Carolina Attorney General's Office, Carolina Utility Customers Association Inc., Carolina Industrial Group for Fair Utility Rates III and Wal-Mart Stores East LP, for consideration by the NCUC. The Partial Settlement, which includes Duke Energy Carolinas and all intervening parties to the rate case, reflected agreements on all but a few issues in these matters, including two significant issues. The two significant issues related to the treatment of ongoing merger cost savings resulting from the Cinergy merger and the proposed amortization of Duke Energy Carolinas' development costs related to GridSouth Transco, LLC (GridSouth), a Regional Transmission Organization (RTO) planned by Duke Energy Carolinas and other utility companies as a result of previous FERC rulemakings, which was suspended in 2002 and discontinued in 2005 as a result of regulatory uncertainty. The Partial Settlement and the remaining disputed issues were presented to the NCUC for a ruling.

The Partial Settlement reflected an agreed to reduction in net revenues and pre-tax cash flows of approximately $210 million and corresponding rate reductions of 12.7% to the industrial class, 5.05% – 7.34% to the general class and 3.85% to the residential class of customers with an effective date of January 1, 2008. Under the Partial Settlement, effective January 1, 2008, Duke Energy Carolinas discontinued the amortization of the environmental compliance costs pursuant to North Carolina clean air legislation discussed above and began capitalizing all environmental compliance costs above the cumulative amortization charge of $1.05 billion as of December 31, 2007. Over the past five years, the average annual clean air amortization was $210 million. The Partial Settlement was designed to enable Duke Energy Carolinas to earn a rate of return of 8.57% on a North Carolina retail jurisdictional rate base and an 11% return on the common equity component of the approved capital structure, which consists of 47% debt and 53% common equity. As part of the settlement, Duke Energy Carolinas agreed to alter the then existing BPM profit sharing arrangement that currently included a provision to share 50% of the North Carolina retail allocation of the profits from certain wholesale sales of bulk power from Duke Energy Carolinas' generating units at market based rates. Under the Partial Settlement, Duke Energy Carolinas will share 90% of the North Carolina retail allocation of the profits from BPM transactions beginning January 1, 2008.

The NCUC issued its Order Approving Stipulation and Deciding Non-Settled Issues on December 20, 2007. The NCUC approved the Partial Settlement in its entirety. The merger savings rider and GridSouth cost matters are discussed in detail below. For the remaining non-settled issues, the NCUC decided in Duke Energy Carolinas' favor. With respect to the non-settled issues, the Order required that Duke Energy Carolinas' test period operating costs reflect an annualized level of the merger cost savings actually experienced in the test period in keeping with traditional principles of ratemaking. The NCUC explained that because rates should be designed to recover a reasonable and prudent level of ongoing expenses, Duke Energy Carolinas' annual cost of service and revenue requirement should reflect, as closely as possible, Duke Energy Carolinas' actual costs. However, the NCUC recognized that its treatment of merger savings would not produce a fair result. Therefore, the NCUC preliminarily concluded that it would reconsider certain language in its 2006 merger order in order to allow it to authorize a 12-month increment rider, beginning January 2008, of approximately $80 million designed to provide a more equitable sharing of the actual merger savings achieved on an ongoing basis. Additionally, the NCUC concluded that approximately $30 million of costs incurred through June 2002 in connection with GridSouth and deferred by Duke Energy Carolinas, were reasonable and prudent and approved a ten-year amortization, retroactive to June 2002. As a result of the retroactive impact of the Order, Duke Energy Carolinas recorded an approximate $17 million charge to write-off a portion of the GridSouth costs in the fourth quarter of 2007. The NCUC did not allow Duke Energy Carolinas a return on the GridSouth investments. As a result of its decision on the non-settled issues, the NCUC ordered an additional reduction in annual revenues of approximately $54 million, offset by its preliminary authorization of a 12-month, $80 million increment rider, as discussed above. The Order ultimately resulted in an overall average rate decrease of 5% in 2008, increasing to 7% upon expiration of this one-time rate rider. On February 18, 2008, the NCUC issued an order confirming their preliminary conclusion regarding the merger savings rider. This order reaffirmed the prior tentative conclusion that the provisions of the Merger Order will not produce a fair sharing of the benefits of estimated merger savings between ratepayers and shareholders and, for that reason, Duke Energy should be authorized to implement a 12-month increment rider to collect $80 million.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

On December 12, 2007, the PSCSC directed the South Carolina Office of Regulatory Staff (ORS) to provide a written report concerning the NCUC's resolution of Duke Energy Carolinas' rate application and its relevance to Duke Energy Carolinas' rates in South Carolina. On January 31, 2008, the ORS filed its report with the PSCSC, which concluded that the outcome of the North Carolina rate case had no bearing on Duke Energy Carolinas' rates in South Carolina. The PSCSC has not taken any action with respect to the report filed by the ORS.

The NCUC has requested that the Public Staff perform a review of Duke Energy Carolinas pension and other post-retirement benefit plan costs, as well as Duke Energy's funding of the plans. At this time, Duke Energy Carolinas does not anticipate that the outcome of this review will have a material impact on its financial position, results of operations or cash flows.

Duke Energy Ohio Electric Rate Filings. Duke Energy Ohio operates under a rate stabilization plan (RSP), a MBSSO approved by the PUCO in November 2004. In March 2005, the Office of the Ohio Consumers' Council (OCC) appealed the PUCO's approval of the MBSSO to the Supreme Court of Ohio and the Court issued its decision in November 2006. It upheld the MBSSO in virtually every respect but remanded to the PUCO on two issues. The Court ordered the PUCO to support a certain portion of its order with reasoning and record evidence and to require Duke Energy Ohio to disclose certain confidential commercial agreements with other parties previously requested by the OCC. Duke Energy Ohio has complied with the disclosure order.

In October 2007, the PUCO issued its ruling affirming the MBSSO, with certain modifications, and maintaining the current price. The ruling provides for continuation of the existing rate components, including the recovery of costs related to new pollution control equipment and capacity costs associated with power purchase contracts to meet customer demand, but provided customers an enhanced opportunity to avoid certain pricing components if they are served by a competitive supplier. The ruling also attempted to modify the statutory requirement that Duke Energy Ohio transfer its generating assets to an exempt wholesale generator (EWG) and ordered Duke Energy Ohio to retain ownership for the remainder of the RSP period. The ruling also incorrectly implied that Duke Energy Ohio's nonresidential regulatory transition charge (RTC) will terminate at the end of 2008. On November 23, 2007, Duke Energy Ohio filed an application for rehearing on the portions of the PUCO's ruling relating to whether certain pricing components may be avoided by customers, the right to transfer generating assets, and the termination date of the RTC. On December 19, 2007, the PUCO issued its Entry on Rehearing granting in part and denying in part Duke Energy Ohio's Application for Rehearing. Among other things, the PUCO modified and clarified the applicability of various rate riders during customer shopping situations. It also clarified that the residential RTC terminates at the end of 2008 and that the nonresidential RTC terminates at the end of 2010 and agreed to give further consideration to whether Duke Energy Ohio may transfer its generating assets to an EWG.

On February 15, 2008, Duke Energy Ohio filed a notice of appeal with the Ohio Supreme Court challenging a portion of the PUCO's decision on remand regarding Duke Energy Ohio's RSP. The October 2007 order permits non-residential customers to avoid certain charges associated with the costs of Duke Energy Ohio standing ready to serve such customers if they return after being served by another supplier. Duke Energy Ohio believes the PUCO exceeded its authority in modifying the charges that may be avoided, resulting in Duke Energy Ohio having to subsidize Ohio's competitive electric market. Duke Energy Ohio has asked the Supreme Court to reverse the PUCO ruling and require that non-residential customers pay the charges associated with Duke Energy Ohio standing ready to serve them should they return from a competitive supplier. On March 28, 2008, Duke Energy Ohio voluntarily withdrew its appeal. The OCC filed a notice of appeal challenging the PUCO's October 2007 decision as unlawful and unreasonable. The OCC and Ohio Partners for Affordable Energy (OPAE) also filed appeals from the PUCO's November 20, 2007 order approving Duke Energy Ohio's MBSSO riders. Duke Energy Ohio has intervened in each appeal. Pending the Ohio Supreme Court's consideration of its initial appeal, the OCC has requested that the PUCO stay implementation of the Infrastructure Maintenance Fund charge to be collected from customers approved in the October 2007 order. On April 14, 2008, Duke Energy Ohio filed a motion to intervene in OCC's appeal and on April 30, 2008, the Ohio Supreme Court granted such motion to intervene. At this time, Duke Energy Ohio cannot predict whether the Ohio Supreme Court will reverse the PUCO's decision or whether the PUCO will grant the OCC's request for a stay. Additionally, Duke Energy Ohio cannot predict the outcome of the MBSSO rider appeal; however, Duke Energy Ohio does not anticipate the resolution of this matter will have a material impact on its results of operations, cash flows or financial position.

In August 2006, Duke Energy Ohio filed an application with the PUCO to amend its MBSSO through 2010. The proposal provides for continued electric system reliability, a simplified market price structure and clear price signals for customers, while helping to maintain a stable revenue stream for Duke Energy Ohio. On November 30, 2007, due to new legislation pending in the Ohio General Assembly regarding the pricing of competitive retail generation services, Duke Energy Ohio requested PUCO approval, which the PUCO granted, to withdraw the Duke Energy Ohio its application to amend its MBSSO. New legislation (SB 221) was passed on April 23, 2008 and signed

by the Governor of Ohio on May 1, 2008. The new law codifies the PUCO's authority to approve an electric utility's standard service offer through an electric security plan (ESP), which would allow for pricing structures similar to the current MBSSO. Electric utilities are required to file an ESP and may also file an application for a market rate option at the same time. The market rate option is a price determined through a competitive bidding process. If a market rate option price is approved, the utility would blend in the MBSSO or ESP price with the market rate option price over a two- to ten-year period, subject to the PUCO's discretion. SB 221 provides for the PUCO to approve non-by-passable charges for new generation, including construction work-in-process (CWIP) from the outset of construction, as part of an ESP. The new law grants the PUCO discretion to approve single issue rate adjustments to distribution and transmission rates and establishes new alternative energy and renewable resources portfolio standards, such that the utility's portfolio must consist of at least 25% of these resources by 2025. SB 221 also provides a separate requirement for energy efficiency, which must reduce 22% of the utility's load. The utility's earnings under the ESP are subject to an annual earnings test and the PUCO must order a refund if it finds that the utility's earnings significantly exceed the earnings of benchmark companies with similar business and financial risks. The earnings test acts as a cap to the ESP price. SB 221 also limits the ability of a utility to transfer its designated generating assets to an EWG absent PUCO approval. Duke Energy Ohio plans to file a new generation pricing formula before the MBSSO expires.

Duke Energy Ohio is currently preparing an ESP filing under SB 221. This filing will address pricing for generation service beginning January 1, 2009, when the current RSP is scheduled to expire. The plan will also provide for pricing for the advanced energy, renewables and energy efficiency portfolio standards that Duke Energy Ohio is required to meet under SB 221. Duke Energy Ohio expects to make the filing on or shortly after the effective date of the new legislation. At this time, Duke Energy Ohio cannot predict the outcome of this proceeding.

Duke Energy Ohio Gas Rate Case. In July 2007, Duke Energy Ohio filed an application with the PUCO for an increase in its base rates for gas service. Duke Energy Ohio sought an increase of approximately $34 million in revenue, or approximately 5.7%, to be effective in the spring of 2008. The application also requests approval to continue tracker recovery of costs associated with an accelerated gas main replacement program. The PUCO accepted the application for filing in September 2007. The staff of the PUCO issued a Staff Report in December 2007 recommending an increase of approximately $14 million to $20 million in revenue. The Staff Report also recommended approval for Duke Energy Ohio to continue tracker recovery of costs associated with an accelerated gas main replacement program. On February 28, 2008, Duke Energy Ohio reached a settlement agreement with the PUCO Staff and all of the intervening parties on its request for an increase in natural gas base rates. The settlement calls for an annual revenue increase of approximately $18 million in base revenue, or 3 percent over current revenue, and permits continued recovery of costs through 2018 for Duke Energy Ohio's accelerated gas main replacement program and permits recovery of carrying costs on gas stored underground via its monthly gas cost adjustment filing. The settlement is subject to the review and approval of the PUCO. An order is expected in the second quarter of 2008.

Duke Energy Kentucky Gas Rate Cases. In 2002, the KPSC approved Duke Energy Kentucky's gas base rate case which included, among other things, recovery of costs associated with an accelerated gas main replacement program. The approval authorized a tracking mechanism to recover certain costs including depreciation and a rate of return on the program's capital expenditures. The Kentucky Attorney General appealed to the Franklin Circuit Court the KPSC's approval of the tracking mechanism as well as the KPSC's subsequent approval of annual rate adjustments under this tracking mechanism. In 2005, both Duke Energy Kentucky and the KPSC requested that the court dismiss these cases.

In February 2005, Duke Energy Kentucky filed a gas base rate case with the KPSC requesting approval to continue the tracking mechanism and for a $14 million annual increase in base rates. A portion of the increase is attributable to recovery of the current cost of the accelerated gas main replacement program in base rates. In December 2005, the KPSC approved an annual rate increase of $8 million and re-approved the tracking mechanism through 2011. In February 2006, the Kentucky Attorney General appealed the KPSC's order to the Franklin Circuit Court, claiming that the order improperly allows Duke Energy Kentucky to increase its rates for gas main replacement costs in between general rate cases, and also claiming that the order improperly allows Duke Energy Kentucky to earn a return on investment for the costs recovered under the tracking mechanism which permits Duke Energy Kentucky to recover its gas main replacement costs.

In August 2007, the Franklin Circuit Court consolidated all the pending appeals and ruled that the KPSC lacks legal authority to approve the gas main replacement tracking mechanism, and any other annual rate adjustments under the tracking mechanism. To date, Duke Energy Kentucky has collected approximately $9 million in annual rate adjustments under the tracking mechanism. Duke Energy Kentucky and the KPSC have appealed these cases to the Kentucky Court of Appeals and Duke Energy Kentucky continues to utilize tracking mechanisms in its billed rates to customers. At this time, Duke Energy Kentucky cannot predict the outcome of these proceedings.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

North Carolina Drought Recovery. On March 4, 2008, Duke Energy Carolinas announced that due to persistent drought conditions it has purchased up to 520 MW of additional generating capacity to help ensure customer electricity needs are met during 2008. In addition, Duke Energy Carolinas filed an application with the NCUC to recover the North Carolina retail allocable portion of costs associated with the purchase of this power.

Energy Efficiency. In May 2007, Duke Energy Carolinas filed an energy efficiency plan with the NCUC that recognizes energy efficiency as a reliable, valuable resource that is a "fifth fuel," that should be part of the portfolio available to meet customers' growing need for electricity along with coal, nuclear, natural gas, or renewable energy. The plan would compensate Duke Energy Carolinas for verified reductions in energy use and be available to all customer groups. The plan contains proposals for several different energy efficiency programs. Customers would pay for energy efficiency programs with an energy efficiency rider that would be included in their power bill and adjusted annually. The energy efficiency rider would be based on the avoided cost of generation not needed as a result of the success of Duke Energy Carolinas' energy efficiency efforts. The plan is consistent with Duke Energy Carolinas' public commitment to invest 1% of its annual retail revenues from the sale of electricity in energy efficiency programs subject to the appropriate regulatory treatment of Duke Energy Carolinas' energy efficiency investments. A hearing is scheduled to begin July 28, 2008.

On September 28, 2007, Duke Energy Carolinas filed an application with the PSCSC seeking approval to implement new energy efficiency programs in South Carolina. Duke Energy Carolinas' South Carolina application is based on the application filed in North Carolina. In advance of the evidentiary hearing held February 5-6, 2008, Duke Energy Carolinas reached settlement agreements with the South Carolina ORS, Wal-Mart, Piedmont Natural Gas and the South Carolina Energy Users Committee. Certain environmental groups that were also interveners on the proceeding did not join any of the settlements. This agreement calls for Duke Energy Carolinas to bear the cost of the programs and allow for recovery of 85% of the avoided generation charges.

Implementation of these plans is subject to approval from the NCUC and PSCSC. As a result, Duke Energy is not able to estimate the impact this plan might have on its consolidated results of operations, cash flows or financial position.

On July 11, 2007, the PUCO approved Duke Energy Ohio's Demand Side Management/Energy Efficiency Program (DSM Program). The DSM Program consists of ten residential and two commercial programs. Implementation of the programs has begun. The programs were first proposed in 2006 and were endorsed by the Duke Energy Community Partnership, which is a collaborative group made up of representatives of organizations interested in energy conservation, efficiency and assistance to low-income customers. The program costs will be recouped through a cost recovery mechanism that will be adjusted annually to reflect the previous year's activity. Duke Energy Ohio is permitted to recover lost revenues, program costs and shared savings (once the programs reach 65% of the targeted savings level) through the cost recovery mechanism based upon impact studies to be provided to the Staff of the PUCO.

In October 2007, Duke Energy Indiana filed its petition with the IURC requesting approval of an alternative regulatory plan to increase its energy efficiency efforts in the state. Similar to the plans in North Carolina and South Carolina, Duke Energy Indiana seeks approval of a plan that will be available to all customer groups and will compensate Duke Energy Indiana for verified reductions in energy usage. Under the plan, customers would pay for energy efficiency programs through an energy efficiency rider that would be included in their power bill and adjusted annually through a proceeding before the IURC. The energy efficiency rider will be based on the avoided cost of generation not needed as a result of the success of Duke Energy Indiana's energy efficiency programs. The IURC is expected to consider the petition in an evidentiary hearing in August 2008.

On November 15, 2007, Duke Energy Kentucky filed its annual application to continue existing energy efficiency programs, consisting of nine residential and two commercial and industrial programs, and to true-up its gas and electric tracking mechanism for recovery of lost revenues, program costs and shared savings. On February 11, 2008, Duke Energy Kentucky filed a motion to amend its energy efficiency programs and applied to reinstitute a low income Home Energy Assistance Program. An order on both applications is expected in the second quarter of 2008.

New Legislation. South Carolina passed new energy legislation which became effective May 3, 2007. Key elements of the legislation include expansion of the annual fuel clause mechanism to include recovery of costs of reagents (e.g., ammonia, limestone) that are consumed in the operation of Duke Energy Carolinas' SO_2 and NOx control technologies and the cost of certain emission allowances used to meet environmental requirements. The cost of reagents for Duke Energy Carolinas in 2008 is expected to be approximately $30 million. With the enactment of this legislation, Duke Energy Carolinas will be allowed to recover the South Carolina portion of these costs, incurred on or after May 3, 2007, through the fuel clause. The legislation also includes provisions to provide assurance of cost recovery related to a utility's incurrence of project development costs associated with nuclear baseload generation, cost recovery assurance for construction costs associated with nuclear or coal baseload generation, and the ability to recover financing costs for new nuclear baseload generation

in rates during construction. The North Carolina General Assembly also passed comprehensive energy legislation in July 2007 that was signed into law by the Governor on August 20, 2007. The North Carolina legislation allows utilities to recover the costs of reagents and certain purchased power costs. Like the South Carolina legislation, the North Carolina legislation provides cost recovery assurance for nuclear project development costs as well as baseload generation construction costs. A utility may include financing costs related to construction work in progress for baseload plants in a rate case. The North Carolina legislation also establishes a renewable portfolio standard for electric utilities at 3% of energy output in 2012, rising gradually to 12.5% by 2021, and grants the NCUC authority to approve a rate rider to compensate utilities for energy efficiency programs that they implement. On February 29, 2008, the NCUC adopted new rules and modified existing rules to implement the legislation. Duke Energy does not believe such rules will have a material adverse impact on its consolidated results of operations, cash flows or financial position.

On February 21, 2008, new legislation (HB 487) that would establish annual alternative energy benchmarks for electric distribution utilities and electric service companies, and energy efficiency standards for electric distribution utilities, was also introduced in the Ohio House of Representatives. Under this legislation, specified portions of the electricity supply of such utilities and companies must be generated from advanced energy or renewable energy resources, including specifically, solar resources. The legislation provides for the PUCO to annually review a utility's or company's compliance and to impose penalties for non-compliance with the benchmarks. HB 487 also establishes policies regarding the geologic storage of carbon dioxide and requires the reporting of greenhouse gas emissions. HB 487 is currently pending in the Ohio House of Representatives. At this time, Duke Energy is not able to estimate the impact these legislative initiatives might have on its consolidated results of operations, cash flows, or financial position.

Other. U.S. Franchised Electric and Gas is engaged in planning efforts to meet projected load growth in its service territories. Long-term projections indicate a need for significant capacity additions, which may include new nuclear, integrated gasification combined cycle (IGCC), coal facilities or gas-fired generation units. Because of the long lead times required to develop such assets, U.S. Franchised Electric and Gas is taking steps now to ensure those options are available. On December 12, 2007, Duke Energy Carolinas filed an application with the Nuclear Regulatory Commission (NRC) for a combined Construction and Operating License (COL) for two Westinghouse AP1000 (advanced passive) reactors for the proposed William States Lee III Nuclear Station at a site in Cherokee County, South Carolina. Each reactor is capable of producing approximately 1,117 MW. Submitting the COL application does not commit Duke Energy Carolinas to build nuclear units. On February 25, 2008, Duke Energy Carolinas received confirmation from the NRC that its COL application has been accepted and docketed for the next stage of review. Also, on December 7, 2007, Duke Energy Carolinas filed applications with the NCUC and the PSCSC for approval of Duke Energy Carolinas' decision to incur development costs associated with the proposed William States Lee III Nuclear Station. The NCUC had previously approved Duke Energy's decision to incur the North Carolina allocable share of up to $125 million in development costs through 2007. The new requests cover a total of up to $230 million in development costs through 2009, which is comprised of $70 million incurred through December 31, 2007 plus an additional $160 million of anticipated costs in 2008 and 2009. The NCUC held an evidentiary hearing on Duke Energy Carolinas' application on April 29, 2008, and the PSCSC has scheduled an evidentiary hearing for May 12, 2008.

On June 2, 2006, Duke Energy Carolinas filed an application with the NCUC for a Certificate of Public Convenience and Necessity (CPCN) to construct two 800 MW state of the art coal generation units at its existing Cliffside Steam Station in North Carolina. On March 21, 2007, the NCUC issued an Order allowing Duke Energy Carolinas to build one 800 MW unit. Its Order explained the basis for its decision to approve construction of one unit, with an approved cost estimate of $1.93 billion (including AFUDC), and included certain conditions including providing for updates on construction cost estimates. A group of environmental interveners filed a motion and supplemental motion for reconsideration in April 2007 and May 2007, respectively. The NCUC denied the motions for reconsideration in June 2007. On February 29, 2008, Duke Energy Carolinas filed its latest updated cost estimate of $1.8 billion (excluding approximately $0.6 billion of AFUDC) for the approved new Cliffside Unit 6. Duke Energy Carolinas believes that the overall cost of Cliffside Unit 6 will be reduced by approximately $125 million in federal advanced clean coal tax credits. On February 20, 2008, Duke Energy Carolinas entered into an amended and restated engineering, procurement, construction and commissioning services agreement, valued at approximately $1.3 billion, with an affiliate of The Shaw Group, Inc., of which approximately $950 million relates to participation in the construction of Cliffside Unit 6, with the remainder related to a flue gas desulfurization system on an existing unit at Cliffside.

On January 29, 2008, the North Carolina Department of Environment and Natural Resources (DENR) issued a final air permit for the new Cliffside Unit 6 and on-site construction has begun. In March 2008, four contested case petitions were filed appealing the final air permit. Duke Energy has moved to intervene in all four cases and the DENR has moved to consolidate all four cases. A hearing is not expected before the second quarter of 2009.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

On October 11, 2007, the environmental group N.C. Waste Awareness Reduction Network (WARN) and two individual N.C. WARN members filed a petition against the DENR contesting the issuance of a wastewater discharge permit to Duke Energy Carolinas for the Cliffside Steam Station. This matter has been settled and the dismissal and settlement document was filed with the Office of Administrative Hearings on March 4, 2008.

Based on initial review, the D.C. Circuit Court of Appeal's February 8, 2008 decision vacating the U.S. Environmental Protection Agency's (EPA) CAMR should have no immediate impact on Cliffside. The North Carolina mercury emission limit is more stringent than the new source limit in CAMR. On March 5, 2008, the Southern Environmental Law Center filed a letter with the North Carolina Division of Air Quality (DAQ) on behalf of 17 environmental groups. The letter urges DAQ to reopen and modify or revoke Cliffside's air permit because of the D.C. Circuit Court's decision vacating CAMR. On March 19, 2008, N.C. WARN filed a contested case petition with the Office of Administrative Hearings challenging the Cliffside air permit and seeking a stay. Also in March 2008, the Southern Environmental Law Center, on behalf of several environmental organizations, several Riverkeeper organizations and Appalachian Voices filed contested case petitions. Duke Energy Carolinas moved to intervene in these three cases.

On June 29, 2007, Duke Energy Carolinas filed with the NCUC preliminary CPCN information to construct a 620 MW combined cycle natural gas-fired generating facility at its existing Dan River Steam Station, as well as updated preliminary CPCN information to construct a 620 MW combined cycle natural gas-fired generating facility at its existing Buck Steam Station. On December 14, 2007, Duke Energy Carolinas filed CPCN applications for the two combined cycle facilities. The NCUC has consolidated its consideration of the two CPCN applications and held an evidentiary hearing on the applications on March 11, 2008. All parties filed proposed orders and/or post-hearing briefs with the NCUC on April 10, 2008, and a final order is expected from the NCUC by June 9, 2008. On May 5, 2008, Duke Energy Carolinas entered into an engineering, construction and commissioning services agreement, valued at approximately $275 million, with Shaw North Carolina, Inc.

The combined cycle natural gas-fired generating facility at the existing Buck Steam Station will affect an isolated wetland, and Duke Energy Carolinas applied for a state permit. DENR issued the permit with an unacceptable condition requiring submission of a stormwater plan before engineering and project siting have determined the location of the facilities. Duke Energy Carolinas filed a protective contested case petition on April 11, 2008, to preserve Duke Energy Carolinas' rights to continue negotiating with DENR.

In August 2005, Duke Energy Indiana filed an application with the IURC for approval of study and preconstruction costs related to the joint development of an IGCC project with Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. (Vectren). Duke Energy Indiana and Vectren reached a Settlement Agreement with the Indiana Office of Utility Consumer Counselor providing for the recovery of such costs if the IGCC project is approved and constructed and for the partial recovery of such costs if the IGCC project does not go forward. The IURC issued an order on July 26, 2006 approving the Settlement Agreement in its entirety.

On September 7, 2006, Duke Energy Indiana and Vectren filed a joint petition with the IURC seeking CPCN's for the construction of a 630 MW IGCC power plant at Duke Energy Indiana's Edwardsport Generating Station in Knox County, Indiana. The petition describes the applicants' need for additional baseload generating capacity and requests timely recovery of all construction and operating costs related to the proposed generating station, including financing costs, together with certain incentive ratemaking treatment. Duke Energy Indiana and Vectren filed their cases in chief with the IURC on October 24, 2006. Duke Energy Indiana's publicly filed testimony with the IURC states that industry estimates (as provided by the Electric Power Research Institute (EPRI)), of total capital requirements for a facility of this type and size are in the range of $1.6 billion to $2.1 billion (including escalation to 2011 and owners' specific site costs). In April 2007, Duke Energy Indiana and Vectren filed a Front End Engineering and Design Study Report which included an updated estimated cost for the IGCC project of approximately $2 billion (including approximately $120 million of AFUDC). In August 2007, Vectren withdrew its participation in the IGCC plant. Duke Energy Indiana is currently exploring its options, including assuming 100% of the plant capacity. Absent identification of an alternative joint owner, Duke Energy Indiana would own 100% of the IGCC plant capacity.

On November 20, 2007, the IURC issued an order granting Duke Energy Indiana CPCN's for the proposed IGCC project and approved the timely recovery of costs related to the project. The IURC also approved Duke Energy Indiana's proposal to initiate a proceeding in May 2008 concerning proposals for the study of partial carbon capture, sequestration and/or enhanced oil recovery for the Edwardsport IGCC Project. On January 25, 2008, Duke Energy Indiana received the final air permit from the Indiana Department of Environmental Management. The Citizens Action Coalition of Indiana, Inc., Sierra Club, Inc., Save the Valley, Inc., and Valley Watch, Inc., all intervenors in the CPCN proceeding, have appealed the IURC Order to the Indiana Court of Appeals and also appealed the air permit. These appeals are pending.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

On May 1, 2008, Duke Energy Indiana filed its first semi-annual IGCC Rider and ongoing review proceeding with the IURC as required under the CPCN Order issued by the IURC in November 2007, which approved the IGCC Project. In its filing, Duke Energy Indiana requested approval of plans to study carbon capture, sequestration and/or enhanced oil recovery, as required by the IURC's November 2007 CPCN Order, and for approval of a new cost estimate for the IGCC Project of $2.3 billion (including approximately $125 million of AFUDC). Duke Energy Indiana has requested expedited proceedings for consideration of the cost estimate increase. A procedure schedule has not been set at this time. Under the CPCN order and statutory provisions, Duke Energy is entitled to recover the costs reasonably incurred in reliance on the CPCN Order.

Duke Energy has been awarded approximately $125 million of federal advanced clean coal tax credits associated with its construction of Cliffside Unit 6 and approximately $134 million of federal advanced clean coal tax credits associated with its construction of the Edwardsport IGCC plant. Since these credits were issued, Appalachian Voices and The Canary Coalition of Sylva have filed suit in a Washington federal court attempting to block tax credits issued to Duke Energy and other utilities that are in the process of constructing clean-coal technology plants throughout the United States, citing that the DOE violated the National Environmental Protection Act in granting these credits. The groups are seeking a preliminary injunction requiring the DOE to suspend the credits until the merits of the suit can be heard. Duke Energy believes these credits were properly awarded.

In April 2005, the PUCO issued an order opening a statewide investigation into riser leaks in gas pipeline systems throughout Ohio. The investigation followed four explosions since 2000 caused by gas riser leaks, including an April 2000 explosion in Duke Energy Ohio's service area. In November 2006, the PUCO Staff released the expert report, which concluded that certain types of risers are prone to leaks under various conditions, including over-tightening during initial installation. The PUCO Staff recommended that natural gas companies continue to monitor the situation and study the cause of any further riser leaks to determine whether further remedial action is warranted. Duke Energy Ohio has approximately 87,000 of these risers on its distribution system. If the PUCO orders natural gas companies to replace all of these risers, Duke Energy Ohio estimates a replacement cost of approximately $40 million. As part of the rate case filed in July 2007 (see "Duke Energy Ohio Gas Rate Case" above), Duke Energy Ohio requested approval from the PUCO to accelerate its riser replacement program. The riser replacement program is contained in the settlement reached with all interveners and will be completed at the end of 2012.

FERC 203 Application. On April 23, 2008, Duke Energy Ohio and certain affiliates filed an application with the FERC requesting approval to transfer Duke Energy Ohio's electric generating facilities, some of which are designated to serve Ohio customers, to affiliate companies. The affiliate companies would be consolidated by Duke Energy. The FERC filing does not obligate Duke Energy to make the transfer of the electric generating facilities, and management is in the process of evaluating the potential transfer. Management believes the proposed asset transfer could provide greater financial flexibility for the assets. The asset transfer complies with Duke Energy Ohio's Corporate Separation Plan that was amended by the PUCO in 2007. As previously discussed, SB 221 limits the ability of a utility to transfer its designated generating assets to an EWG absent PUCO approval. The filing does not impact Duke Energy Ohio's current rates.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Commercial Power. Reported results for Commercial Power are subject to volatility due to the over- or under-collection of certain costs, including fuel and purchased power, since Commercial Power is not subject to regulatory accounting pursuant to SFAS No. 71, "*Accounting for Certain Types of Regulation*." In addition, Commercial Power could be impacted by certain of the regulatory matters discussed above, including the Duke Energy Ohio electric rate filings.

14. Commitments and Contingencies

Environmental

Duke Energy is subject to international, federal, state and local regulations regarding air and water quality, hazardous and solid waste disposal and other environmental matters. These regulations can be changed from time to time, imposing new obligations on Duke Energy.

Remediation Activities. Duke Energy and its affiliates are responsible for environmental remediation at various contaminated sites. These include some properties that are part of ongoing Duke Energy operations, sites formerly owned or used by Duke Energy entities, and sites owned by third parties. Remediation typically involves management of contaminated soils and may involve groundwater remediation. Managed in conjunction with relevant federal, state and local agencies, activities vary with site conditions and locations, remedial requirements, complexity and sharing of responsibility. If remediation activities involve statutory joint and several liability provisions, strict liability, or cost recovery or contribution actions, Duke Energy or its affiliates could potentially be held responsible for contamination caused by other parties. In some instances, Duke Energy may share liability associated with contamination with other potentially responsible parties, and may also benefit from insurance policies or contractual indemnities that cover some or all cleanup costs. All of these sites generally are managed in the normal course of business or affiliate operations. Duke Energy believes that completion or resolution of these matters will have no material adverse effect on its consolidated results of operations, cash flows or financial position.

Clean Water Act 316(b). The EPA finalized its cooling water intake structures rule in July 2004. The rule established aquatic protection requirements for existing facilities that withdraw 50 million gallons or more of water per day from rivers, streams, lakes, reservoirs, estuaries, oceans, or other U.S. waters for cooling purposes. Fourteen of the 23 coal and nuclear-fueled generating facilities in which Duke Energy is either a whole or partial owner are affected sources under that rule. On January 25, 2007, the U.S. Court of Appeals for the Second Circuit issued its opinion in *Riverkeeper, Inc. v. EPA*, Nos. 04-6692-ag(L) et. al. (2d Cir. 2007) remanding most aspects of the EPA's rule back to the agency. The court effectively disallowed those portions of the rule most favorable to industry, and the decision creates a great deal of uncertainty regarding future requirements and their timing. Duke Energy is still unable to estimate costs to comply with the EPA's rule, although it is expected that costs will increase as a result of the court's decision. The magnitude of any such increase cannot be estimated at this time. On April 14, 2008, the U.S. Supreme Court issued an order granting review of the case. A decision is not likely until 2009 after briefs are submitted and oral argument occurs.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Clean Air Interstate Rule (CAIR). The EPA finalized its CAIR in May 2005. The CAIR limits total annual and summertime NO_x emissions and annual SO_2 emissions from electric generating facilities across the Eastern U.S. through a two-phased cap-and-trade program. Phase 1 begins in 2009 for NO_x and in 2010 for SO_2. Phase 2 begins in 2015 for both NO_x and SO_2. The emission controls Duke Energy is installing to comply with state clean air legislation will contribute significantly to achieving compliance with CAIR requirements (see Note 13). In addition, Duke Energy currently estimates that its Midwest electric operations will spend approximately $300 million between 2008 and 2012 to comply with Phase 1 of CAIR and approximately $200 million for CAIR Phase 2 compliance costs over the period 2008-2017. The IURC issued an order in 2006 granting Duke Energy Indiana approximately $1.07 billion in rate recovery to cover its estimated Phase 1 compliance costs of CAIR/CAMR in Indiana. Duke Energy Ohio receives partial recovery of depreciation and financing costs related to environmental compliance projects for 2005-2008 through its RSP.

On March 25, 2008, the U.S. Court of Appeals for the District of Columbia heard oral argument in a case involving multiple challenges to the CAIR. Nearly all aspects of the rule were challenged, but Duke Energy challenged only the portions pertaining to sulfur dioxide allowance allocations. A decision is expected in the summer of 2008. The outcome and any resulting consequences cannot be estimated at this time.

Clean Air Mercury Rule (CAMR). The EPA finalized its CAMR in May 2005. The CAMR was to have limited total annual mercury emissions from coal-fired power plants across the U.S. through a two-phased cap-and-trade program beginning in 2010. On February 8, 2008 the U.S. Court of Appeals for the District of Columbia issued its opinion in *New Jersey v. EPA*, No. 05-1097 vacating the CAMR. The decision creates uncertainty regarding future mercury emission reduction requirements and their timing. The EPA and utilities have requested rehearing of the D.C. Circuit Court decision by the entire D.C. Circuit panel (en banc review). The court has ordered briefing on whether it should accept the case for en banc review. Thus, the matter remains unsettled until the court decides whether to rehear the case. Barring reversal of the decision if reheard, there will be a delay in the implementation of federal mercury requirements for existing coal-fired power plants while the EPA conducts a new rulemaking. Duke Energy is unable to estimate the costs to comply with a new EPA rule, although it is expected that costs will increase as a result of the court's decision.

Coal Combustion Product (CCP) Management. Duke Energy currently estimates that it will spend approximately $320 million over the period 2008-2012 to install synthetic caps and liners at existing and new CCP landfills and to convert CCP handling systems from wet to dry systems.

Extended Environmental Activities and Accruals. Included in Other within Deferred Credits and Other Liabilities and Other Current Liabilities on the Consolidated Balance Sheets were total accruals related to extended environmental-related activities of approximately $60 million and $52 million as of March 31, 2008 and December 31, 2007, respectively. These accruals represent Duke Energy's provisions for costs associated with remediation activities at some of its current and former sites, as well as other relevant environmental contingent liabilities. Duke Energy believes that completion or resolution of these matters will have no material impact on its consolidated results of operations, cash flows or financial position.

Litigation

New Source Review (NSR). In 1999-2000, the U.S. DOJ acting on behalf of the EPA, filed a number of complaints and notices of violation against multiple utilities across the country for alleged violations of the NSR provisions of the Clean Air Act (CAA). Generally, the government alleges that projects performed at various coal-fired units were major modifications, as defined in the CAA, and that the utilities violated the CAA when they undertook those projects without obtaining permits and installing the best available emission controls for SO_2, NO_x and particulate matter. The complaints seek injunctive relief to require installation of pollution control technology on various allegedly violating generating units, and unspecified civil penalties in amounts of up to $27,500 per day for each violation. A number of Duke Energy's plants have been subject to these allegations. Duke Energy asserts that there were no CAA violations because the applicable regulations do not require permitting in cases where the projects undertaken are "routine" or otherwise do not result in a net increase in emissions.

In 2000, the government brought a lawsuit against Duke Energy in the U.S. District Court in Greensboro, North Carolina. The EPA claims that 29 projects performed at 25 of Duke Energy's coal-fired units in the Carolinas violate these NSR provisions. Three environmental groups have intervened in the case. In August 2003, the trial court issued a summary judgment opinion adopting Duke Energy's legal positions on the standard to be used for measuring an increase in emissions, and granted judgment in favor of Duke Energy. The trial court's decision was appealed and ultimately reversed and remanded for trial by the U.S. Supreme Court. At trial, Duke Energy will continue to assert that the projects were routine or not projected to increase emissions. No trial date has been set.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

In November 1999, the U.S. brought a lawsuit in the U.S. Federal District Court for the Southern District of Indiana against Cinergy, Duke Energy Ohio, and Duke Energy Indiana alleging various violations of the CAA for various projects at six of Duke Energy owned and co-owned generating stations in the Midwest. Additionally, the suit claims that Duke Energy violated an Administrative Consent Order entered into in 1998 between the EPA and Cinergy relating to alleged violations of Ohio's State Implementation Plan (SIP) provisions governing particulate matter at Unit 1 at Duke Energy Ohio's W.C. Beckjord Station. Three northeast states and two environmental groups have intervened in the case. In June 2007, the trial court ruled, as a matter of law, that 11 of 23 projects undertaken at the plants do not qualify for the "routine" exception in the regulations. The court ruled further that the defendants had "fair notice" of the EPA's interpretation of the applicable regulations. In April 2008, the plaintiffs dropped their claims on six projects, removing one generation station from the lawsuit. A jury trial commenced on May 5, 2008.

Cinergy and Duke Energy Ohio have been informed by Dayton Power and Light (DP&L) that in June 2000, the EPA issued a Notice of Violation (NOV) to DP&L for alleged violations of CAA requirements at a station operated by DP&L and jointly-owned by DP&L, Columbus Southern Power Company (CSP), and Duke Energy Ohio. The NOV indicated the EPA may issue an order requiring compliance with the requirements of the Ohio SIP, or bring a civil action seeking injunctive relief and civil penalties of up to $27,500 per day for each violation. In September 2004, Marilyn Wall and the Sierra Club brought a lawsuit against Duke Energy Ohio, DP&L and CSP for alleged violations of the CAA at this same generating station. On December 14, 2007, the Court ordered a stay of the litigation pending settlement negotiations among the parties. That stay is set to expire on May 15, 2008. Trial is currently scheduled to commence in August 2008.

On April 3, 2008, the Sierra Club filed another lawsuit in the U.S. District Court for the Southern District of Indiana against Duke Energy Indiana and certain affiliated companies claiming NSR violations at the Edwardsport generating station in Knox County, Indiana. Sierra Club claims that Duke Energy violated the CAA when it undertook various unnamed maintenance projects at Edwardsport without obtaining permits and installing the best available emission controls. Sierra Club further states that it intends to file suit for additional alleged violations of the CAA and the Indiana State Implementation Plan. On April 29, 2008, the plaintiff sent notice of this lawsuit and a request for waiver of service to the defendants. The defendants' current deadline to answer or otherwise respond to the complaint is June 28, 2008.

It is not possible to predict with certainty whether Duke Energy will incur any liability or to estimate the damages, if any, that Duke Energy might incur in connection with these matters. Ultimate resolution of these matters, even in settlement, could have a material adverse effect on Duke Energy's consolidated results of operations, cash flows or financial position. However, Duke Energy will pursue appropriate regulatory treatment for any costs incurred in connection with such resolution.

Carbon Dioxide (CO_2) Litigation. In July 2004, the states of Connecticut, New York, California, Iowa, New Jersey, Rhode Island, Vermont, Wisconsin and the City of New York brought a lawsuit in the U.S. District Court for the Southern District of New York against Cinergy, American Electric Power Company, Inc., American Electric Power Service Corporation, The Southern Company, Tennessee Valley Authority, and Xcel Energy Inc. A similar lawsuit was filed in the U.S. District Court for the Southern District of New York against the same companies by Open Space Institute, Inc., Open Space Conservancy, Inc., and The Audubon Society of New Hampshire. These lawsuits allege that the defendants' emissions of CO_2 from the combustion of fossil fuels at electric generating facilities contribute to global warming and amount to a public nuisance. The complaints also allege that the defendants could generate the same amount of electricity while emitting significantly less CO_2. The plaintiffs are seeking an injunction requiring each defendant to cap its CO_2 emissions and then reduce them by a specified percentage each year for at least a decade. In September 2005, the District Court granted the defendants' motion to dismiss the lawsuit. The plaintiffs have appealed this ruling to the Second Circuit Court of Appeals. Oral arguments were held before the Second Circuit Court of Appeals on June 7, 2006. It is not possible to predict with certainty whether Duke Energy will incur any liability or to estimate the damages, if any, that Duke Energy might incur in connection with this matter.

Hurricane Katrina Lawsuit. In April 2006, Duke Energy and Cinergy were named in the third amended complaint of a purported class action lawsuit filed in the U.S. District Court for the Southern District of Mississippi. Plaintiffs claim that Duke Energy and Cinergy, along with numerous other utilities, oil companies, coal companies and chemical companies, are liable for damages relating to losses suffered by victims of Hurricane Katrina. Plaintiffs claim that defendants' greenhouse gas emissions contributed to the frequency and intensity of storms such as Hurricane Katrina. In October 2006, Duke Energy and Cinergy were served with this lawsuit. On August 30, 2007, the court dismissed the case. The plaintiffs have filed their appeal to the Fifth Circuit Court of Appeals. Briefing is ongoing in the Fifth Circuit. It is not possible to predict with certainty whether Duke Energy or Cinergy will incur any liability or to estimate the damages, if any, that Duke Energy or Cinergy might incur in connection with this matter.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

San Diego Price Indexing Cases. Duke Energy and several of its affiliates, as well as other energy companies, have been parties to 13 lawsuits which have been coordinated as the "Price Indexing Cases" in San Diego, California. The plaintiffs allege that the defendants conspired to manipulate the price of natural gas in violation of state and/or federal antitrust laws, unfair business practices and other laws. Plaintiffs in some of the cases further allege that such activities, including engaging in "round trip" trades, providing false information to natural gas trade publications and unlawfully exchanging information, resulted in artificially high energy prices. In December 2007, Duke Energy reached a settlement in principle to settle the 13 cases. A settlement agreement was executed in February 2008. The proposed settlement will not have a material adverse effect on Duke Energy's consolidated results of operations, cash flows or financial position.

Other Price Reporting Cases. A total of 12 lawsuits have been filed against Duke Energy affiliates and other energy companies. Seven of these cases were dismissed on filed rate and/or federal preemption grounds, and the plaintiffs in each of these dismissed cases appealed their respective rulings. On September 24, 2007, the Ninth Circuit reversed the prior rulings and remanded four of the cases to the District Court for further proceedings. Defendants request for reconsideration was denied. In July 2007, the judge in two of the cases reconsidered and reversed his prior ruling dismissing the cases. The seventh case was appealed to the Tennessee Court of Appeals, where oral argument was heard in November 2007 and a decision is pending. In February 2008, the judge in one of the cases granted a motion to dismiss and entered judgment in favor of DETM. Plaintiffs' motion to reconsider was, in large part, denied. Each of these cases contains similar claims, that the respective plaintiffs, and the classes they claim to represent, were harmed by the defendants' alleged manipulation of the natural gas markets by various means, including providing false information to natural gas trade publications and entering into unlawful arrangements and agreements in violation of the antitrust laws of the respective states. Plaintiffs seek damages in unspecified amounts. At this time, Duke Energy is unable to express an opinion regarding the probable outcome or estimate damages, if any, related to these matters.

Western Electricity Litigation. Plaintiffs, on behalf of themselves and others, in three lawsuits allege that Duke Energy affiliates, among other energy companies, artificially inflated the price of electricity in certain western states. Two of the cases were dismissed and plaintiffs appealed to the U.S. Court of Appeal for the Ninth Circuit. Of those two cases, one was dismissed by agreement in March 2007. In November 2007, the court issued an opinion affirming dismissal and plaintiffs filed a motion for rehearing. Plaintiffs in these cases seek damages in unspecified amounts. It is not possible to predict with certainty whether Duke Energy will incur any liability or to estimate the damages, if any, that Duke Energy might incur in connection with these lawsuits, but Duke Energy does not presently believe the outcome of these matters will have a material adverse effect on its consolidated results of operations, cash flows or financial position.

Trading Related Investigations. Beginning in February 2004, Duke Energy has received requests for information from the U.S. Attorney's office in Houston focused on the natural gas price reporting activities of certain individuals involved in DETM trading operations. Duke Energy has cooperated with the government in this investigation and is unable to express an opinion regarding the probable outcome or estimate damages, if any, related to this matter at this time.

ExxonMobil Disputes. In April 2004, Mobil Natural Gas, Inc. (MNGI) and 3946231 Canada, Inc. (3946231, and collectively with MNGI, ExxonMobil) filed a Demand for Arbitration against Duke Energy, DETMI Management Inc. (DETMI), DTMSI Management Ltd. (DTMSI) and other affiliates of Duke Energy. MNGI and DETMI are the sole members of DETM. DTMSI and 3946231 are the sole beneficial owners of Duke Energy Marketing Limited Partnership (DEMLP, and with DETM, the Ventures). Among other allegations, ExxonMobil alleged that DETMI and DTMSI engaged in wrongful actions relating to affiliate trading, payment of service fees, expense allocations and distribution of earnings in breach of agreements and fiduciary duties relating to the Ventures. ExxonMobil sought to recover actual damages, plus attorneys' fees and exemplary damages; aggregate damages were specified at the arbitration hearing and totaled approximately $125 million (excluding interest). Duke Energy denied these allegations and filed counterclaims asserting that ExxonMobil breached its Venture obligations and other contractual obligations. In March 2007, Duke Energy and ExxonMobil executed a settlement agreement for global settlement of both parties' claims. The resolution of this matter did not have a material effect on Duke Energy's consolidated results of operations, cash flows or financial position. The gas supply agreements with other parties, under which DEMLP continues to remain obligated, are currently estimated to result in losses of up to approximately $70 million through 2011. As Duke Energy has an ownership interest of approximately 60% in DEMLP, only 60% of any losses would impact pre-tax earnings for Duke Energy. However, these losses are subject to change in the future in the event of changes in market conditions and underlying assumptions.

Duke Energy Retirement Cash Balance Plan. A class action lawsuit was filed in federal court in South Carolina against Duke Energy and the Duke Energy Retirement Cash Balance Plan, alleging violations of Employee Retirement Income Security Act (ERISA) and the Age Discrimination in Employment Act. These allegations arise out of the conversion of the Duke Energy Company Employees' Retirement Plan

into the Duke Energy Retirement Cash Balance Plan. The case also raises some Plan administration issues, alleging errors in the application of Plan provisions (*e.g.*, the calculation of interest rate credits in 1997 and 1998 and the calculation of lump-sum distributions). The plaintiffs seek to represent present and former participants in the Duke Energy Retirement Cash Balance Plan. This group is estimated to include approximately 36,000 persons. The plaintiffs also seek to divide the putative class into sub-classes based on age. Six causes of action are alleged, ranging from age discrimination, to various alleged ERISA violations, to allegations of breach of fiduciary duty. The plaintiffs seek a broad array of remedies, including a retroactive reformation of the Duke Energy Retirement Cash Balance Plan and a recalculation of participants'/ beneficiaries' benefits under the revised and reformed plan. Duke Energy filed its answer in March 2006. A second class action lawsuit was filed in federal court in South Carolina, alleging similar claims and seeking to represent the same class of defendants. The second case has been voluntarily dismissed, without prejudice, effectively consolidating it with the first case. A portion of this contingent liability was assigned to Spectra Energy in connection with the spin-off in January 2007. A hearing on the plaintiffs' motion to amend the complaint to add additional age discrimination claim, defendant's motion to dismiss and the respective motions for summary judgment was held in December 2007 and a decision is pending. The matter is currently in discovery with a tentative trial date in July 2008. It is not possible to predict with certainty whether Duke Energy will incur any liability or to estimate the damages, if any, that Duke Energy might incur in connection with this matter.

Ohio Antitrust Lawsuit. In January 2008, four plaintiffs, including individual, industrial and non-profit customers, filed a lawsuit against Duke Energy in federal court in the Southern District of Ohio. Plaintiffs allege that Duke Energy (then Cinergy and The Cincinnati Gas & Electric Company (CG&E)), conspired to provide inequitable and unfair price advantages for certain large business consumers by entering into non-public option agreements with such consumers in exchange for their withdrawal of challenges to Duke Energy Ohio's (then CG&E's) pending RSP, which was implemented in early 2005. Duke Energy strongly denies the allegations made in the lawsuit and on March 21, 2008, Duke Energy filed a motion to dismiss plaintiffs' claims. It is not possible to predict with certainty whether Duke Energy will incur any liability or to estimate the damages, if any, that Duke Energy might incur in connection with this matter.

Alaskan Global Warming Lawsuit. On February 26, 2008, plaintiffs filed suit against Peabody Coal and various oil and power company defendants, including Duke Energy and certain of its subsidiaries. Plaintiffs, the governing bodies of an Inupiat village in Alaska, brought the action on their own behalf and on behalf of the village's approximately 400 residents. The lawsuit alleges that defendants' emissions of CO_2 contributed to global warming and constitute a private and public nuisance. Plaintiffs also allege that certain defendants, including Duke Energy, conspired to mislead the public with respect to the global warming. Plaintiffs seek unspecified monetary damages, attorneys fees and expenses. Duke Energy has not yet been served with this lawsuit. It is not possible to predict with certainty whether Duke Energy will incur any liability or to estimate the damages, if any, that Duke Energy might incur in connection with this matter.

Asbestos-related Injuries and Damages Claims. Duke Energy has experienced numerous claims for indemnification and medical cost reimbursement relating to damages for bodily injuries alleged to have arisen from the exposure to or use of asbestos in connection with construction and maintenance activities conducted by Duke Energy Carolinas on its electric generation plants prior to 1985.

Amounts recognized as asbestos-related reserves related to Duke Energy Carolinas in the Consolidated Balance Sheets totaled approximately $1,069 million and $1,082 million as of March 31, 2008 and December 31, 2007, respectively, and are classified in Other within Deferred Credits and Other Liabilities and Other within Current Liabilities. These reserves are based upon the minimum amount in Duke Energy's best estimate of the range of loss for current and future asbestos claims through 2027. Management believes that it is possible there will be additional claims filed against Duke Energy Carolinas after 2027. In light of the uncertainties inherent in a longer-term forecast, management does not believe that they can reasonably estimate the indemnity and medical costs that might be incurred after 2027 related to such potential claims. Asbestos-related loss estimates incorporate anticipated inflation, if applicable, and are recorded on an undiscounted basis. These reserves are based upon current estimates and are subject to greater uncertainty as the projection period lengthens. A significant upward or downward trend in the number of claims filed, the nature of the alleged injury, and the average cost of resolving each such claim could change our estimated liability, as could any substantial adverse or favorable verdict at trial. A federal legislative solution, further state tort reform or structured settlement transactions could also change the estimated liability. Given the uncertainties associated with projecting matters into the future and numerous other factors outside our control, management believes that it is possible Duke Energy Carolinas may incur asbestos liabilities in excess of the recorded reserves.

Duke Energy has a third-party insurance policy to cover certain losses related to Duke Energy Carolinas' asbestos-related injuries and damages above an aggregate self insured retention of $476 million. Through March 31, 2008, Duke Energy has made approximately $473 million in payments that apply to this retention. The insurance policy limit for potential insurance recoveries for indemnification and medical cost claim payments is $1,107 million in excess of the self insured retention. Probable insurance recoveries of approximately

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

$1,040 million related to this policy are classified in the Consolidated Balance Sheets in Other within Investments and Other Assets and Receivables as of both March 31, 2008 and December 31, 2007, respectively. Duke Energy is not aware of any uncertainties regarding the legal sufficiency of insurance claims or any significant solvency concerns related to the insurance carrier.

Duke Energy Indiana and Duke Energy Ohio have also been named as defendants or co-defendants in lawsuits related to asbestos at their electric generating stations. The impact on Duke Energy's consolidated results of operations, cash flows, or financial position of these cases to date has not been material. Based on estimates under varying assumptions concerning uncertainties, such as, among others: (i) the number of contractors potentially exposed to asbestos during construction or maintenance of Duke Energy Indiana and Duke Energy Ohio generating plants; (ii) the possible incidence of various illnesses among exposed workers, and (iii) the potential settlement costs without federal or other legislation that addresses asbestos tort actions, Duke Energy estimates that the range of reasonably possible exposure in existing and future suits over the foreseeable future is not material. This estimated range of exposure may change as additional settlements occur and claims are made and more case law is established.

EI UK Holdings, Inc. In March, 2004, EI UK Holdings, Inc., a subsidiary of FirstEnergy Corp. filed a complaint in Ohio State Court. The complaint alleged that Cinergy, and an affiliate, had breached certain agreements and sought indemnification from Cinergy. The case went to trial and on February 14, 2008, the jury returned a verdict in favor of EI UK Holdings and against Cinergy and its affiliate and awarded EI UK Holdings $15 million, plus interest. Cinergy is appealing the verdict.

Other Litigation and Legal Proceedings. Duke Energy and its subsidiaries are involved in other legal, tax and regulatory proceedings arising in the ordinary course of business, some of which involve substantial amounts. Duke Energy believes that the final disposition of these proceedings will not have a material adverse effect on its consolidated results of operations, cash flows or financial position.

Duke Energy has exposure to certain legal matters that are described herein. As of March 31, 2008 and December 31, 2007, Duke Energy has recorded reserves, including reserves related to the aforementioned asbestos-related injuries and damages claims, of approximately $1.1 billion and $1.1 billion, respectively, for these proceedings and exposures. Duke Energy has insurance coverage for certain of these losses incurred. As of March 31, 2008 and December 31, 2007, Duke Energy recognized approximately $1,040 million and $1,040 million, respectively, of probable insurance recoveries related to these losses. These reserves represent management's best estimate of probable loss as defined by SFAS No. 5, "*Accounting for Contingencies.*"

Duke Energy expenses legal costs related to the defense of loss contingencies as incurred.

Other Commitments and Contingencies

Commercial Power produced synfuel from facilities that qualified for tax credits (through 2007) in accordance with Section 29/45K of the Internal Revenue Code if certain requirements were satisfied. Section 29/45K provided for a phase-out of the credit if the average price of crude oil during a calendar year exceeded a specified threshold. The phase-out was based on a prescribed calculation and definition of crude oil prices. The exposure to synfuel tax credit phase-out was monitored as Duke Energy was able to reduce or cease synfuel production based on the expectation of any potential tax credit phase-out. The objective of these activities was to reduce potential losses incurred if the reference price in a year exceeded a level triggering a phase-out of synfuel tax credits.

These credits reduced Duke Energy's income tax liability and, therefore, Duke Energy's tax expense recorded in Income From Discontinued Operations, net of tax (see Note 11). Commercial Power's sale of synfuel had generated $339 million in tax credits through December 31, 2005. After reducing for the possibility of phase-out, the amount of additional credits generated during the years ended December 31, 2007 and 2006 were approximately $84 million and $20 million, respectively. Duke Energy ceased production of synfuel upon the expiration of the tax credits at the end of 2007.

The Internal Revenue Service (IRS) has completed the audit of Cinergy for the 2002, 2003, and 2004 tax years, including the synfuel facility owned during that period, which represents $222 million of tax credits generated during the aforementioned audit period. The IRS has not proposed any adjustment that would disallow the credits claimed during that period. Subsequent periods are still subject to audit. Duke Energy believes that it operated in conformity with all the necessary requirements to be allowed such credits under Section 29/45K.

Duke Energy was party to an agreement with a third party service provider related to certain future purchases. The agreement contained certain damage payment provisions if qualifying purchases were not initiated by September 2008. In the fourth quarter of 2006, Duke Energy initiated early settlement discussions regarding this agreement and recorded a reserve of approximately $65 million. During the year ended December 31, 2007, Duke Energy paid the third party service provider approximately $20 million, which directly reduced

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Duke Energy's future exposure under the agreement, and further reduced the reserve by $45 million based upon qualifying purchase commitments that, once satisfied, fulfills Duke Energy's obligations under the agreement. There is no remaining reserve associated with this agreement.

In October 2006, Duke Energy began an internal investigation into improper data reporting to the EPA regarding air emissions under the NOx Budget Program at Duke Energy's DEGS of Narrows, L.L.C. power plant facility in Narrows, Virginia. The investigation has revealed evidence of falsification of data by an employee relating to the quality assurance testing of its continuous emissions monitoring system to monitor heat input and NOx emissions. In December 2006, Duke Energy voluntarily disclosed the potential violations to the EPA and Virginia Department of Environmental Quality (VDEQ), and in January 2007, Duke Energy made a full written disclosure of the investigation's findings to the EPA and the VDEQ. In December 2007, the EPA issued a notice of violation. Duke Energy has taken appropriate disciplinary action, including termination, with respect to the employees involved with the false reporting. It is not possible to predict with certainty whether Duke Energy will incur any liability or to estimate the damages, if any, that Duke Energy might incur in connection with this matter.

On March 10, 2008, the EPA issued a Clean Air Act Notice of Violation/Finding of Violation (NOV/FOV) asserting noncompliance with SO2 emission limits, opacity standards, and permitting requirements at Duke Energy Ohio's Zimmer Generating Station. The NOV/FOV also asserts that a PSD permit should have been obtained for the installation in 2004 of a pollution control project in order to comply with the EPA's regional cap-and-trade program for NOx emissions. Duke Energy Ohio disputes the legal and factual basis for the FOV/NOV. Duke Energy is unable to predict at this time what, if any, remedies or potential penalties may result from the FOV/NOV.

Other. As part of its normal business, Duke Energy is a party to various financial guarantees, performance guarantees and other contractual commitments to extend guarantees of credit and other assistance to various subsidiaries, investees and other third parties. To varying degrees, these guarantees involve elements of performance and credit risk, which are not included on the Consolidated Balance Sheets. The possibility of Duke Energy having to honor its contingencies is largely dependent upon future operations of various subsidiaries, investees and other third parties, or the occurrence of certain future events. For further information see Note 15.

In addition, Duke Energy enters into various fixed-price, non-cancelable commitments to purchase or sell power (tolling arrangements or power purchase contracts), take-or-pay arrangements, transportation or throughput agreements and other contracts that may or may not be recognized on the Consolidated Balance Sheets. Some of these arrangements may be recognized at market value on the Consolidated Balance Sheets as trading contracts or qualifying hedge positions.

15. Guarantees and Indemnifications

Duke Energy and its subsidiaries have various financial and performance guarantees and indemnifications which are issued in the normal course of business. As discussed below, these contracts include performance guarantees, stand-by letters of credit, debt guarantees, surety bonds and indemnifications. Duke Energy and its subsidiaries enter into these arrangements to facilitate commercial transactions with third parties by enhancing the value of the transaction to the third party.

As discussed in Note 1, on January 2, 2007, Duke Energy completed the spin-off of its natural gas businesses to shareholders. Guarantees that were issued by Duke Energy, Cinergy, or International Energy, or were assigned to Duke Energy prior to the spin-off remained with Duke Energy subsequent to the spin-off. Guarantees issued by Spectra Energy Capital or its affiliates prior to the spin-off remained with Spectra Energy Capital subsequent to the spin-off, except for certain guarantees discussed below that are in the process of being assigned to Duke Energy. During this assignment period, Duke Energy has indemnified Spectra Energy Capital against any losses incurred under these guarantee obligations.

Duke Energy has issued performance guarantees to customers and other third parties that guarantee the payment and performance of other parties, including certain non-wholly-owned entities, as well as guarantees of debt of certain non-consolidated entities and less than wholly-owned consolidated entities. If such entities were to default on payments or performance, Duke Energy would be required under the guarantees to make payments on the obligations of the less than wholly-owned entities. The maximum potential amount of future payments Duke Energy could have been required to make under these guarantees as of March 31, 2008 was approximately $524 million. Approximately $400 million of the guarantees expire between 2008 and 2039, with the remaining performance guarantees having no contractual expiration. In addition, Spectra Energy Capital is in the process of assigning performance guarantees with maximum potential amounts of future payments of approximately $148 million to Duke Energy, as discussed above. Duke Energy has indemnified Spectra Energy Capital for any losses incurred as a result of these guarantees during the assignment period.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Duke Energy uses bank-issued stand-by letters of credit to secure the performance of non-wholly-owned entities to a third party or customer. Under these arrangements, Duke Energy has payment obligations to the issuing bank which are triggered by a draw by the third party or customer due to the failure of the non-wholly-owned entity to perform according to the terms of its underlying contract. The maximum potential amount of future payments Duke Energy could have been required to make under these letters of credit as of March 31, 2008 was approximately $25 million. Substantially all of these letters of credit were issued on behalf of less than wholly-owned consolidated entities and non-consolidated entities and expire in 2008 and 2009.

Duke Energy has guaranteed certain issuers of surety bonds, obligating itself to make payment upon the failure of a non-wholly-owned entity to honor its obligations to a third party. As of March 31, 2008, Duke Energy had guaranteed approximately $129 million of outstanding surety bonds related to obligations of non-wholly-owned entities, of which approximately $125 million relates to projects at Crescent. The majority of these bonds expire in various amounts in 2008; however, Duke Energy has a bond indemnity obligation through September 2009 for the Crescent projects related to these outstanding bonds.

Additionally, Duke Energy has issued guarantees to customers or other third parties related to the payment or performance obligations of certain entities that were previously wholly owned by Duke Energy but which have been sold to third parties, such as DukeSolutions, Inc. (DukeSolutions) and Duke Engineering & Services, Inc. (DE&S). These guarantees are primarily related to payment of lease obligations, debt obligations, and performance guarantees related to provision of goods and services. Duke Energy has received back-to-back indemnification from the buyer of DE&S indemnifying Duke Energy for any amounts paid related to the DE&S guarantees. Duke Energy also received indemnification from the buyer of DukeSolutions for the first $2.5 million paid by Duke Energy related to the DukeSolutions guarantees. Further, Duke Energy granted indemnification to the buyer of DukeSolutions with respect to losses arising under some energy services agreements retained by DukeSolutions after the sale, provided that the buyer agreed to bear 100% of the performance risk and 50% of any other risk up to an aggregate maximum of $2.5 million (less any amounts paid by the buyer under the indemnity discussed above). Additionally, for certain performance guarantees, Duke Energy has recourse to subcontractors involved in providing services to a customer. These guarantees have various terms ranging from 2008 to 2019, with others having no specific term. The maximum potential amount of future payments under these guarantees as of March 31, 2008 was approximately $63 million.

Duke Energy has entered into various indemnification agreements related to purchase and sale agreements and other types of contractual agreements with vendors and other third parties. These agreements typically cover environmental, tax, litigation and other matters, as well as breaches of representations, warranties and covenants. Typically, claims may be made by third parties for various periods of time, depending on the nature of the claim. Duke Energy's potential exposure under these indemnification agreements can range from a specified amount, such as the purchase price, to an unlimited dollar amount, depending on the nature of the claim and the particular transaction. Duke Energy is unable to estimate the total potential amount of future payments under these indemnification agreements due to several factors, such as the unlimited exposure under certain guarantees.

At March 31, 2008, the amounts of the fair value recorded for the guarantees and indemnifications mentioned above are immaterial, both individually and in the aggregate.

16. Fair Value of Financial Assets and Liabilities

On January 1, 2008, Duke Energy adopted SFAS No. 157, "*Fair Value Measurements*," (SFAS No. 157). Duke Energy's adoption of SFAS No. 157 is currently limited to financial instruments and to non-financial derivatives as, in February 2008, the FASB issued FSP No. 157-2, which delayed the effective date of SFAS No. 157 for one year for nonfinancial assets and liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis. There was no cumulative effect adjustment to retained earnings for Duke Energy as a result of the adoption of SFAS No. 157.

SFAS No. 157 defines fair value, establishes a framework for measuring fair value in GAAP and expands disclosure requirements about fair value measurements. Under SFAS No. 157, fair value is considered to be the exchange price in an orderly transaction between market participants to sell an asset or transfer a liability at the measurement date. The fair value definition under SFAS No. 157 focuses on an exit price, which is the price that would be received by Duke Energy to sell an asset or paid to transfer a liability versus an entry price, which would be the price paid to acquire an asset or received to assume a liability. Although SFAS No. 157 does not require additional fair value measurements, it applies to other accounting pronouncements that require or permit fair value measurements.

DUKE ENERGY CORPORATION

Notes To Unaudited Consolidated Financial Statements—(Continued)

Duke Energy determines fair value of financial assets and liabilities based on the following fair value hierarchy, as prescribed by SFAS No. 157, which prioritizes the inputs to valuation techniques used to measure fair value into three levels:

Level 1 inputs—unadjusted quoted prices in active markets for identical assets or liabilities that Duke Energy has the ability to access. An active market for the asset or liability is one in which transactions for the asset or liability occur with sufficient frequency and volume to provide ongoing pricing information. Duke Energy does not adjust quoted market prices on Level 1 inputs for any blockage factor.

Level 2 inputs—inputs other than quoted market prices included in Level 1 that are observable, either directly or indirectly, for the asset or liability. Level 2 inputs include, but are not limited to, quoted prices for similar assets or liabilities in an active market, quoted prices for identical or similar assets or liabilities in markets that are not active and inputs other than quoted market prices that are observable for the asset or liability, such as interest rate curves and yield curves observable at commonly quoted intervals, volatilities, credit risk and default rates.

Level 3 inputs—unobservable inputs for the asset or liability.

In February 2007, the FASB issued SFAS No. 159, "*The Fair Value Option for Financial Assets and Financial Liabilities- including an amendment of FASB Statement No. 115*" (SFAS No. 159), which permits entities to elect to measure many financial instruments and certain other items at fair value. For Duke Energy, SFAS No. 159 was effective as of January 1, 2008 and had no impact on amounts presented for periods prior to the effective date. Duke Energy does not currently have any financial assets or financial liabilities for which the provisions of SFAS No. 159 have been elected. However, in the future, Duke Energy may elect to measure certain financial instruments at fair value in accordance with this standard.

The following table provides the fair value measurement amounts for assets and liabilities recorded on Duke Energy's Consolidated Balance Sheets at fair value at March 31, 2008:

Description	Total Fair Value Amounts at March 31, 2008	Level 1	Level 2	Level 3
		(in millions)		
Investments in available for sale auction rate securities (a)	$ 280	$ —	$ —	$ 280
Nuclear decommissioning trust fund	1,818	1,264	554	—
Other long-term available for sale securities (a)	369	122	247	—
Derivative assets (b)	390	51	155	192
Total Assets	$2,865	$ 1,437	$ 956	$ 472
Derivative liabilities (c)	(358)	—	(187)	(171)
Net Assets	$2,507	$ 1,437	$ 769	$ 301

(a) Included in Other within Investments and Other Assets in the Consolidated Balance Sheets.

(b) Included in Other within Current Assets and Other within Investments and Other Assets on the Consolidated Balance Sheets.

(c) Included in Other within Current Liabilities and Other within Deferred Credits and Other Liabilities on the Consolidated Balance Sheets.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

The following table provides a reconciliation of beginning and ending balances of assets measured at fair value on a recurring basis where the determination of fair value includes significant unobservable inputs (Level 3):

Rollforward of Level 3 measurements	Available-for-Sale Auction Rate Securities	Derivatives (net)	Total
		(in millions)	
Balance at January 1, 2008	$ —	$ —	$ —
Transfers in to Level 3	285	—	285
Total pre-tax realized or unrealized gains included in earnings:			
Revenue, non-regulated	—	16	16
Total pre-tax losses included in other comprehensive income	(20)	(3)	(23)
Net purchases, sales, issuances and settlements	—	(15)	(15)
Total gains included on balance sheet as regulatory asset or liability or as non-current liability	—	15	15
Balance at March 31, 2008	$280	$ 21	$301
Pre-tax amounts included in the Consolidated Statements of Operations related to Level 3 measurements outstanding at March 31, 2008:			
Revenue, non-regulated	$ —	$ 9	$ 9
Total	$ —	$ 9	$ 9

Valuation methods of the primary fair value measurements disclosed above are as follows:

Investments in equity securities: Investments in equity securities are typically valued at the closing price in the principal active market as of the last business day of the quarter. Principal active markets for equity prices include published exchanges such as NASDAQ, NYSE, NYMEX and Chicago Board of Trade, as well as pink sheets, which is an electronic quotation system that displays quotes for broker-dealers for many over-the-counter securities. Foreign equity prices are translated from their trading currency using the currency exchange rate in effect at the close of the principal active market. Duke Energy does not adjust prices to reflect for after-hours market activity. The majority of Duke Energy's investments in equity securities are valued using Level 1 measurements.

Investments in available-for-sale auction rate securities: As of March 31, 2008, Duke Energy has approximately $300 million par value (approximately $280 million fair value) of auction rate securities which are currently illiquid. All of these securities were valued as of March 31, 2008 using Level 3 measurements. Valuations were determined based on a combination of broker quotes, where available, internal modeling of comparable instruments or discounted cash flow analyses. In preparing the valuations, all significant value drivers were considered, including the underlying collateral. Refer to Note 19 for additional information on Duke Energy's investments in auction rate securities.

Investments in debt securities: Most debt investments are valued based on a calculation using interest rate curves and credit spreads applied to the terms of the debt instrument (maturity and coupon interest rate) and consider the counterparty credit rating. Most debt valuations are Level 2 measures. If the market for a particular fixed income security is relatively inactive or illiquid, the measurement is a Level 3 measurement. U.S. Treasury debt is typically a Level 1 measurement.

Commodity derivatives: The pricing for commodity derivatives is primarily a calculated value which incorporates the forward price and is adjusted for liquidity (bid-ask spread), credit or non-performance risk (after reflecting credit enhancements such as collateral) and discounted to present value. The primary difference between a Level 2 and a Level 3 measurement has to do with the level of activity in forward markets for the commodity. If the market is relatively inactive, the measurement is deemed to be a Level 3 measurement. Some commodity derivatives are NYMEX contracts, which Duke Energy classifies as Level 1 measurements.

17. New Accounting Standards

The following new accounting standards were adopted by Duke Energy subsequent to March 31, 2007 and the impact of such adoption, if applicable, has been presented in the accompanying Consolidated Financial Statements:

SFAS No. 157. Refer to Note 16 for a discussion of Duke Energy's adoption of SFAS No. 157.

SFAS No. 159. Refer to Note 16 for a discussion of Duke Energy's adoption of SFAS No. 159.

FSP No. FIN 39-1. Refer to Note 1 for a discussion of Duke Energy's adoption of FSP No. FIN 39-1.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

EITF Issue No. 06-11, "Accounting for Income Tax Benefits of Dividends on Share-Based Payment Awards" (EITF 06-11). In June 2007, the EITF reached a consensus that would require realized income tax benefits from dividends or dividend equivalents that are charged to retained earnings and paid to employees for equity-classified nonvested equity shares, nonvested equity share units, and outstanding equity share options to be recognized as an increase to additional paid-in capital. In addition, EITF 06-11 requires that dividends on equity-classified share-based payment awards be reallocated between retained earnings (for awards expected to vest) and compensation cost (for awards not expected to vest) each reporting period to reflect current forfeiture estimates. For Duke Energy, EITF 06-11 has been applied prospectively to the income tax benefits of dividends on equity-classified employee share-based payment awards that are declared in fiscal years beginning January 1, 2008, as well as interim periods within those fiscal years. The adoption of EITF 06-11 did not have a material impact on Duke Energy's consolidated results of operations, cash flows or financial position.

The following new accounting standards have been issued, but have not yet been adopted by Duke Energy as of March 31, 2008:

SFAS No. 141 (revised 2007), "Business Combinations" (SFAS No. 141R). In December 2007, the FASB issued SFAS No. 141R, which replaces SFAS No. 141, *"Business Combinations."* SFAS No. 141R retains the fundamental requirements in SFAS No. 141 that the acquisition method of accounting be used for all business combinations and that an acquirer be identified for each business combination. This statement also establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any noncontrolling (minority) interests in an acquiree, and any goodwill acquired in a business combination or gain recognized from a bargain purchase. For Duke Energy, SFAS No. 141R must be applied prospectively to business combinations for which the acquisition date occurs on or after January 1, 2009. The impact to Duke Energy of applying SFAS No. 141R for periods subsequent to implementation will be dependent upon the nature of any transactions within the scope of SFAS No. 141R. SFAS No. 141R changes the accounting for income taxes related to prior business combinations, such as Duke Energy's merger with Cinergy. Subsequent to the effective date of SFAS No. 141R, the resolution of tax contingencies relating to Cinergy that existed as of the date of the merger will be required to be reflected in the Consolidated Statements of Operations instead of being reflected as an adjustment to the purchase price via an adjustment to goodwill.

SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements—an amendment of Accounting Research Bulletin (ARB) No. 51" (SFAS No. 160). In December 2007, the FASB issued SFAS No. 160, which amends ARB No. 51, *"Consolidated Financial Statements,"* to establish accounting and reporting standards for the noncontrolling (minority) interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS No. 160 clarifies that a noncontrolling interest in a subsidiary is an ownership interest in a consolidated entity that should be reported as equity in the consolidated financial statements. This statement also changes the way the consolidated income statement is presented by requiring consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. In addition, SFAS No. 160 establishes a single method of accounting for changes in a parent's ownership interest in a subsidiary that do not result in deconsolidation. For Duke Energy, SFAS No. 160 is effective as of January 1, 2009, and must be applied prospectively, except for certain presentation and disclosure requirements which must be applied retrospectively. Duke Energy is currently evaluating the impact of adopting SFAS No. 160.

SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities—an amendment to FASB Statement No. 133" (SFAS No. 161). In March 2008, the FASB issued SFAS No. 161, which amends and expands the disclosure requirements for derivative instruments and hedging activities prescribed by SFAS No. 133, *"Accounting for Derivative Instruments and Hedging Activities."* SFAS No. 161 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of and gains and losses on derivative instruments, and disclosures about credit-risk-related contingent features in derivative agreements. Duke Energy will adopt SFAS No. 161 as of January 1, 2009 and SFAS No. 161 encourages, but does not require, comparative disclosure for earlier periods at initial adoption. The adoption of SFAS No. 161 will not have any impact on Duke Energy's consolidated results of operations, cash flows or financial position.

18. Income Taxes and Other Taxes

Duke Energy or its subsidiaries file income tax returns in the U.S. with federal and various state governmental authorities, and in certain foreign jurisdictions.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

The following table details the changes in Duke Energy's unrecognized tax benefits from January 1, 2008 to March 31, 2008.

	Increase/ (Decrease) (in millions)
Unrecognized Tax Benefits—January 1, 2008	[redacted]
Unrecognized Tax Benefits Changes	
Gross increases—tax positions in prior periods	[redacted]
Gross decreases—tax positions in prior periods	(3)
Gross increases—current period tax positions	[redacted]
Total Changes	15
Unrecognized Tax Benefits—March 31, 2008	[redacted]

At March 31, 2008 and December 31, 2007, Duke Energy had approximately $124 million and $114 million, respectively, of unrecognized tax benefits that, if recognized, would affect the effective tax rate. Additionally, at March 31, 2008, Duke Energy has approximately $18 million and $9 million that, if recognized, would affect Income From Discontinued Operations, net of tax, and Goodwill, respectively.

It is reasonably possible that Duke Energy will reflect an approximate $65 million reduction in unrecognized tax benefits within the next twelve months due to expected settlements. Also, it is reasonably possible that up to approximately $100 million in currently recorded unrecognized tax benefits related to prior open tax years could change within the next twelve months, although Duke Energy is unable to further estimate the amount of potential change at this time. Duke Energy expects in the next twelve months to decide whether or not to contest a ruling by the taxing authorities that denied its position.

Duke Energy is assessing certain other tax matters, which do not represent tax positions under FASB Interpretation (FIN) 48, "*Accounting for Uncertainty in Income Taxes-an Interpretation of FASB Statement 109*," which could result in gains in future periods. However, the timing and amounts of any such potential gains are not currently estimable.

During the three months ended March 31, 2008, Duke Energy recognized an immaterial amount of net interest expense in the Consolidated Statements of Operations related to income taxes. At March 31, 2008, Duke Energy had approximately $26 million of interest receivable, which reflects all interest related to income taxes, and $2 million accrued for the payment of penalties recorded in the Consolidated Balance Sheets.

Duke Energy has the following tax years open.

Jurisdiction	Tax Years
Federal	1999 and after (except for Cinergy and its subsidiaries, which are open for years *2000 and after*)
State	*Majority closed through 2001 except for certain refund claims for tax years 1978-2001 and any adjustments related to open federal years*
International	2000 and after

The effective tax rate for income from continuing operations for the three months ended March 31, 2008 was approximately 32.5% as compared to 29.2% for the same period in 2007. The increase in the effective tax rate is due primarily to the recognition of the reduction in the unitary state tax rate in 2007 as a result of the spin-off of Spectra Energy (see Note 1).

As of March 31, 2008 and December 31, 2007, approximately $280 million and $312 million, respectively, of current deferred tax assets were included in Other within Current Assets on the Consolidated Balance Sheets. At March 31, 2008, these balances exceeded 5% of total current assets.

DUKE ENERGY CORPORATION
Notes To Unaudited Consolidated Financial Statements—(Continued)

Excise Taxes. Certain excise taxes levied by state or local governments are collected by Duke Energy from its customers. These taxes, which are required to be paid regardless of Duke Energy's ability to collect from the customer, are accounted for on a gross basis. When Duke Energy acts as an agent, and the tax is not required to be remitted if it is not collected from the customer, the taxes are accounted for on a net basis. Duke Energy's excise taxes accounted for on a gross basis and recorded as operating revenues in the accompanying Consolidated Statements of Operations for the three months ended March 31, 2008 and 2007 were as follows:

	Three Months Ended March 31, 2008	Three Months Ended March 31, 2007
	(in millions)	
Excise Taxes	$ 78	$ 76

19. Other Comprehensive Income

At December 31, 2007, Duke Energy held approximately $430 million of investments in auction rate debt securities, substantially all of which were sold at auction in January 2008 at full principal amounts. Duke Energy made additional investments in auction rate debt securities during the first quarter of 2008, which primarily consisted of investments in AAA rated student loan securities which have very minimal credit risk as substantially all values are ultimately backed by the U.S. Federal government. At March 31, 2008, Duke Energy held approximately $300 million par value of investments in auction rate debt securities. As a result of the current illiquid market for auction rate debt securities, at March 31, 2008, Duke Energy has classified all its investments in auction rate debt securities as long-term investments in Other within Investments and Other Assets on the Consolidated Balance Sheets. Management of Duke Energy has the intent and ability to hold these securities until the credit markets regain liquidity or the instruments are refunded by the issuer under the terms of the indenture, such that these holdings can be redeemed at their stated par values. As these securities are treated as available-for-sale securities under SFAS No. 115, "*Accounting for Certain Investments in Debt and Equity Securities*," Duke Energy performed a valuation of its investment holdings at March 31, 2008 (consistent with provisions of SFAS No. 157 – see Note 16) and determined that the carrying value of these investments exceeded the current estimated fair value of these investments by approximately $20 million. Duke Energy recorded the reduction in carrying value of these investments as a component of Other Comprehensive Income during the three months ended March 31, 2008 as management believes the reduction in fair value is temporary. Management will continue to monitor the carrying value of these investments in the future to determine if any other-than-temporary impairment losses should be recorded.

20. Subsequent Events

For information on subsequent events related to debt and credit facilities, discontinued operations and assets held for sale, regulatory matters, and commitments and contingencies, see Notes 7, 11, 13 and 14, respectively.

Item 2. ***Management's Discussion and Analysis of Financial Condition and Results of Operations.***

INTRODUCTION

Management's Discussion and Analysis should be read in conjunction with the Consolidated Financial Statements.

Executive Overview

Net income was $465 million for the first quarter of 2008 as compared to $357 million for the first quarter of 2007. Diluted earnings per share increased from $0.28 per share in the first quarter of 2007 to $0.37 per share in the first quarter of 2008 primarily due to the increase in net income in the first quarter of 2008 as compared to the same period in 2007, as described further below.

Income from continuing operations increased from $337 million for the first quarter of 2007 to $463 million for the first quarter of 2008. Total business segment EBIT increased from $683 million to $899 million. The increase for U.S. Franchised Electric and Gas of $63 million was primarily attributed to the conclusion in the third quarter of 2007 of North Carolina clean air amortization in 2007, the substantial completion of rate credits in 2007 related to the merger with Cinergy Corp. (Cinergy), favorable weather and higher allowance for funds used during construction (AFUDC), partially offset by lower retail rates resulting from the North Carolina 2007 rate review, a favorable settlement with the Department of Energy that occurred in 2007 related to its obligation to accept and dispose of used nuclear fuel, higher depreciation expense and lower Bulk Power Marketing results, net of sharing. Segment results for Commercial Power improved $133 million, primarily due to improved mark-to-market impacts of economic hedges, lower purchase accounting net expenses, gains on the sale of emission allowances and improved results of the Midwest gas-fired assets, partially offset by higher expenses from increased plant maintenance due to plant outages. The $20 million increase in segment results for International Energy were driven primarily by higher margins at National Methanol Company (NMC) and favorable foreign exchange rates, partially offset by unfavorable hydrology in Latin America. Results at Crescent were flat for the three months ended March 31, 2008 as compared to the same period in the prior year, reflecting the ongoing challenges in the overall real estate markets.

The increase in segment EBIT was partially offset by higher interest expense of approximately $19 million due primarily to higher debt balances. The effective tax rate for the first quarter 2008 increased to approximately 32% compared to 29% in the same period in 2007 primarily due to of the recognition of a reduction in the unitary state tax rate in 2007 as a result of the spin-off of Spectra Energy.

The decrease in income from *discontinued operations from $20 million in first quarter 2007 to $2 million in 2008 primarily reflects* the classification of the results of operations for Commercial Power's synthetic fuel (synfuel) operations as discontinued operations as a result of the cessation of synfuel operations on December 31, 2007 due to the expiration of certain tax credits.

RESULTS OF OPERATIONS

Results of Operations and Variances (in millions)

	Three Months Ended March 31,		
	2008	2007	Increase (Decrease)
Operating revenues	$ 4,337	$ 3,935	$ 402
Operating expenses	2,604	2,436	168
Gains (losses) on sales of other assets and other, net	18	(11)	29
Operating income	751	588	163
Other income and expenses, net	117	53	64
Interest expense	182	163	19
Minority interest expense	1	2	(1)
Income from continuing operations before income taxes	685	476	209
Income tax expense from continuing operations	222	139	83
Income from continuing operations	463	337	126
Income from discontinued operations, net of tax	2	20	(18)
Net income	$ 465	$ 357	$ 108

The following is a summary discussion of the consolidated results of operations and variances, which is followed by a discussion of results by segment.

Consolidated Operating Revenues

Three Months Ended March 31, 2008 as Compared to March 31, 2007. Consolidated operating revenues for the three months ended March 31, 2008 increased $302 million, compared to the same period in 2007. This change was primarily driven by the following:

- A $202 million increase at U.S. Franchised Electric and Gas driven primarily by an increase in fuel revenues (including emission allowances) primarily driven by higher fuel prices (approximately $163 million), substantial completion in 2007 of the sharing of anticipated merger savings (approximately $51 million), and favorable weather conditions (approximately $32 million), partially offset by a decrease in retail rates and rate riders primarily related to new retail base rates implemented in North Carolina in the first quarter of 2008, net of increases in recoveries of Duke Energy Indiana's environmental compliance costs from retail customers and the Demand Side Management rider implemented in Ohio in the third quarter of 2007 (approximately $25 million) and a decrease in wholesale power revenues, net of sharing, primarily due to increased sharing of profits with North Carolina retail customers and lower Midwest sales volumes largely driven by forced outages (approximately $18 million).

- A $70 million increase at Commercial Power primarily due to an increase in mark-to-market revenues on non-qualifying power and capacity hedge contracts (approximately $33 million), an increase in retail electric revenues due to increased amortization of purchase accounting valuation liability of the rate stabilization plan and increased retail demand resulting from a favorable weather in 2008 (approximately $19 million) and increased revenues from the Midwest gas-fired generation assets due primarily to higher generation volumes due to favorable weather as well as higher PJM capacity revenues (approximately $17 million), and

- A $44 million increase at International Energy due primarily to higher average energy prices and the strengthening of the Real against the U.S. dollar in Brazil, partially offset by lower volumes (approximately $24 million), higher average energy prices in Guatemala and El Salvador (approximately $27 million) and increased natural gas liquids sales in Peru (approximately $6 million) partially offset by decreased sales volume as a result of unfavorable hydrology in Ecuador (approximately $16 million).

Consolidated Operating Expenses

Three Months Ended March 31, 2008 as Compared to March 31, 2007. Consolidated operating expenses for the three months ended March 31, 2008 increased $168 million, compared to the same period in 2007. This change was primarily driven by the following:

- A $164 million increase at U.S. Franchised Electric and Gas driven primarily by an increase in fuel expense, including purchased power (approximately $171 million), increased operating and maintenance expenses primarily due to higher outage and maintenance costs at generating plants (approximately $21 million) and increased depreciation due primarily to additional capital spending (approximately $20 million), partially offset by decreased regulatory amortization expense related to the completion in 2007 of North Carolina clean air legislation compliance costs,

- A $47 million increase at International Energy due primarily to higher operating and general and administrative costs and the strengthening of the Real against the U.S. dollar in Brazil (approximately $16 million), increased fuel and purchased power costs in Guatemala (approximately $14 million), higher fuel costs due to increased generation in El Salvador (approximately $13 million) and higher purchased power costs due to unfavorable hydrology in Argentina (approximately $7 million), partially offset by lower generation in Ecuador (approximately $11 million), partially offset by

- A $39 million decrease at Commercial Power primarily due to an increase in mark-to-market gains on non-qualifying fuel hedge contracts (approximately $40 million) and lower sulfur dioxide emission allowance expenses due to installation of flue gas desulfurization equipment (approximately $18 million), partially offset by increased fuel and operating expenses for the Midwest gas-fired generation assets due to increased generation volumes in 2008 (approximately $7 million) and increased operating expenses primarily due to increased plant maintenance (approximately $5 million).

Consolidated Gains (Losses) on Sales of Other Assets and Other, Net

Consolidated gain (losses) on sales of other assets and other, net was a gain of approximately $18 million and a loss of approximately $11 million for the three months ended March 31, 2008 and 2007, respectively. The net gain for the three months ended March 31, 2008 and net loss for the three months ended March 31, 2007 were due primarily to Commercial Power's sale of emission allowances.

Consolidated Operating Income

Consolidated operating income for the three months ended March 31, 2008 increased $153 million, compared to the same period in 2007. Drivers to operating income are discussed above.

Consolidated Other Income and Expenses, Net

Consolidated other income and expenses, net for the three months ended March 31, 2008 increased $64 million compared to the same period in 2007. The increase was driven primarily by an increase in equity earnings of $24 million due primarily to increased equity earnings at International Energy of approximately $23 million primarily related to its investment in NMC, a $21 million charge in the first quarter of 2007 associated with convertible debt related to the spin-off of Spectra Energy with no comparable charge during the first quarter of 2008, and an $18 million increase in the equity component of allowance for funds used during construction (AFUDC) as a result of additional capital spending.

Consolidated Interest Expense

Consolidated interest expense for the three months ended March 31, 2008 increased $19 million, compared to the same period in 2007. This increase was due primarily to higher debt balances.

Consolidated Income Tax Expense from Continuing Operations

Consolidated income tax expense from continuing operations for the three months ended March 31, 2008 increased $83 million compared to the same period in 2007. The increase is primarily the result of higher pre-tax income and a higher effective tax rate for the three months ended March 31, 2008 (32%) compared to the same period in 2007 (29%). The increase in the effective tax rate is due primarily to the recognition of the reduction in the unitary state tax rate in 2007 as a result of the spin-off of Spectra Energy.

Consolidated Income from Discontinued Operations, Net of tax

Consolidated income from discontinued operations, net of tax, for the three months ended March 31, 2008 decreased $18 million, compared to the same period in 2007. The decrease primarily relates to the inclusion of the results of Commercial Power's synfuel operations (approximately $12 million of after-tax earnings, including an approximate $34 million tax benefit), which ceased upon the expiration of tax credits on December 31, 2007 and were reclassified to discontinued operations, in the three months ended March 31, 2007.

Segment Results

Management evaluates segment performance based on earnings before interest and taxes from continuing operations, after deducting minority interest expense related to those profits (EBIT). On a segment basis, EBIT excludes discontinued operations, represents all profits from continuing operations (both operating and non-operating) before deducting interest and taxes, and is net of the minority interest expense related to those profits. Cash, cash equivalents and short-term investments are managed centrally by Duke Energy, so the gains and losses on foreign currency remeasurement and interest and dividend income on those balances are excluded from the segments' EBIT. Management considers segment EBIT to be a good indicator of each segment's operating performance from its continuing operations as it represents the results of Duke Energy's ownership interest in operations without regard to financing methods or capital structures.

Duke Energy's segment EBIT may not be comparable to a similarly titled measure of another company because other entities may not calculate EBIT in the same manner. Segment EBIT is summarized in the following table, and detailed discussions follow.

EBIT by Business Segment (in millions)

	Three Months Ended March 31,	
	2008	2007
U.S. Franchised Electric and Gas	$ 637	$ 574
Commercial Power	146	13
International Energy	114	96
Crescent	2	2
Total reportable segment EBIT	899	685
Other	(78)	(84)
Total reportable segment and other EBIT	821	601
Interest expense	(182)	(163)
Interest income and other[a]	46	38
Consolidated income from continuing operations before income taxes	$ 685	$ 476

(a) Other within Interest Income and Other includes foreign currency transaction gains and losses.

The amounts discussed below include intercompany transactions that are eliminated in the Consolidated Financial Statements.

U.S. Franchised Electric and Gas

U.S. Franchised Electric and Gas includes the regulated operations of Duke Energy Carolinas, LLC (Duke Energy Carolinas), Duke Energy Ohio, Inc. (Duke Energy Ohio), Duke Energy Indiana, Inc. (Duke Energy Indiana) and Duke Energy Kentucky, Inc. (Duke Energy Kentucky).

	Three Months Ended March 31,		
(in millions, except where noted)	2008	2007	Increase (Decrease)
Operating revenues	$ 2,601	$ 2,399	$ 202
Operating expenses	1,999	1,835	164
Gains (losses) on sales of other assets and other, net	3	-	3
Operating income	605	564	41
Other income and expenses, net	32	10	22
EBIT	$ 637	$ 574	$ 63
Duke Energy Carolinas GWh sales[a]	22,065	21,552	513
Duke Energy Midwest GWh sales[a][b]	16,276	16,412	(136)
Net proportional MW capacity in operation[c]	27,333	27,590	(257)

(a) Gigawatt-hours (GWh)

(b) Duke Energy Ohio, Duke Energy Indiana and Duke Energy Kentucky collectively referred to as Duke Energy Midwest

(c) Megawatt (MW)

The following table shows the percent changes in GWh sales and average number of customers for Duke Energy Carolinas for the three months ended March 31, 2008 compared to the same period in the prior year.

Increase (decrease) over prior year	Three Months Ended March 31, 2008
Residential sales[a]	2.1%
General service sales[a]	1.7%
Industrial sales[a]	(1.2)%
Wholesale sales	20.1%
Total Duke Energy Carolinas sales[b]	3.3%
Average number of customers	1.8%

(a) Major components of Duke Energy Carolinas' retail sales.

(b) Consists of all components of Duke Energy Carolinas' sales, including retail sales, and wholesale sales to incorporated municipalities and to public and private utilities and power marketers.

The following table shows the percent changes in GWh sales and average number of customers for Duke Energy Midwest for the three months ended March 31, 2008 compared to the same period in the prior year.

Increase (decrease) over prior year	Three Months Ended March 31, 2008
Residential sales[a]	4.5%
General service sales[a]	4.1%
Industrial sales[a]	4.1%
Wholesale sales	(17.2)%
Total Duke Energy Midwest sales[b]	(0.8)%
Average number of customers	0.6%

(a) Major components of Duke Energy Midwest's retail sales.

(b) Consists of all components of Duke Energy Midwest's sales, including retail sales, and wholesale sales to incorporated municipalities and to public and private utilities and power marketers.

Three Months Ended March 31, 2008 as Compared to March 31, 2007

Operating Revenues. The increase was driven primarily by:

- A $163 million increase in fuel revenues (including emission allowances) driven primarily by increased retail fuel rates. Fuel rates increased primarily due to increased coal transportation and natural gas costs. These fuel revenues represent sales to retail and wholesale customers;
- A $51 million increase related to the substantial completion in 2007 of the sharing of anticipated merger savings through rate decrement riders with regulated customers, and
- A $32 million increase in GWh sales to retail customers due to favorable weather conditions. For the Midwest, heating degree days for the first quarter of 2008 were approximately 10% above normal compared to 6% above normal during the same period in 2007. For the Carolinas, heating degree days for the first quarter of 2008 were approximately 1% below normal compared to 8% below normal during the same period in 2007. The number of heating degree days for the first quarter of 2008 was approximately 5% greater than the same period in 2007 for combined Carolinas and the Midwest.

Partially offsetting these increases were:

- A $25 million decrease in retail rates and rate riders primarily related to the new retail base rates implemented in North Carolina in the first quarter of 2008, net of increases in recoveries of Duke Energy Indiana's environmental compliance costs from retail customers and the Demand Side Management rider implemented in Ohio in the third quarter of 2007; and
- An $18 million decrease in wholesale power revenues, net of sharing, primarily due to increased sharing of profits with North Carolina retail customers and lower Midwest sales volumes largely driven by forced outages. Profits from certain wholesale transactions are required to be shared with retail customers in various jurisdictions. Additionally, beginning in first quarter 2008, Duke Energy Carolinas is required to share a greater percentage of profits with customers in the North Carolina jurisdiction compared to the same period in 2007.

Operating Expenses. The increase was driven primarily by:

- A $171 million increase in fuel expense (including purchased power) due primarily to an increase in Duke Energy Indiana's wholesale emission allowance expense driven by the recognition of the 2007 gain on sales of native load allowances previously deferred.

higher coal costs in the Carolinas resulting from higher freight costs, higher natural gas costs at Duke Energy Ohio and increased generation at coal fired plants during the first quarter of 2008 compared to the first quarter of 2007. This increase also reflects a $19 million reimbursement in first quarter 2007 of previously incurred fuel expenses resulting from a settlement between Duke Energy Carolinas and the U.S. Department of Justice resolving Duke Energy's used nuclear fuel litigation against the Department of Energy (DOE). The settlement between the parties was finalized on March 6, 2007;

- A $21 million increase in operating and maintenance expenses primarily due to higher outage and maintenance costs at generating plants; and

- A $20 million increase in depreciation due primarily to additional capital spending.

Partially offsetting these increases was:

- A $48 million decrease in regulatory amortization expenses. Approximately $56 million of the decrease relates to the amortization of compliance costs related to North Carolina clean air legislation, which was completed in 2007.

Other Income and Expenses, net. The increase resulted primarily from the equity component of AFUDC due to additional capital spending for ongoing construction projects.

EBIT. The increase resulted primarily from the substantial completion of the required rate reductions due to the merger with Cinergy, decreased regulatory amortization and favorable weather conditions. These increases were partially offset by lower retail rates in North Carolina, higher operation and maintenance costs and the DOE settlement.

Commercial Power

	Three Months Ended March 31,		
(in millions, except where noted)	**2008**	**2007**	**Increase (Decrease)**
Operating revenues	[illegible]	[illegible]	[illegible]
Operating expenses	323	362	(39)
Gains (losses) on sales of other assets and other, net	[illegible]	[illegible]	[illegible]
Operating income	141	7	134
Other income and expenses, net	[illegible]	[illegible]	[illegible]
EBIT	$ 146	$ 13	$ 133
Actual plant production, GWh	[illegible]	[illegible]	[illegible]
Proportional megawatt capacity in operation	7,550	8,100	(550)

Three Months Ended March 31, 2008 as compared to March 31, 2007

Operating Revenues. The increase was primarily driven by:

- A $33 million increase in net mark-to-market revenues on non-qualifying power and capacity hedge contracts, consisting of mark-to-market losses of $11 million in 2008 compared to losses of $44 million in 2007;

- A $19 million increase in retail electric revenues due to increased amortization of purchase accounting valuation liability of the rate stabilization plan and increased retail demand resulting from favorable weather in 2008 compared to 2007, and

- A $17 million increase in revenues from the Midwest gas-fired generation assets due primarily to higher generation volumes due to favorable weather in 2008 compared to 2007 and higher PJM capacity revenues.

Operating Expenses. The decrease was primarily driven by:

- A $40 million decrease in fuel expense due to mark-to-market gains on non-qualifying fuel hedge contracts of $58 million in 2008 compared to gains of $18 million in 2007; and

- An $18 million decrease primarily due to lower sulfur dioxide emission allowance expenses due to installation of flue gas desulfurization equipment.

Partially offsetting these decreases were:

- A $7 million increase in fuel and operating expenses for the Midwest gas-fired generation assets primarily due to increased generation volumes in 2008 compared to 2007, and

- A $5 million increase in operating expenses primarily due to increased plant maintenance due to plant outages.

Gains (Losses) on Sales of Other Assets and Other, net. Increase in 2008 compared to 2007 is attributable to gains on sales of emission allowances in 2008 compared to losses on sales of emission allowances in 2007.

EBIT. The improvement is primarily attributable to higher mark-to-market earnings on economic hedges due primarily to increasing coal prices, improved results from the Midwest gas-fired assets as a result of higher generation volumes and increased PJM capacity revenues, gains on sales of emission allowances and lower emission allowance expenses due to installation of flue gas desulfurization equipment. These favorable variances were partially offset by higher expenses from increased plant maintenance in 2008.

International Energy

	Three Months Ended March 31,		
(in millions, except where noted)	2008	2007	Increase (Decrease)
Operating revenues	$ 289	$ 245	$ 44
Operating expenses	212	165	47
Operating income	77	80	(3)
Other income and expenses, net	42	19	23
Minority interest expense	(5)	(5)	-
EBIT	$ 114	$ 94	$ 20
Sales, GWh	7,084	7,224	(140)
Proportional megawatt capacity in operation	4,005	3,945	60

Three Months Ended March 31, 2008 as Compared to March 31, 2007

Operating Revenues. The increase was driven primarily by:

- A $24 million increase in Brazil due to higher average energy prices and the strengthening of the Brazilian Real against the U.S. dollar, partially offset by lower volumes;
- A $15 million increase in Guatemala due to higher average energy prices, partially offset by lower dispatch;
- A $12 million increase in El Salvador due to higher average energy prices as a result of higher demand; and
- A $6 million increase in Peru as a result of increased natural gas liquids sales.

Partially offsetting these increases was:

- A $16 million decrease in Ecuador primarily due to decreased sales volume as a result of unfavorable hydrology.

Operating Expenses. The increase was driven primarily by:

- A $16 million increase in Brazil primarily due to higher operating and general and administrative costs, as well as the strengthening of the Brazilian Real against the U.S. dollar;
- A $14 million increase in Guatemala due to increased fuel costs and higher purchased power costs;
- A $13 million increase in El Salvador primarily due to higher fuel costs resulting from increased generation;
- A $7 million increase in Argentina due to higher purchased power costs as a result of unfavorable hydrology, and
- A $5 million increase in Peru primarily due to higher royalty fees.

Partially offsetting these increases was:

- An $11 million decrease in Ecuador due to a lower generation.

Other Income and Expenses, net. The increase was primarily driven by a $20 million increase in National Methanol Company (NMC) due to higher methanol and MTBE margins and increased sales volumes as a result of planned maintenance in 2007.

EBIT. The increase was due primarily to the favorable results at NMC, the strengthening of the Brazilian Real against the U.S. dollar and favorable energy prices in Latin America, offset by lower volumes due to unfavorable hydrology in Argentina.

Crescent

	Three Months Ended March 31,		
	2008	2007	Increase (Decrease)
		(in millions)	
Equity in earnings of unconsolidated affiliates	$2	$ 2	$ —
EBIT	$2	$ 2	$ —

EBIT. Segment EBIT for Crescent was flat for the three months ended March 31, 2008 as compared to the same period in the prior year. During the three months ended March 31, 2008, Crescent recognized gains from sales of certain real estate holdings in the fourth quarter of 2007 which had been deferred until the first quarter of 2008 (Duke Energy's proportionate pre-tax share of approximately $17 million), offset by impairment charges (Duke Energy's proportionate pre-tax share of approximately $11 million) and increased interest expense (Duke Energy's proportionate pre-tax share of approximately $7 million).

Matters Impacting Future Results

Crescent's results are subject to volatility due to various factors including its management's investment decisions, real estate market conditions, the cost of construction materials, the availability and cost of credit and the general level of interest rates. During 2007 and the first quarter of 2008, Crescent recorded impairment charges on certain of its properties, which reflected current economic conditions in Crescent's markets and its management's plans for the properties in its portfolio. Changes in factors such as further or prolonged deterioration in real estate market conditions or changes regarding the timing or method for disposition of properties could result in future impairments being recorded by Crescent, which would be reflected in Duke Energy's equity earnings of Crescent.

In addition, as of March 31, 2008, Duke Energy performed an overall assessment of its investment in Crescent to determine if an impairment of the carrying value of its investment in Crescent exists. As of March 31, 2008, the carrying value of Duke Energy's equity method investment in Crescent was approximately $208 million. The impairment assessment was deemed necessary as a result of the prolonged deterioration in the real estate markets which has resulted in sales at Crescent that are substantially lower in 2007 and the first quarter of 2008 than was forecasted. Further, Crescent has long-term debt of approximately $1.5 billion at March 31, 2008, all of which is non-recourse to Duke Energy. Approximately $1.2 billion of the long-term debt balance is term debt due in September 2012. Crescent's debt agreements have certain financial covenants that are required to be met on a quarterly basis. If current market conditions continue to be difficult or deteriorate further, Crescent could be in violation of one or more of its debt covenants, perhaps as early as the second quarter of 2008. Crescent's management currently believes that it can successfully negotiate amendments to its debt agreements, including the debt covenant compliance requirements, which is expected to enable Crescent to execute its business plans for the foreseeable future, absent other outside market factors. However, failure to successfully negotiate amendments to its debt agreements could have a material adverse impact on Crescent's future results of operations and cash flows.

As of March 31, 2008, Duke Energy believes the fair value of its investment in Crescent exceeds the carrying value. Duke Energy's determination of fair value considered the results of discounted cash flow models and other indicators of fair value. However, further or prolonged deterioration in market conditions, or the inability of Crescent to negotiate amendments to its debt agreements, as discussed above, could result in future impairment charges being recorded. Management of Duke Energy continues to closely monitor its overall investment in Crescent for indicators of impairment. Also, refer to Note 15, Guarantees and Indemnifications, for a discussion of Duke Energy's guarantee of certain surety bonds for Crescent projects.

Other

	Three Months Ended March 31,		
	2008	2007	Increase (Decrease)
		(in millions)	
Operating revenues	$ 21	$ 36	$ (15)
Operating expenses	94	100	(6)
Gains (losses) on sales of other assets and other, net	1		1
Operating income	(72)	(64)	(8)
Other income and expenses, net	(7)	(21)	14
Minority interest expense	(1)	(1)	
EBIT	$ (78)	$ (86)	$ 8

Three Months Ended March 31, 2008 as Compared to March 31, 2007

Operating Income. The decrease was driven primarily by higher captive insurance costs.

Other Income and Expenses, net. The reduction in net expense was due primarily to convertible debt charges of approximately $21 million related to the spin-off of Spectra Energy with no comparable charges in 2008.

EBIT. The increase was due primarily to convertible debt charges recorded in 2007 with no comparable charges in 2008, partially offset by higher captive insurance costs.

LIQUIDITY AND CAPITAL RESOURCES

Operating Cash Flows

Net cash provided by operating activities was $1,012 million for the three months ended March 31, 2008 compared to $907 million for the same period in 2007, an increase in cash provided of $105 million. This change was driven primarily by net income of $465 million in the three months ended March 31, 2008 compared to $357 million for the same period in 2007.

Investing Cash Flows

Net cash used in investing activities was $1,075 million for the three months ended March 31, 2008 compared to $594 million for the same period in 2007, an increase in cash used of $481 million. This change was driven primarily by:

- An approximate $300 million increase in capital expenditures, and
- An approximate $200 million decrease in proceeds from available for sale securities, net of purchases.

Financing Cash Flows and Liquidity

Net cash provided by financing activities was $27 million for the three months ended March 31, 2008 compared to $691 million of cash used for the same period in 2007, an increase in cash provided of $718 million. This change was driven primarily by:

- An approximate $700 million increase in proceeds from issuances of long-term debt, net of redemptions, as a result of net issuances of approximately $350 million during 2008 as compared to net repayments of approximately $350 million during 2007
- An approximate $400 million increase in cash provided as the result of cash distributed to Spectra Energy in the spin-off in 2007, partially offset by
- An approximate $400 million decrease in proceeds from issuances of notes payable and commercial paper due to net repayments in 2008 versus net issuances in 2007.

Significant Financing Activities. In January 2008, Duke Energy Carolinas, LLC (Duke Energy Carolinas) issued $900 million principal amount of mortgage refunding bonds, of which $400 million carries a fixed interest rate of 5.25% and matures January 15, 2018 and $500 million carries a fixed interest rate of 6.00% and matures January 15, 2038. Proceeds from the issuance were used to fund capital expenditures and for general corporate purposes, including the repayment of commercial paper. In anticipation of this debt issuance, Duke Energy Carolinas executed a series of interest rate swaps in late 2007 to lock in the market interest rates at that time. The value of these interest rate swaps, which were terminated at the time of issuance of the fixed rate debt, was a pre-tax loss of approximately $18 million, which was recorded as a component of Accumulated Other Comprehensive Income (AOCI) and will be amortized as a component of interest expense over the life of the debt.

In March 2008, Duke Energy entered into an amendment to the $2.65 billion master credit facility whereby the borrowing capacity was increased by $550 million to $3.2 billion. Pursuant to the amendment, the additional credit capacity of $550 million specifically increased the borrowing sublimits for Duke Energy Ohio, Inc. (Duke Energy Ohio) and Duke Energy Indiana, Inc. (Duke Energy Indiana) to $750 million and $700 million, respectively. In May 2008, Duke Energy reallocated the sublimits under its master credit facility by increasing the sublimit of Duke Energy Carolinas $100 million to $900 million and reducing the sublimits of both Duke Energy Ohio and Duke Energy Indiana by $50 million to $700 million and $650 million, respectively.

In April 2008, Duke Energy Carolinas issued $900 million principal amount of mortgage refunding bonds, of which $300 million carries a fixed interest rate of 5.10% due April 15, 2018 and $600 million carries a fixed interest rate of 6.05% and matures April 15, 2038. Proceeds from the issuance will be used to fund capital expenditures and for general corporate purposes. In anticipation of this debt issuance, Duke Energy Carolinas executed a series of interest rate swaps in late 2007 to lock in the market interest rates at that time. The value of these interest rate swaps, which were terminated at the time of issuance of the fixed rate debt, was a pre-tax loss of approximately $23 million, which was recorded as a component of AOCI and will be amortized as a component of interest expense over the life of the debt.

In April 2008, Duke Energy Carolinas refunded $100 million of tax-exempt auction rate bonds through the issuance of $100 million of tax-exempt variable-rate demand bonds, which are supported by a direct-pay letter of credit. The variable-rate demand bonds, which are due November 1, 2040, have an initial interest rate of 2.15% which will be reset on a weekly basis.

While Duke Energy has plans to refund and refinance its remaining tax exempt auction rate bonds, the timing of such refinancing transaction is uncertain and subject to market conditions.

Available Credit Facilities and Restrictive Debt Covenants. Duke Energy's debt and credit agreements contain various financial and other covenants. Failure to meet those covenants beyond applicable grace periods could result in accelerated due dates and/or termination of the agreements. As of March 31, 2008, Duke Energy was in compliance with those covenants. In addition, some credit agreements may allow for acceleration of payments or termination of the agreements due to nonpayment, or to the acceleration of other significant indebtedness of the borrower or some of its subsidiaries. None of the debt or credit agreements contain material adverse change clauses.

Credit Ratings. Through May 1, 2008, the credit ratings of Duke Energy and its subsidiaries were unchanged from those disclosed in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" in Duke Energy's Annual Report on Form 10-K for the year ended December 31, 2007.

Duke Energy's credit ratings are dependent on, among other factors, the ability to generate sufficient cash to fund capital and investment expenditures and pay dividends on its common stock, while maintaining the strength of its current balance sheet. If, as a result of market conditions or other factors, Duke Energy is unable to maintain its current balance sheet strength, or if its earnings and cash flow outlook materially deteriorates, Duke Energy's credit ratings could be negatively impacted.

Other Financing Matters. In October 2007, Duke Energy filed a registration statement (Form S-3) with the Securities and Exchange Commission. Under this Form S-3, which is uncapped, Duke Energy, Duke Energy Carolinas, Duke Energy Ohio and Duke Energy Indiana may issue debt and other securities in the future at amounts, prices and with terms to be determined at the time of future offerings. The registration statement also allows for the issuance of common stock by Duke Energy.

Off-Balance Sheet Arrangements

During the first quarter of 2008, there were no material changes to Duke Energy's off-balance sheet arrangements. For information on Duke Energy's off-balance sheet arrangements, see "Off-Balance Sheet Arrangements" in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Duke Energy's Annual Report on Form 10-K for the year-ended December 31, 2007.

Contractual Obligations

Duke Energy enters into contracts that require cash payment at specified periods, based on specified minimum quantities and prices. During the first quarter of 2008, there were no material changes in Duke Energy's contractual obligations. For an in-depth discussion of Duke Energy's contractual obligations, see "Contractual Obligations" and "Quantitative and Qualitative Disclosures about Market Risk" in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Duke Energy's Annual Report on Form 10-K for the year-ended December 31, 2007.

New Accounting Standards

The following new accounting standards have been issued, but have not yet been adopted by Duke Energy as of March 31, 2008:

SFAS No. 141 (revised 2007), "Business Combinations" (SFAS No. 141R). In December 2007, the FASB issued SFAS No. 141R, which replaces SFAS No. 141, "*Business Combinations.*" SFAS No. 141R retains the fundamental requirements in SFAS No. 141 that the acquisition method of accounting be used for all business combinations and that an acquirer be identified for each business combination. This statement also establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any noncontrolling (minority) interests in an acquiree, and any goodwill acquired in a business combination or gain recognized from a bargain purchase. For Duke Energy, SFAS No. 141R must be applied prospectively to business combinations for which the acquisition date occurs on or after January 1, 2009. The impact to Duke Energy of applying SFAS No. 141R for periods subsequent to implementation will be dependent upon the nature of any transactions within the scope of SFAS No. 141R. SFAS No. 141R changes the accounting for income taxes related to prior business combinations, such as Duke Energy's merger with Cinergy. Subsequent to the effective date of SFAS No. 141R, the resolution of tax contingencies relating to Cinergy that existed as of the date of the merger will be required to be reflected in the Consolidated Statements of Operations instead of being reflected as an adjustment to the purchase price via an adjustment to goodwill.

SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements—an amendment of Accounting Research Bulletin (ARB) No. 51" (SFAS No. 160). In December 2007, the FASB issued SFAS No. 160, which amends ARB No. 51, "*Consolidated Financial Statements,*" to establish accounting and reporting standards for the noncontrolling (minority) interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS No. 160 clarifies that a noncontrolling interest in a subsidiary is an ownership interest in a consolidated entity that should be reported as equity in the consolidated financial statements. This statement also changes the way the consolidated income statement is presented by requiring consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. In addition, SFAS No. 160 establishes a single method of accounting for changes in a parent's ownership interest in a subsidiary that do not result in deconsolidation. For Duke Energy, SFAS No. 160 is effective as of January 1, 2009, and must be applied prospectively, except for certain presentation and disclosure requirements which must be applied retrospectively. Duke Energy is currently evaluating the impact of adopting SFAS No. 160.

SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities—an amendment to FASB Statement No. 133" (SFAS No. 161). In March 2008, the FASB issued SFAS No. 161, which amends and expands the disclosure requirements for derivative instruments and hedging activities prescribed by SFAS No. 133, "*Accounting for Derivative Instruments and Hedging Activities.*" SFAS No. 161 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of and gains and losses on derivative instruments, and disclosures about credit-risk-related contingent features in derivative agreements. Duke Energy will adopt SFAS No. 161 as of January 1, 2009 and SFAS No. 161 encourages, but does not require, comparative disclosure for earlier periods at initial adoption. The adoption of SFAS No. 161 will not have any impact on Duke Energy's consolidated results of operations, cash flows or financial position.

Subsequent Events

For information on subsequent events related to debt and credit facilities, discontinued operations and assets held for sale, regulatory matters, and commitments and contingencies see Note 7, "Debt and Credit Facilities," Note 11, "Discontinued Operations and Assets Held for Sale," Note 13, "Regulatory Matters," and Note 14, "Commitments and Contingencies" to the Consolidated Financial Statements, respectively.

Item 3. *Quantitative and Qualitative Disclosures about Market Risk*

For an in-depth discussion of Duke Energy's market risks, see "Management's Discussion and Analysis of Quantitative and Qualitative Disclosures about Market Risk" in Duke Energy's Annual Report on Form 10-K for the year ended December 31, 2007.

Interest Rate Risk

Based on a sensitivity analysis as of March 31, 2008, it was estimated that if market interest rates average 1% higher (lower) over the next twelve months, interest expense, net of offsetting impacts in interest income, would increase (decrease) by approximately $24 million. Comparatively, based on a sensitivity analysis as of December 31, 2007, had interest rates averaged 1% higher (lower) in 2007, it was estimated that interest expense, net of offsetting impacts in interest income, would have increased (decreased) by approximately $22 million. These amounts were estimated by considering the impact of the hypothetical interest rates on variable-rate securities

outstanding, adjusted for interest rate hedges, auction rate investments with interest rates that periodically reset, cash and cash equivalents outstanding as of March 31, 2008 and December 31, 2007. The increase in interest rate sensitivity was primarily due to a decrease in cash and auction rate investments with interest rates that periodically reset balances. If interest rates changed significantly, management would likely take actions to manage its exposure to the change. However, due to the uncertainty of the specific actions that would be taken and their possible effects, the sensitivity analysis assumes no changes in Duke Energy's financial structure.

Item 4. *Controls and Procedures.*

Disclosure Controls and Procedures

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed by Duke Energy in the reports it files or submits under the Securities Exchange Act of 1934 (Exchange Act) is recorded, processed, summarized, and reported, within the time periods specified by the Securities and Exchange Commission's (SEC) rules and forms.

Disclosure controls and procedures include, without limitation, controls and procedures designed to provide reasonable assurance that information required to be disclosed by Duke Energy in the reports it files or submits under the Exchange Act is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Under the supervision and with the participation of management, including the Chief Executive Officer and Chief Financial Officer, Duke Energy has evaluated the effectiveness of its disclosure controls and procedures (as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act) as of March 31, 2008, and, based upon this evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that these controls and procedures are effective in providing reasonable assurance of compliance.

Changes in Internal Control over Financial Reporting

Under the supervision and with the participation of management, including the Chief Executive Officer and Chief Financial Officer, Duke Energy has evaluated changes in internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the fiscal quarter ended March 31, 2008 and, other than the third party sourcing arrangement discussed below, found no change has materially affected, or is reasonably likely to materially affect, internal control over financial reporting.

During the first quarter of 2008, Duke Energy transferred payroll processing for the Midwest operations to the same third party provider currently used for the Carolinas and Houston operations.

Item 1. Legal Proceedings.

For information regarding legal proceedings that became reportable events or in which there were material developments in the first quarter of 2008, see Note 13 to the Consolidated Financial Statements, "Regulatory Matters" and Note 14 to the Consolidated Financial Statements, "Commitments and Contingencies."

Item 1A. Risk Factors.

In addition to the other information set forth in this report, careful consideration should be given to the factors discussed in Part I, "Item 1A. Risk Factors" in Duke Energy's Annual Report on Form 10-K for the year ended December 31, 2007, which could materially affect Duke Energy's financial condition or future results. Additional risks and uncertainties not currently known to Duke Energy or that Duke Energy currently deems to be immaterial also may materially adversely affect Duke Energy's financial condition and/or results of operations.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Issuer Purchases of Equity Securities for First Quarter of 2008

There were no issuer purchases of equity securities during the first quarter of 2008.

In February 2005, Duke Energy announced plans to execute up to approximately $2.5 billion of stock repurchases over a three year period. Duke Energy repurchased approximately $1.4 billion of common stock under this plan, which expired in February 2008.

Item 4. Submission of Matters to a Vote of Security Holders.

No matters were submitted to a vote of Duke Energy's security holders during the first quarter of 2008.

Item 6. Exhibits

(a) Exhibits

Exhibits filed or furnished herewith are designated by an asterisk (*). All exhibits not so designated are incorporated by reference to a prior filing, as indicated. Items constituting management contracts or compensatory plans or arrangements are designated by a double asterisk (**).

Exhibit Number	
3.1	Amended and Restated By-Laws of Duke Energy Corporation (filed on Form 8-K of Duke Energy Corporation, March 3, 2008, File No. 1-32853, as Exhibit 3.1).
*10.1	Amended and Restated Engineering, Procurement and Construction Agreement, dated February 20, 2008, by and between Duke Energy Carolinas, LLC and Stone & Webster National Engineering P.C. (portions of the exhibit have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended).
*10.2**	Agreement, effective March 31, 2008, by and between Henry B. Barron, Jr. and Duke Energy Corporation.
10.3**	Form of Phantom Stock Agreement (filed on Form 8-K of Duke Energy Corporation, February 22, 2008, File No. 1-32853, as Exhibit 10.1).
10.4**	Form of Performance Share Agreement (filed on Form 8-K of Duke Energy Corporation, February 22, 2008, File No. 1-32853, as Exhibit 10.2).
10.5	Amendment No. 1 to the Amended and Restated Credit Agreement (filed on Form 8-K of Duke Energy Corporation, March 12, 2008, File No. 1-32853, as Exhibit 10.1).
*31.1	Certification of the Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
*31.2	Certification of the Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
*32.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
*32.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

The total amount of securities of the registrant or its subsidiaries authorized under any instrument with respect to long-term debt not filed as an exhibit does not exceed 10% of the total assets of the registrant and its subsidiaries on a consolidated basis. The registrant agrees, upon request of the Securities and Exchange Commission, to furnish copies of any or all of such instruments to it.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DUKE ENERGY CORPORATION

Date: May 9, 2008

/s/ DAVID L. HAUSER
David L. Hauser
Group Executive and
Chief Financial Officer

Date: May 9, 2008

/s/ STEVEN K. YOUNG
Steven K. Young
Senior Vice President and Controller

EXHIBIT 10.1

PORTIONS OF THIS EXHIBIT MARKED BY ("***") HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION

FINAL EXECUTION VERSION

FIRST AMENDED AND RESTATED ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

by and between

DUKE ENERGY CAROLINAS, LLC, as Owner

and

SHAW NORTH CAROLINA, INC., as Contractor

for the

CONSTRUCTION OF A SUPERCRITICAL COAL-FIRED GENERATION FACILITY IN CLIFFSIDE, NORTH CAROLINA

Dated February 20, 2008

Table of Contents

EXHIBITS

FIRST AMENDED AND RESTATED

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This FIRST AMENDED AND RESTATED ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (the **"Agreement"**) is entered into as of the 20th day of February, 2008 (the **"Amendment Date"**), by and between DUKE ENERGY CAROLINAS, LLC, a North Carolina limited liability company having a place of business in Charlotte, North Carolina (**"Owner"**), and SHAW NORTH CAROLINA, INC., a Shaw Group Company, a North Carolina corporation having a place of business in Charlotte, North Carolina (**"Contractor"**). Owner and Contractor may be referred to individually as a **"Party"** and collectively as the **"Parties"**.

RECITALS

WHEREAS, Owner and Stone and Webster National Engineering, P.C. (**"SWNE"**) are parties to that certain Engineering, Procurement and Construction Agreement, dated as of July 11, 2007 (the **"Original EPC Agreement"**), pursuant to which Owner engaged SWNE to perform the engineering, procurement, construction and commissioning of the following systems:

(i) a new nominally-rated 820 MW supercritical pulverized coal electric-generation unit to be located adjacent to the Owner's existing coal-fired steam station in Cliffside, North Carolina (**"Cliffside Unit 6"**); and

(ii) a new flue gas desulfurization system for Owner's existing Unit 5 at the Owner's coal-fired steam station in Cliffside, North Carolina (**"Unit 5 Scrubber"**)

(collectively, Cliffside Unit 6 and the Unit 5 Scrubber shall hereinafter be referred to as the **"Project"**);

WHEREAS, pursuant to that certain Assignment and Assumption Agreement, dated as of the date hereof and entered into immediately prior to the execution of this Agreement, (i) SWNE has assigned to 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), including all intellectual property rights relating thereto, 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 SWNE's obligations and other liabilities under, arising out of or relating to the Original EPC Agreement;

WHEREAS, the Original EPC Agreement provided *** process whereby the Parties agreed to ***;

WHEREAS, the Parties agreed to *** and, as a result, the Parties have *** set forth herein; and

WHEREAS, the Parties hereto desire to amend and restate the Original EPC Agreement in the manner set forth herein in order to reflect ***, determine the process pursuant to which *** and make the other changes set forth herein.

NOW, THEREFORE, in consideration of the recitals, the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties, intending to be legally bound, stipulate and agree as follows:

1. DEFINITIONS

The following capitalized words and phrases used in this Agreement shall have the following meanings unless otherwise noted:

"AAA" shall have the meaning set forth in Section 28.2.

"Affiliate" shall mean, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such first Person at such time.

"Agreement" shall have the meaning set forth in the first paragraph above and shall include all Exhibits, and all amendments hereto (including, to the extent applicable, Change Orders).

***

"** Work"** shall mean the scope of Work performed by Contractor hereunder for which the *** Costs apply.

"Alstom Contract" shall mean the Engineering, Fabrication and Delivery Agreement for the Cliffside Steam Station, dated as of ***, by and between Owner and Alstom Power Inc. for the purchase of one (1) wet flue gas desulfurization system for the Unit 5 Scrubber and one (1) Air Quality Control System for Unit 6.

"Amendment Date" shall have the meaning set forth in the first paragraph of this Agreement.

*** shall mean ***.

"Bulk Materials" shall mean those items of material and Equipment described in Table 1-5e of Exhibit I.

"Business Day" shall mean every Day other than Saturday, Sunday or a legal holiday recognized by the State.

"Cash Flow Plan" shall have the meaning set forth in Section 7.1.

*** shall mean ***.

"Change" shall have the meaning set forth in Section 8.1.

"**Change in Law**" shall mean (a) any binding change after the Effective Date in the judicial or administrative interpretation of, or adoption after the Effective Date of, any Laws (excluding any Laws relating to net income Taxes and excluding any Laws relating to the organization, existence, good standing, qualification, or licensing of Contractor or their Affiliates or Subcontractors in any jurisdiction), which is inconsistent or at variance with any Laws in effect on the Effective Date or (b) the imposition after the Effective Date of any condition or requirement (except for any conditions or requirements which result from the acts or omissions of Contractor or any Subcontractor) not required as of the Effective Date affecting the issuance, renewal or extension of any Government Approval (excluding any Government Approval relating to the organization, existence, good standing, qualification, or licensing of Contractor or its Subcontractors in any jurisdiction). Notwithstanding the foregoing, the issuance of the Facility Air Permit subsequent to the Effective Date shall not be considered a Change in Law for any purpose hereunder.

"**Change Order**" shall have the meaning set forth in Section 8.1.

"**Clarifier Refurbishment**" shall have the meaning set forth in Table I-4c of Exhibit I.

"**Collateral**" shall have the meaning set forth in Section 22.1.

"**Commissioning**" shall mean the activities required to be conducted by Contractor pursuant to the terms of this Agreement in order to bring Unit 6 or the Unit 5 Scrubber from an inactive condition, when construction is essentially complete, to a state where Unit 6 or Unit 5 Scrubber is ready for the commencement of operation, including pre-commissioning, start-up, individual system and integrated, functional verification and synchronization of Unit 6 or Unit 5 Scrubber with other tie-in Facility equipment.

"**Confidential Information**" shall mean, with respect to any Party, all written, verbal, electronic and other information and documents such Party provides or makes available to the other Party relating in any way to this Agreement which are marked as being "Proprietary" to such Party at the time of disclosure, or for verbal information reduced to a writing and marked or designated as being "Proprietary" to such Party within seven (7) Days after such verbal disclosure. "Confidential Information" shall not include any Documentation or any other information that: (a) was already known to the other Party at the time it was disclosed by such Party; (b) was available to the public at the time it was disclosed by such Party; (c) becomes available to the public after being disclosed by such Party through no wrongful act of, or breach of this Agreement by, the other Party; (d) is received by the other Party without restriction as to use or disclosure from a third party; or (e) is independently developed by the other Party without benefit of any disclosure of information by such Party.

"**Construction Services Agreement**" shall mean Owner Purchase Order FHP01564 issued pursuant to the ***.

"**Construction Services Payments**" shall mean, with respect to each of Unit 6 and the Unit 5 Scrubber, those payments which have been made or are due and payable by Owner to Contractor prior to the Effective Date for those on-site services, including erosion control, fire protection modifications and other miscellaneous site preparation services, as are more fully described in Owner purchase order FHP01564.

*** shall mean ***.

"Contract Price" shall mean ***.

"Contractor" shall have the meaning set forth in the first paragraph above and shall include respective successors and permitted assigns.

"Contractor Indemnitees" shall have the meaning set forth in Section 14.2.

"Contractor Permits" shall have the meaning set forth in Section 3.20.

"Contractor's Project Manager" shall mean the Person whom Contractor designates in Exhibit G to issue and receive communications on Contractor's behalf under this Agreement

"Contractor's Site Representative" shall mean the Person whom Contractor designates in Exhibit G to represent Contractor at the Site.

"Control" shall mean (a) the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a Person, whether through the ownership of voting securities, as a trustee or executor, by contract or credit arrangement, or otherwise, or (b) the ownership, directly or indirectly, of fifty percent (50%) or more of the equity interest in a Person.

*** shall mean for any month, a comparison of the total *** incurred by Contractor during such month in the performance of each type of ***, as described in each of *** (which shall include reasonable detail showing the build-up of such total ***) against the applicable *** for such type of *** for such month as set forth in ***, as applicable.

*** shall mean, for any month, a comparison of the total *** and which are incurred in the performance of that *** during such month against the *** during such month as set forth in ***.

*** shall mean, for any month, a comparison of the total *** incurred by Contractor during such month in the performance of each type of ***, as described in each of *** (which shall include reasonable detail showing the build-up of such total ***), against the applicable *** for such type of *** for such month as set forth in ***, as applicable, and shall contain a certification as to whether any such *** has exceeded ***.

*** shall mean ***.

*** shall mean ***.

"* Comparison"** shall mean, as the context may require, the Cost Comparison — ***, the Cost Comparison — ***, the Cost Comparison — *** the Cost Comparison — *** or the Cost Comparison — ***.

*** shall mean ***.

*** shall mean ***.

*** shall mean ***.

*** shall have the meaning set forth in Section 3.2 of Exhibit I.

*** shall mean ***.

*** shall mean ***.

*** shall mean ***.

*** shall have the meaning set forth in Section 3.2 of Exhibit I.

"Craft Labor" shall mean, with respect to each of Unit 6 and the Unit 5 Scrubber, respectively, those items of Contractor craft labor as set forth in more detail in Table I-5c of Exhibit I.

"Craft Labor Costs" shall mean for each of Unit 6 and the Unit 5 Scrubber, respectively, those amounts that are incurred by Contractor in providing *** for Unit 6 or the Unit 5 Scrubber, as applicable.

"Day" shall mean a calendar day, including Saturdays, Sundays, and holidays.

"Default" shall have the meaning set forth in Section 23.1.

"Defects" shall have the meaning set forth in Section 13.4.

"Delay Liquidated Damages" shall mean:

(a) With respect to Unit 6:

(i) *** per Day (or any portion of a Day) for the first *** Days that Contractor fails to achieve Substantial Completion of Unit 6 by the Guaranteed Substantial Completion Date for Unit 6;

(ii) *** per Day (or any portion of a Day) for each Day in excess of the first *** Days but less than or equal to *** Days that Contractor fails to achieve Substantial Completion of Unit 6 by the Guaranteed Substantial Completion Date for Unit 6; and

(iii) *** per Day (or any portion of a Day) for each Day in excess of *** Days that Contractor fails to achieve Substantial Completion of Unit 6 by the Guaranteed Substantial Completion Date for Unit 6.

(b) With respect to the Unit 5 Scrubber:

(i) With respect to Unit 5 Scrubber Tie-In:

(A) *** per Day (or any portion of a Day) for each Day on or after the Guaranteed Unit 5 Tie-In Commencement Date until the *** Day after the Guaranteed Unit 5 Tie-In Commencement Date that Unit 5 Scrubber Tie-In has not commenced;

(B) *** per Day (or any portion of a Day) for each Day after the *** Day but prior to the *** Day on or after the Guaranteed Unit 5 Tie-In Commencement Date that Unit 5 Scrubber Tie-In has not commenced; and

(C) *** per Day (or any portion of a Day) for each Day after the *** Day on or after the Guaranteed Unit 5 Tie-In Commencement Date that Unit 5 Scrubber Tie-In has not commenced;

(ii) After commencement of Unit 5 Scrubber Tie-In, *** per Day (or any portion of a Day) for each Day after the Guaranteed Tie-in Completion Date that the successful tie-in of the Unit 5 Scrubber has not been achieved; and

(iii) After the successful tie-in of the Unit 5 Scrubber has been achieved, *** per Day (or any portion of a Day) for each Day after the Guaranteed Substantial Completion Date of the Unit 5 Scrubber that Contractor fails to achieve Substantial Completion of the Unit 5 Scrubber.

"Delay Liquidated Damages Cap" for Unit 6 or for the Unit 5 Scrubber shall mean *** of the respective Contract Price for Unit 6 or the Unit 5 Scrubber, as may be amended by Change Order.

"Design Documents" shall have the meaning set forth in Section 3.6.

"Dispute" shall have the meaning set forth in Section 28.1.

"Documentation" shall mean such materials in printed or electronic format that are agreed, or are required hereunder, to be delivered by Contractor to Owner, including, without limitation, Design Documents, specifications (including the Specifications), schedules (including the Schedule), schematics, drawings (including Final Completion agreed "as built" drawings as specified in Exhibit A), blueprints, memoranda, letters, notes, isometrics, computer programs and software, flow charts, logic diagrams, graphs, studies, system descriptions, lists, charts, diagrams, standards, criteria, assumptions, measurements, procedures (including the Testing Procedure), instructions, reports, test data and results, analyses, calculations, formulas, computations, plans, empirical and other correlations, models, manuals (including software manuals and Project Manuals) and training materials, that are necessary for the design, Commissioning, operation, maintenance, modification or decommissioning of the Project.

"Duke Coal Facility" or the **"Facility"** shall mean the Owner's entire physical coal facility known as the Cliffside Steam Station, including the Project and all other generating units and ancillary structures thereto.

"Early Completion Bonus" shall mean, with respect to Unit 6:

(a) *** per Day for each Day earlier than *** Days but less than or equal to *** Days that Contractor achieves Substantial Completion of Unit 6 prior to the Guaranteed Substantial Completion Date for Unit 6; and

(b) *** per Day for each Day earlier than *** Days that Contractor achieves Substantial Completion of Unit 6 prior to the Guaranteed Substantial Completion Date for Unit 6.

"Effective Date" shall mean July 11, 2007, which is the date of execution by the Owner and SWNE of the Original EPC Agreement.

"Electrical Output" shall mean the net electrical power, as measured at the high side of the main step-up transformer, which is produced by Unit 6 in kilowatts (kW) during the Performance Testing, at the test specified operating conditions, and corrected to the base performance conditions set forth in Exhibit L-2.

"* Equipment"** shall mean those items of material, Equipment and associated Subcontractor services (e.g., transportation, technical assistance, warranty services, etc.) as defined in *** of ***.

"Equipment" shall mean any and all material, structure, buildings, apparatus, equipment, spare parts, hardware, Documentation, goods, tools, supplies, and other personal property, all as intended to become a permanent part of the Project, that Contractor furnishes, or is required to furnish, hereunder in accordance with the Specifications or otherwise for the Project. "Equipment" includes (a) all of the foregoing items that Contractor furnishes through a Subcontractor and (b) all of the foregoing items that Contractor has purchased or provided or has committed to purchase or provide, directly or indirectly through a Subcontractor, pursuant to the JPDA. For the purposes of this Agreement, "Equipment" shall not include any Owner Equipment.

"Equipment Warranty Period" shall have the meaning set forth in Section 13.2.

*** shall mean ***.

*** shall mean ***:

(a) ***

(b) ***

"Facility Air Permit" shall mean Permit No. 04044T28 issued by the North Carolina Department of Environmental and Natural Resources (NCDENR) Division of Air Quality to Owner, effective as of January 29, 2008.

*** shall mean ***.

"FERC" shall mean the Federal Energy Regulatory Commission, and its successors.

*** shall mean ***.

*** shall mean those costs for each of the Unit 5 Scrubber and Unit 6, respectively, incurred by Contractor in performance of *** for the Unit 5 Scrubber and Unit 6, as applicable, ***.

"Final Completion" shall mean, with respect to each of Unit 6 or the Unit 5 Scrubber, the achievement by Contractor of all the conditions set forth in Section 11.3.

"Final Completion Date" shall mean, with respect to each of Unit 6 or the Unit 5 Scrubber, the date on which Final Completion of Unit 6 or the Unit 5 Scrubber occurs.

"Final Payment Invoice" shall have the meaning set forth in Section 7.5.

"Financial Institutions" shall mean any party entering into a loan agreement, guarantee, note, indenture or security agreement with Owner or its Affiliates in relation to the Duke Coal Facility, including arrangements relating to interest rate or currency hedging and arrangements relating to the construction or permanent financing or refinancing of the Project or the Facility.

"Fixed Prices" shall mean ***.

"Force Majeure" shall mean an unforeseeable event or cause that is beyond the reasonable control of a Party, including by way of example, but not limited to:

(a) acts of God, war, riots, insurrection, terrorism, rebellion, floods, hurricanes, tornadoes, earthquakes, lightning, pandemic, epidemics, and other natural calamities;

(b) acts or inaction of any Government Authority;

(c) explosions or fires;

(d) strikes, lockouts, or other labor disputes, but excluding legal strikes, lockouts or work stoppages involving only employees of Contractor and that are directed solely at a Contractor facility;

(e) delay in the performance of the Services or delivery of Equipment or Owner Equipment to the extent any such delay is not attributable to an act or omission of Contractor, or its employees, officers, agents, Subcontractors or other Persons under Contractor's control and supervision, unless such acts or omissions are themselves a result of Force Majeure;

(f) a Change in Law, but only to the extent such Change in Law delays a Party or increases its cost, as demonstrated by credible evidence, in its performance of its obligations under this Agreement (excluding payment obligations); and

(g) delays in obtaining goods or services from any Subcontractor caused by the occurrence of any of Force Majeure events;

provided, however, that an event or cause shall not be an event of Force Majeure unless it: (i) negatively impacts the Work under this Agreement, (ii) is not the result of the willful misconduct or negligent act or omission of, or breach of this Agreement by, such Party (or any Person over whom that Party has control), and (iii) cannot be cured, remedied, avoided, offset, or otherwise overcome by the prompt exercise of reasonable diligence by the Party (or any Person over whom

that Party has control). For the avoidance of doubt, except as otherwise expressly provided in Exhibit I, the definition of "Force Majeure" shall not include, and Contractor shall not be entitled to equitable relief for, changes such as inflation and interest rates.

"Full Notice to Proceed" with respect to Unit 6 or the Unit 5 Scrubber shall mean the written notice that Owner gives to Contractor fully authorizing Contractor to proceed with the respective Work for Unit 6 or the Unit 5 Scrubber.

*** shall mean, with respect to each of Unit 6 or the Unit 5 Scrubber, respectively, the Work as set forth in more detail in *** of ***.

*** or *** shall mean:

(a) ***

(b) ***

"Government Authority" shall mean any federal, state, county, city, local, municipal, foreign or other government or quasi-governmental authority or any department, agency, subdivision, court or other tribunal of any of the foregoing.

"Government Approvals" shall mean all permits, licenses, authorizations, consents, decrees, waivers, privileges and approvals from and filings with any Government Authority required for or material to the development, financing, ownership, construction, operation or maintenance of the Project in accordance with this Agreement, including the Certificate of Public Convenience and Necessity (CPCN), the Facility Air Permit and other work permits, environmental permits, licenses and construction permits.

"Gross Negligence" shall mean a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both.

*** shall mean the ***, dated as of ***, which has been executed and delivered by *** to Owner ***, and as attached hereto as ***.

"Guaranteed Emission Limits" shall mean, with respect to Unit 6 and the Unit 5 Scrubber, those specific emission limits and requirements identified as such and set forth in Exhibit M which must be met in order to achieve Final Completion of Unit 6 or the Unit 5 Scrubber.

"Guaranteed Final Completion Date" shall mean:

(a) With respect to the Unit 5 Scrubber, ***; and

(b) With respect to Unit 6, ***;

as such dates may be adjusted by Change Order.

"Guaranteed Substantial Completion Date" shall mean:

(a) With respect to the Unit 5 Scrubber, ***; and

(b) With respect to Unit 6, ***;

as such dates may be adjusted by Change Order.

"Guaranteed Unit 5 Tie-In Commencement Date" shall mean ***, as such date may be adjusted by Change Order.

"Guaranteed Unit 5 Tie-In Completion Date" shall mean ***, as such date may be adjusted by Change Order.

"Guarantor" shall mean *.

"Hazardous Materials" shall mean substances defined as "hazardous substances" pursuant to Section 101(14) Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Sections 9601 et seq.); those substances defined as "hazardous waste" pursuant to Section 1004(5) of the Resource, Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); those substances designated as a "hazardous substance" pursuant to Section 311 (b)(2)(A) or as a "toxic pollutant" pursuant to Section 307(a)(1) of the Clean Water Act (33 U.S.C. Sections 1251 et seq.); those substances defined as "hazardous materials" pursuant to Section 103 of the Hazardous Materials Transportation Act (49) U.S.C. Sections 1801 et seq.); those substances regulated as a "chemical substance or mixture" or as an "imminently hazardous chemical substance or mixture" pursuant to Section 6 or 7 of the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.); those substances defined as "contaminants" pursuant to Section 1401 of the Safe Drinking Water Act (42 U.S.C. Sections 300f et seq.), if present in excess of permissible levels; those substances regulated pursuant to the Oil Pollution Act of 1990 (33 U.S.C. Sections 2701 et seq.); those substances defined as a "pesticide" pursuant to Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended by the Federal Environmental Pesticide Control Act of 1972 and by the Federal Pesticide Act of 1978 (7 U.S.C. Sections 136 et seq.); those substances defined as "toxic materials" or "harmful physical agents" pursuant to Section 6 of the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.); those substances defined as "hazardous air pollutants" pursuant to Section 112(a)(6), or "regulated substance" pursuant to Section 112(a)(2)(B) of the Clean Air Act (42 U.S.C. Sections 7401 et seq.); those substances defined as "extremely hazardous substances" pursuant to Section 302(a)(2) of the Emergency Planning & Community Right-to-Know Act of 1986 (42 U.S.C. Sections 11001 et seq.); and those other hazardous substances, hazardous wastes, toxic pollutants, hazardous materials, chemical substances or mixtures, imminently hazardous chemical substances or mixtures, contaminants, pesticides, toxic materials, harmful physical agents, air pollutants, regulated substances, or extremely hazardous substances defined in any regulations promulgated pursuant to any of the foregoing environmental Laws, and all other contaminants, toxins, pollutants, hazardous substances, substances, materials and contaminants, polluted, toxic and hazardous materials, the use, disposition, possession or control of which is regulated by one or more Laws.

"Heat Rate" shall mean the test calculated net heat rate in BTU/kW-hr in HHV for Unit 6 during the Performance Testing at the test specified operating conditions and corrected to the base performance conditions set forth in Exhibit L-2.

"**Hitachi Contract**" shall mean the Engineering, Fabrication and Delivery Agreement for the ***, dated as of ***, by and between Owner and Hitachi Power Systems America, Ltd. for the purchase of one new single-reheat boiler.

*** shall mean, with respect to each of Unit 6 or the Unit 5 Scrubber, those items as set forth in more detail in Table I-5a of Exhibit I.

*** shall mean ***.

"**Indemnified Party**" shall mean the Owner Indemnitees or Contractor Indemnitees, as applicable.

*** shall mean those amounts for each of the Unit 5 Scrubber and Unit 6, respectively, that are incurred by Contractor in performance of the *** at the Site for the Unit 5 Scrubber or Unit 6, as applicable.

*** shall mean, with respect to Unit 6 and the Unit 5 Scrubber, respectively, those items identified as such costs in more detail in Table I-2a of Exhibit I, examples of which include***.

"**Invoice**" shall have the meaning set forth in Section 7.3(a).

*** shall mean ***.

"**** Payments**" shall mean those amounts paid by Owner to Contractor under the *** for Unit 6 or the Unit 5 Scrubber, as applicable, but excluding the Construction Services Payments.

"**Key Schedule Milestone**" shall mean each Key Schedule Milestone identified on Exhibit C.

"**Laws**" shall mean, at any date of determination, all statutes, laws, codes, ordinances, orders, judgments, decrees, injunctions, licenses, rules, permits, approvals, agreements, and regulations, including all applicable codes, standards, rules and regulations of the State, in effect on such date, including all Government Approvals.

"**Lien**" shall mean any lien, mortgage, pledge, encumbrance, charge, security interest, defect in title, or other claim filed or asserted in connection with the Project by or through Contractor, a Subcontractor or any other third party under the control of Contractor or any Subcontractor against the Facility, the Site, the Equipment or the Owner Equipment.

"**Liquidated Damages**" shall mean the Delay Liquidated Damages and the Performance Liquidated Damages.

"**Limited Notice to Proceed**" or "**LNTP**" with respect to Unit 6 or the Unit 5 Scrubber shall mean a written notice that Owner gives to Contractor authorizing Contractor to proceed with the respective Work for Unit 6 or the Unit 5 Scrubber in a limited manner.

"**Make Right Performance Guarantees**" shall mean those Performance Guarantees designated as such in Exhibit L for which the payment of a Performance Liquidated Damage as a remedy shall not be an option for Contractor, which shall include the Guaranteed Emission

Limits, but only to the extent that the failure to meet any such limits are attributable to Contractor's scope of Work (with respect to Owner Equipment, only the Work as expressly set forth in Section 3.1(a)(ii)(B)).

"Major Subcontractor" shall mean any Subcontractor who is engaged by Contractor: (i) to perform any off-Site Services or provide any Equipment that exceeds or is expected to exceed, in the aggregate with all prior provision of Equipment, ***; or (ii) that will be providing Services at the Site (other than the delivery of material or Equipment) that exceeds or is expected to exceed, in the aggregate with all prior performance of Services or provision of Equipment, ***.

"Maximum Liability Amount" shall have the meaning set forth in Section 17.2.

"Mechanical Completion" for Unit 6 or the Unit 5 Scrubber shall mean that Unit 6 or the Unit 5 Scrubber shall have achieved all the conditions set forth in Section 11.1.

"Minimum Performance Guarantees" shall mean, to the extent that the failure to meet any such limit is attributable to Contractor's scope of Work (but with respect to Owner Equipment, only the Work as expressly set forth in Section 3.1(a)(ii)(B)):

(a) With respect to the operation of the Unit 5 Scrubber, those minimum performance guarantees which must be met in accordance with Exhibit L-1 in order for Contractor to achieve Substantial Completion of the Unit 5 Scrubber and which allows the Unit 5 Scrubber to operate in compliance with applicable Laws; and

(b) With respect to the operation of Unit 6 in accordance with the performance conditions set forth in Exhibit L-2, the achievement by Unit 6 of net Heat Rate for Unit 6 not exceeding *** of the Performance Guarantees (or *** BTU/kW-hr HHV) and a net Electrical Output for Unit 6 not less than *** of the Performance Guarantees (or *** kW), both of which are achieved while meeting the Permitted Emission Limits of Unit 6;

as such performance guarantees may be adjusted by Change Order.

"Monthly Progress Report" shall mean the written report Contractor delivers to Owner each month describing the total amount of progress in the Work achieved during the prior month, as provided in Section 3.21(a).

*** shall have the meaning set forth in the Recitals.

"Original EPC Agreement" shall have the meaning set forth in the Recitals.

"OSHA" shall have the meaning set forth in Section 24.2.

"OSHA Standards" shall have the meaning set forth in Section 24.2(b).

"Owner" shall have the meaning set forth in the first paragraph above and shall include their respective successors and permitted assigns.

"Owner Equipment" shall mean the equipment that Owner has agreed to purchase and supply pursuant to the Owner Equipment Contracts, including specifically the following items:

(a) one wet flue gas desulfurization (FGD) system for the Unit 5 Scrubber and one air quality control system (AQCS) for Unit 6 from Alstom Power, Inc.;

(b) one 904,500 kW TCAF-40" Super-Critical Steam Turbine and associated 1070MVA generator from Toshiba International Corporation; and

(c) one new single-reheat boiler from Hitachi Power Systems America, Ltd.

"Owner Equipment Contracts" shall mean, collectively, the ***, the ***, the *** and any other contract executed directly between Owner and a third-party supplier of equipment, including the Owner Equipment, for the Project, as each may be amended or updated.

"Owner Indemnitees" shall have the meaning set forth in Section 14.1.

"Owner Permits" shall mean the permits and approvals that Owner is required to obtain as set forth in Section 4.3 and Exhibit E.

"Owner's Project Director" shall mean the Person that Owner designates in writing to issue and receive communications on Owner's behalf under this Agreement.

"Party" shall have the meaning set forth in the first paragraph.

"Performance Guarantees" shall mean, to the extent that the failure to meet any such limit is attributable to Contractor's scope of Work (but with respect to ***, only the Work as expressly set forth in Section 3.1(a)(ii)(B)):

(a) With respect to the operation of the Unit 5 Scrubber, those specific guarantees set forth in Exhibit L-1 under the performance conditions set forth in Exhibit L-1, which must be met in order for Contractor to achieve Final Completion of the Unit 5 Scrubber; and

(b) With respect to the operation of Unit 6 in accordance with the performance conditions set forth in Exhibit L-2, the achievement by Unit 6 of a Heat Rate for Unit 6 not exceeding *** BTU/kW-hr HHV, an Electrical Output for Unit 6 not less than *** kW and Unit 6 Main Steam Flow Capacity of not less than *** lbm/hr (all of which are achieved while meeting the Guaranteed Emission Limits of Unit 6);

as such may be adjusted by Change Order.

"Performance Liquidated Damages" shall mean, to the extent that the failure to meet any such limit is attributable to Contractor's scope of Work (but with respect to Owner Equipment, only the Work as expressly set forth in Section 3.1(a)(ii)(B)):

(a) With respect to the operation of Unit 6, *** per each BTU/kWhr measured as HHV over the Performance Guarantee for Unit 6 Heat Rate, *** per each kW under the Performance Guarantee for Unit 6 Electrical Output and *** for each lbm/hr under the Performance Guarantee for Unit 6 Main Steam Flow Capacity in accordance with Exhibit L-2; and

(b) With respect to the performance of the Air Quality Control System for Unit 6, the liquidated damages as expressly set forth in Section 9.0 of Exhibit L-2; and

(c) With respect to the performance of the Unit 5 Scrubber, the liquidated damages as expressly set forth in Table 5.1 of Exhibit L-1.

"Performance Liquidated Damages Cap" for Unit 6 or the Unit 5 Scrubber shall mean *** of the respective Contract Price for Unit 6 or the Unit 5 Scrubber, as may be amended by Change Order.

"Performance Testing" shall mean the tests, conducted in accordance with the Testing Procedures, by which Contractor demonstrates that Unit 6 and the Unit 5 Scrubber meets, for Substantial Completion, the Minimum Performance Guarantees, or for Final Completion, the Performance Guarantees.

"Permitted Emission Limits" shall mean:

(a) With respect to Unit 6, those specific emission limits for each regulated pollutant set forth in the Facility Air Permit authorizing the construction and operation of Unit 6 and which specifies the methods of measurement, recordation, and compliance and which are designated as such and set forth in Exhibit M.

(b) With respect to the Unit 5 Scrubber, those emission limits designated as such and set forth in Exhibit M.

"Person" shall mean any individual, company, corporation, partnership, joint venture, association, joint stock company, limited liability company, trust, estate, unincorporated organization, Government Authority or other entity having legal capacity.

"Prime Interest Rate" shall mean, as of a particular date, the prime rate of interest as published on that date in *The Wall Street Journal*, and generally defined therein as "the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks." If *The Wall Street Journal* is not published on a date for which the interest rate must be determined, the prime interest rate shall be the prime rate published in *The Wall Street Journal* on the nearest-preceding date on which *The Wall Street Journal* was published. If *The Wall Street Journal* discontinues publishing a prime rate, the prime interest rate shall be the prime rate announced publicly from time to time by Bank of America, N.A. or its successor.

"Project" shall mean collectively Unit 6 and the Unit 5 Scrubber as set forth in the Recitals.

"Project Manuals" shall mean those manuals prepared by Contractor for use by Owner or its designated operator in connection with the operation, maintenance of and training on the Project that conform to the requirements of Exhibit A.

"Progress Meeting" shall have the meaning set forth in Section 3.21(b).

"Prudent Industry Practice" shall mean those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to

time, as are commonly used, or are generally accepted, in construction or operations of electric power generation facilities similar to the Project, which in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, after due and diligent inquiry, are considered good, safe and prudent practices in connection with the operation and maintenance of facilities similar to the Project with commensurate standards of safety, performance, dependability, efficiency, and economy, and as are in accordance with generally accepted standards of professional care, skill, diligence, and competence applicable to operation, maintenance and construction practices in the United States.

"**Quality Assurance Plan**" shall have the meaning set forth in Section 3.7.

"***" shall have the meaning set forth in Table I-4d of Exhibit I.

"**Real Property**" shall mean all structures, buildings, improvements and permanent fixtures annexed or attached to Unit 6 and Unit 5 Scrubber and constructed for Owner, buildings of all kinds and descriptions including structural and other improvements to buildings, foundations, walls, floors, roofs, insulation, stairways, partitions, loading and unloading platforms and canopies, areaways, systems for heating and air conditioning, ventilating, sanitation, fixed fire protection, lighting, plumbing, and drinking water, building elevators and escalators, retaining walls, piling and mats for general improvements of Site, private roads, walks, paved areas, culverts, bridges, viaducts, fencing, reservoirs, dykes, dams, ditches, canals, drainage, storm and sanitary sewers, water lines for drinking, sanitary and fire protection and all building materials which become an integral part of Unit 6 or the Unit 5 Scrubber.

"**Reliability Testing**" shall have the meaning set forth in Exhibit L-3.

"**Sales Tax**" shall mean any current or future sales, use or similar tax imposed on Contractor, any Subcontractor or Owner with respect to the Work by the State or any other Government Authority.

"**Schedule**" shall mean the critical schedule of key dates and milestones, including the Key Schedule Milestones, for completion of the Work, as set forth in Exhibit C, as modified or updated from time to time in accordance with the terms of this Agreement.

"***SDS***" *or* "***Small Diverse Suppliers***" *shall have the meaning set forth in* Section 25.4.

"**Services**" shall mean all labor, transportation, packaging, storage, designing, drawing, engineering, demolition, Site preparation, manufacturing, construction, commissioning, installation, testing, equipping, verification, training, procurement (whether procurement of Equipment or otherwise) and other work, services and actions (including pursuant to any warranty obligations) to be performed by Contractor hereunder (whether at the Site or otherwise) in connection with, or relating to, the Project (or any component thereof, including any Equipment and any Owner Equipment). "Services" includes (a) all of the foregoing items that Contractor provides through a Subcontractor, (b) all of the foregoing items that Contractor has provided or has committed to provide directly, or indirectly through a Subcontractor, pursuant to the JPDA and the Construction Services Agreement and (c) the services that Contractor provides with respect to Owner Equipment pursuant to Section 3.1(a)(ii).

"**Services Warranty Period**" shall have the meaning set forth in Section 13.1.

"Scope of Work" shall mean the scope of work as set forth in Exhibit A.

"Site" shall mean the physical location at the Cliffside Steam Station under the care, custody and control of Contractor upon which Contractor shall perform the construction portion of the Work as described in Exhibit B.

"Specifications" shall mean the Project specifications in Exhibit A.

"Standby Letter of Credit" shall mean *** dated ***, executed and delivered by *** to Owner in the *** in support of ***.

"State" shall mean the State of North Carolina and its Government Authorities.

"Subcontractor" shall mean a Person, including any vendor, materialman or supplier, who has a contract (whether written or oral, a purchase order or otherwise) with Contractor or a contract with any Person hired by Contractor or with a Person of any lower tier (e.g., a second- or third-tier subcontractor) to perform any of the Services or to furnish any Equipment, at the Site or elsewhere.

*** shall mean those amounts for each of the Unit 6 and the Unit 5 Scrubber, respectively, that are incurred by *** in performance of the Work in connection with the items identified in *** of Exhibit I.

*** shall mean, with respect to Unit 6 and the Unit 5 Scrubber, respectively, those items of Work provided by the furnish and erect Subcontractors as identified in *** of Exhibit I for Unit 6 or the Unit 5 Scrubber, as applicable.

*** shall mean, as the context may require, *** for, each of the Unit 6 and the Unit 5 Scrubber, respectively, that are incurred by the *** in performance of the *** for Unit 6 or the Unit 5 Scrubber, as applicable.

"Substantial Completion" shall mean that Unit 6 or the Unit 5 Scrubber shall have achieved all the conditions set forth in Section 11.2.

"Substantial Completion Date" shall mean the date on which Substantial Completion of Unit 6 or the Unit 5 Scrubber actually occurs.

"Substantial Completion Punch List" shall mean the written list of items of Work with respect to Unit 6 or the Unit 5 Scrubber (which Contractor prepares and with which Owner agrees prior to Substantial Completion) that remain to be completed by Contractor after Substantial Completion of Unit 6 or the Unit 5 Scrubber but prior to Final Completion of Unit 6 or the Unit 5 Scrubber and which shall not affect the safety, reliability or operability of the Facility.

"Tangible Personal Property" shall mean all property, other than Real Property, that has physical substance and monetary value; all property not permanently attached to or in the form of Real Property when purchased; such as power plant machinery, air, water and noise pollution abatement equipment to be incorporated into the Project (Tangible Personal Property shall be interpreted consistently with the Laws of the State).

"Targeted Substantial Completion Date" shall mean:

(a) With respect to the Unit 5 Scrubber, ***; and

(b) With respect to Unit 6, ***;

as such dates may be adjusted by Change Order.

*** shall mean ***:

(a)***

(b)***

as such amounts may be amended by Change Order in accordance with this Agreement and Exhibit I. ***.

"Taxes" shall mean all present and future license, documentation, recording and registration fees, all taxes (including income, gross receipts, unincorporated business income, payroll, sales, use, privilege, personal property (tangible and intangible), real estate, excise and stamp taxes), levies, imports, duties, assessments, fees (customs or otherwise), charges and withholdings of any nature whatsoever, and all penalties, fines, additions to tax, and interest imposed by any Government Authority.

"Testing Procedures" *shall mean those procedures prepared for the Performance Testing by Contractor in accordance with Exhibit I, and reasonably* acceptable to Owner.

"Third Party Claim" shall mean any claim, demand or cause of action of every kind and character by any Person other than Owner or Contractor. For the avoidance of doubt, a claim, demand or cause of action by an employee of Owner or Contractor (unless made on behalf of Owner or Contractor) shall be considered a Third Party Claim hereunder.

"Toshiba Contract" shall mean the Engineering, Fabrication and Delivery Agreement, dated as of ***, by and between Owner and Toshiba International Corporation for the purchase of the steam turbine generator for Unit 6.

"Unit 6" shall mean the Cliffside Unit 6 described in the Recitals, and shall include the boiler, turbine and generator set and all associated auxiliary and environmental components (including the flue gas desulfurization system for Unit 6) necessary to generate and place power therefrom on the transmission grid in compliance with all applicable Laws.

"Unit 5 Scrubber" shall mean the new flue gas desulfurization system for Owner's existing Unit 5 at the Owner's coal-fired steam station in Cliffside, North Carolina.

"Unit 5 Scrubber Tie-In" shall mean the process required to connect the Unit 5 Scrubber to the interface points of Owner's existing Unit 5 at Owner's coal-fired steam station in Cliffside, North Carolina in order that operation of Unit 5, through the Unit 5 Scrubber, shall meet the Permitted Emissions Limits.

"**Unit 6 Main Steam Flow Capacity**" shall mean the test calculated turbine throttle steam flow rate in lbm/hr for Unit 6 during the Performance Testing at the test specified operating conditions and corrected to the base performance conditions set forth in Exhibit L-2.

"**Warranty Period**" shall mean, as the context may require, the Services Warranty Period or the Equipment Warranty Period, as each may be extended from time to time with respect to any Service or Equipment as provided in Section 13.3.

"**Work**" with respect to Unit 6 or the Unit 5 Scrubber shall mean, as the context may require, either (a) the Equipment and the Services or (b) the Equipment or the Services, for Unit 6 or the Unit 5 Scrubber.

2. GENERAL PROVISIONS

2.1 Intent of Contract Documents. It is the intent of the Parties that Contractor provide the Equipment and perform the Services and all of its other obligations under this Agreement for the Contract Price, which shall not be increased, except in accordance with Article 8 or as otherwise expressly set forth herein.

2.2 Independent Contractor. Contractor shall perform and execute the provisions of this Agreement as an independent contractor to Owner and shall not in any respect be deemed or act, or hold itself out, as an agent of Owner for any purpose or reason whatsoever except as contemplated in Section 3.1(a)(ii).

2.3 Subcontracting; Approved Subcontractors.

(a) The Parties have agreed upon the list of approved Subcontractors set forth in Exhibit H for the Services and Equipment listed in Exhibit H. Contractor shall have the right to have that portion of the Services identified in Exhibit H performed by the approved Subcontractor for such Service, and the right to purchase Equipment identified in Exhibit H from the approved Subcontractor for such Equipment. For all Major Subcontractors listed on Exhibit H, Contractor shall provide not less than *** prior notice to Owner prior to execution of such subcontracts. If, prior to execution of a subcontract with such Major Subcontractor listed on Exhibit H, Owner desires that Contractor engage an alternative approved Major Subcontractor in lieu of the Major Subcontractor that is preferred by Contractor, Owner shall consult in good faith with Contractor on the difference in value, if any, between the bid price of the Major Subcontractor desired by Owner and the Major Subcontractor preferred by Contractor, plus any additional impacts to Schedule or warranties attributable to selecting the alternative Major Subcontractor in lieu of the preferred Major Subcontractor. If desired by Owner, Contractor shall engage such alternative approved Major Subcontractor but shall be entitled to a Change Order for the schedule, cost, warranty or other impacts in selecting the alternative Major Subcontractor.

(b) If Contractor desires to engage a Subcontractor that is not identified in Exhibit H as an approved Subcontractor, then, before Contractor enters into any contract with, or otherwise engages, such Subcontractor to perform such Services or provide such Equipment, Contractor shall deliver to Owner for Owner's review and approval (such approval not to be unreasonably withheld or delayed) (x) the name of the Subcontractor

that Contractor proposes to use in the performance of such Services or purchase of such Equipment, (y) a statement in reasonable detail of the reasons why the proposed Subcontractor is preferred over any approved Subcontractor and (z) the information (and any additional information as Owner may reasonably request) on which Contractor is basing its desire to engage such Subcontractor. Owner shall have the right to reject any such Subcontractor; provided that (i) Owner's rejection shall be reasonable and shall occur within ten (10) Business Days after Contractor submits to Owner all of the information described in clauses (x), (y) and (z) above and (ii) Contractor shall have an alternative Subcontractor available to perform such Services or provide such Equipment.

(c) Contractor shall not allow any Subcontractor that Owner rejects to perform any portion of the Services or provide any of the Equipment. Unless otherwise mutually agreed in writing, no contractual relationship shall exist between Owner and any Subcontractor with respect to any of the Services or the Equipment. Contractor shall be fully responsible for all acts, omissions, failures and faults of all Subcontractors as fully as if they were the acts, omissions, failures and faults of Contractor.

2.4 Assignment of Subcontracts. All subcontracts between Contractor and its Subcontractors shall be in writing and, to the extent commercially reasonable, all subcontracts with Major Subcontractors shall contain provisions, which Contractor shall not waive, release, modify or impair (a) obligating each Subcontractor that may receive access to any Owner Confidential Information, to protect such Owner Confidential Information in accordance with the provisions of this Agreement; (b) as applicable, sufficient to ensure that Contractor has the right to grant the intellectual property licenses and assignments that are granted to Owner herein; (c) giving Contractor an unrestricted right to assign the subcontract and all benefits, interests, rights and causes of action arising under it to Owner, an Affiliate of Owner, a Financial Institution, or an operator of the Facility, as designated by Owner and (d) providing that, following a Default by Contractor and a termination of this Agreement by Owner, upon receipt by Contractor and Subcontractor of written notice from Owner electing same, such subcontract, together with all benefits, interests, obligations, rights and causes of action arising thereunder, shall be deemed to have been assigned from Contractor to Owner effective immediately upon receipt of such notice from Owner without any further action required by any party. At the request of Owner, Contractor shall provide Owner with copies of all warranties of each Major Subcontractor relating to any of the Work, and Contractor shall comply with any request by Owner upon the termination of this Agreement pursuant to Article 23 or prior to the expiration of the Warranty Period to assign the benefit of any Subcontractor warranty to Owner, an Affiliate of Owner, a Financial Institution, or an operator of the Facility, as designated by Owner; provided that, unless otherwise agreed, Contractor shall not be required to assign any rights to claims that Contractor may have against such Subcontractor at the time of the assignment of such benefit.

2.5 Interpretation.

(a) Headings. The titles and headings in this Agreement are inserted for convenience only and shall not be used for the purposes of construing or interpreting this Agreement.

(b) Plural/Singular. Words importing the singular also include the plural and vice versa.

(c) References. References to natural persons include Persons. References to "Articles" and "Sections" are references to Articles and Sections of this Agreement. References to "Exhibits" are references to the Exhibits attached to this Agreement, including all attachments to and documents and information incorporated therein, and all Exhibits are incorporated into this Agreement by reference.

(d) Gender. Words importing one gender include the other gender.

(e) Without Limitation. The words "include" and "including" are not words of limitation and shall be deemed to be followed by the words "without limitation."

(f) Amendments. All references in this Agreement to contracts, agreements or other documents shall be deemed to mean those contracts, agreements or documents as the same may be modified, supplemented or amended from time to time; provided, however, that, unless Contractor was a party to such modification, supplement or amendment, Contractor shall not be bound by such modification, supplement or amendment in its performance of the Services or provision of the Equipment until Contractor is notified of and agrees to it.

(g) Industry Meanings. Words and abbreviations not otherwise defined in this Agreement which have well-known technical or design, engineering or construction industry meanings in the United States are used in this Agreement in accordance with those recognized meanings.

(h) Agreement. Provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing.

(i) Written. Provisions including the word "written" or "in writing" mean hand-written, type-written, printed or electronically made and resulting in a permanent record.

(j) Drafting. Neither Contractor nor Owner shall assert or claim a presumption disfavoring the other by virtue of the fact that this Agreement was drafted primarily by legal counsel for the other, and this Agreement shall be construed as if drafted jointly by Owner and Contractor and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

2.6 Inclusion; Order of Precedence. This Agreement (excluding the Exhibits) and the Exhibits shall be considered complementary, and what is required by one shall be binding as if required by all. The Parties shall attempt to give effect to all provisions. The failure to list a requirement specifically in one document, once that requirement is specifically listed in another, shall not imply the inapplicability of that requirement, and Contractor shall provide as part of its obligations hereunder all items required to conform the Work to the Specifications and the other standards in this Agreement. In the event of a conflict between this Agreement (excluding the Exhibits) and the Exhibits, this Agreement (excluding the Exhibits) shall control and the conflicting provisions shall be interpreted so as to accord with the provisions of this Agreement (excluding the Exhibits). Notwithstanding the foregoing, conflicts regarding scope of Work matters shall be governed by Exhibit A. Later dated amendments, Exhibits or Change Orders shall take precedence over earlier dated amendments, Exhibits or Change Orders.

2.7 Days. If a payment obligation falls due on a Day other than a Business Day, the obligation shall be deemed to be due on the next Business Day.

3. CONTRACTOR RESPONSIBILITIES

3.1 Performance of the Services; Commencement of Work.

(a) Performance of the Services.

(i) Scope of Services for Work. With respect to all Work other than Owner Equipment, Contractor shall procure, provide and pay for all items and services necessary for the proper execution and completion of the Services, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including all procurement, design and engineering services, all installation and construction services, administration, management, training and coordination, all Commissioning and verification services, and all labor, Equipment, construction aids, furnishings, equipment, supplies, insurance (other than Owner insurance), permits (other than Owner permits), licenses, inspections, storage and transportation, Project Manuals, and all other items, facilities and services. Contractor shall design, construct and install the Equipment on an engineering and construction basis pursuant to this Agreement, including providing all necessary civil, structural, mechanical, and electrical engineering services, all control equipment necessary for the design, construction and operation of the Equipment, all interconnections set forth in the Specifications, and all equipment not specifically described in the Specifications which is customary and necessary to meet the requirements of the Specifications and the Performance Guarantees. Work not specifically delineated in this Section or elsewhere shall be performed and provided by Contractor to the extent customary and necessary to complete the Project in accordance with Prudent Industry Practices. *** Contractor shall execute the entire Services in a manner that will enable Unit 6 and the Unit 5 Scrubber to achieve Substantial Completion by the Guaranteed Substantial Completion Date for Unit 6 or the Unit 5 Scrubber and Final Completion of Unit 6 and the Unit 5 Scrubber by the Guaranteed Final Completion Date for Unit 6 or the Unit 5 Scrubber.

(ii) Scope of Services for Owner Equipment. Owner shall be responsible for procuring, supplying and providing the Owner Equipment by the dates set forth in the Schedule. The Owner Equipment shall be provided pursuant to the Owner Equipment Contracts. With respect to such Owner Equipment, the Parties hereby agree as follows:

(A) Owner hereby authorizes Contractor to, and Contractor hereby agrees to, act as Owner's agent for the purpose of generally administering the Owner Equipment Contracts on behalf of Owner and assuring compliance by Owner and suppliers with the terms thereof. Contractor shall perform such services in the manner that a reasonably prudent contractor in the pulverized-coal

construction industry would perform if such contractor, instead of Owner, were a party to such Owner Equipment Contracts. Such agency services shall include but shall not be limited to reviewing design documents, obtaining design interface and delivery schedule information, coordinating and expediting delivery of such Owner Equipment, diligently asserting Owner's rights, maintaining appropriate records, providing to Owner any notices delivered to Contractor by the supplier of the Owner Equipment, regularly updating Owner with respect to the status of the performance of the suppliers of the Owner Equipment, assisting Owner in pursuing available remedies against the suppliers of the Owner Equipment, including assistance to Owner in the administration and coordination of warranty claims for such Owner Equipment and enforcing the repair, replacement or refurbishment of such Owner Equipment as necessary, consulting with Owner with respect to any material issues, and attending meetings and otherwise interfacing with the suppliers of the Owner Equipment, all as necessary in order to ensure performance by the respective suppliers under the Owner Equipment Contracts in accordance with the terms and conditions set forth in such Owner Equipment Contracts. Notwithstanding the foregoing, Contractor shall have no authority to, and shall not, take any of the following actions under or with respect to the Owner Equipment Contracts without the prior approval of Owner: (1) consent to any change order; (2) agree to or permit any amendment, modification, or supplement; (3) waive any of Owner's rights or the obligations of the suppliers of the Owner Equipment; (4) initiate or conduct any litigation or other similar proceedings; (5) take any action that would cause a default or breach by Owner of an Owner Equipment Contract; or (6) agree to or consent to termination or suspension of work or activities thereunder. Owner shall provide notice to and consult with Contractor on any performance or schedule concerns before making payments to the suppliers of the Owner Equipment after the Effective Date.

(B) In addition to the agency services set forth in Section 3.1(a)(ii)(A) above, Contractor shall also provide timely review and response to all Owner Equipment designs, specifications and drawings, provide all on-site storage and transportation, provide on-site administration and coordination, provide installation and integration services with respect to the Owner Equipment in accordance with the Schedule, perform inspections of such Owner Equipment, perform all installation, commissioning testing and Performance Testing for all such Owner Equipment, conduct quality surveillance and start-up of such Owner Equipment to the extent permitted under the Owner Equipment Contracts, coordinate training, incorporate Owner Equipment manuals into the Project Manual, and provide other services reasonably necessary to install and interconnect such Owner Equipment to the Facility as contemplated by Contractor's Scope of Work.

(C) Notwithstanding anything to the contrary, Contractor shall have no liability to Owner for payment of any performance liquidated damages specified within the Owner Equipment Contracts for any shortfall in the performance of such Owner Equipment (including failure to meet performance guarantees) or for the payment of any delay liquidated damages specified within the Owner Equipment Contracts for the late delivery of such Owner Equipment. Except to

the extent that Contractor's failure to perform its obligations in accordance with this Agreement hereof is the cause of such non-performance or schedule delay, Contractor shall be entitled to a Change Order granting equitable relief from any impact on Contractor's cost or schedule of performance under this Agreement attributable to a breach by the suppliers of the Owner Equipment of the terms of the Owner Equipment Contracts.

(b) Work Under Limited Notices to Proceed for Unit 6.

(i) Until such time that Owner issues a Full Notice to Proceed with respect to Unit 6, Owner shall from time to time issue Limited Notices to Proceed for Contractor to perform certain portions of the Work with respect to Unit 6 as set forth in each such Limited Notice to Proceed. Such portions of the Work shall be performed for the price and in the manner set forth in such Limited Notice to Proceed. Each Limited Notice to Proceed for Unit 6 shall expire upon the earlier of (A) the date set forth in such Limited Notice to Proceed, (B) issuance of the Full Notice to Proceed for Unit 6 or (C) termination of this Agreement with respect to Unit 6 in accordance with Section 23.4(a).

(ii) The Parties hereto acknowledge and agree that the Owner has entered into Owner Equipment Contracts for the Owner Equipment prior to the Amendment Date. In connection with the execution of this Agreement, the Owner hereby retains all of Owner's obligations, rights, and remedies under each Owner Equipment Contract and with respect to the Owner Equipment obtained pursuant thereto.

(c) Work After Full Notice to Proceed. The Parties hereto acknowledge and agree that Owner issued a Full Notice to Proceed to Contractor with respect to the Unit 5 Scrubber on ***. Therefore, Contractor has received authorization to provide the full scope of Work relating to the Unit 5 Scrubber until such Work is completed unless this Agreement is earlier terminated with respect to the Unit 5 Scrubber in accordance with Section 23.4(a). Upon the issuance by Owner of the Full Notice to Proceed with respect to Unit 6, such notice shall be deemed to be authorization for Contractor to commence the remainder of the Work relating to Unit 6 on the date set forth in such Full Notice to Proceed, and thereafter, Contractor shall perform the full scope of Work relating to Unit 6 until such Work is completed unless this Agreement is earlier terminated with respect to Unit 6 in accordance with Section 23.4(a). Owner shall issue the Full Notice to Proceed with respect to Unit 6 no later than ***. If Owner fails to issue such Full Notice to Proceed by such time, such failure shall constitute, as Contractor's sole and exclusive remedy, a Change, with respect to which Article 8 shall apply. Contractor shall perform its obligations under this Agreement in accordance with the agreed upon Schedule, as such Schedule may be modified or updated from time to time in accordance with the terms of this Agreement.

3.2 Professional Standards. Contractor shall perform and complete the Services and its other obligations under this Agreement, and all Equipment shall be, in accordance with all applicable Laws, this Agreement and Prudent Industry Practices. In the event of any conflict between any of the authorities in the foregoing sentence, all applicable Laws shall control over the terms of this Agreement and Prudent Industry Practices, and the terms of this Agreement shall control over Prudent Industry Practices.

3.3 Sufficient Personnel. At all times during the term of this Agreement, Contractor shall employ a sufficient number of qualified Persons, who shall be licensed if required by applicable Laws, so that Contractor may complete the Services and Contractor's other obligations under this Agreement in an efficient, prompt, economical and professional manner and in accordance with the Schedule. Without in any way limiting the foregoing, Contractor shall, for example, employ a sufficient number of qualified buyers, inspectors, and expediters necessary to provide all equipment, materials and supplies to be provided by Contractor hereunder in a timely manner consistent with the Schedule. Contractor shall provide all technical services and supervision for Commissioning and verification. Contractor shall also provide all construction services and craft personnel as required for system adjustments during Commissioning and verification. Owner shall provide and pay for operations and maintenance staff during Commissioning and verification.

3.4 Supervision and Discipline. Contractor shall supervise, coordinate and direct the Services using Contractor's best skill, judgment and attention. Contractor shall enforce strict discipline and good order among Contractor's employees, Subcontractors' employees and all other Persons carrying out the Services. Contractor shall at all times take all necessary precautions to prevent any unlawful or disorderly conduct by or among its employees, employees of Subcontractors and other Persons performing the Services and for the preservation of the peace and the protection of Persons and property at, or in the immediate vicinity of, the Site. Contractor shall only permit the employment of Persons who are fit at the time they are employed and on each Day they perform the Services, who are skilled in the tasks assigned to them, and who are qualified to perform the tasks assigned to them. Contractor shall be responsible for labor peace on the Site and Contractor shall at all times implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes where reasonably possible and practical under the circumstances.

3.5 Contractor's Key Personnel. Exhibit G contains a list of Contractor's key personnel who shall be responsible for supervising the performance of Contractor's obligations under this Agreement. That list includes the designation of Contractor's Project Manager and Contractor's Site Representative. Any replacement of the key personnel listed in Exhibit G shall be subject to the prior written approval of Owner, which consent Owner shall not unreasonably withhold or delay. Contractor's Project Manager shall act as Contractor's liaison with Owner and shall have the authority (a) to administer this Agreement on behalf of Contractor, (b) to perform the responsibilities of Contractor under this Agreement, and (c) to bind Contractor as to the day-to-day project management operations under the Agreement. Contractor's Site Representative or other Contractor supervisory personnel shall be present at the Site at all times when the Services are being performed at the Site.

3.6 Design and Engineering. Prior to the Effective Date, Contractor shall have scrutinized, and satisfied itself as to the adequacy of, the Specifications (including design criteria and calculations, if any) for completion of the Project. Contractor shall be responsible for the design of the Project and for the accuracy of the Specifications. Any data or information received by Contractor, from Owner or otherwise, shall not relieve Contractor from its responsibility for the design of the Project and execution of the Services. Contractor shall

engage all supervisors, engineers, designers, draftsmen and other Persons necessary for the preparation of all Documentation required for the Work. In connection with the Documentation, Contractor shall prepare working drawings and specifications setting forth in detail the requirements for the construction of the Project in accordance with this Agreement (the "**Design Documents**"). Contractor shall submit those Design Documents identified in Exhibit A for Owner's review, and Owner shall complete its review of, and provide any comments to Contractor with respect to, the Design Documents within ten (10) Days of receiving such Design Documents from Contractor (and such Design Documents shall be deemed reviewed without comment if Contractor does not receive any comments from Owner within such time period). If Owner notifies Contractor that the Design Documents fail to comply with this Agreement, Contractor shall correct such Design Documents and shall resubmit them for Owner's prompt review within five (5) Business Days in accordance herewith. Owner shall be entitled, but not obligated, to review and comment on all other Design Documents not identified in Exhibit A. Any review by Owner of any Design Documents pursuant to this Section shall not relieve Contractor from any obligation or responsibility under this Agreement. If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Designs Documents, they shall be corrected, notwithstanding any prior consent or approval of Owner of any such Design Documents.

3.7 Quality Assurance Plan. Contractor shall develop, implement and maintain a written plan for quality assurance of the Services (the "**Quality Assurance Plan**"). Such plan shall meet the Owner's corporate and Site-specific policies and requirements and the requirements of all applicable Laws. Contractor delivered the plan to Owner on October 9, 2007 for Owner's review and comment, and Contractor has incorporated Owner's reasonable comments therein. Contractor has the right to rely on such approved October 9, 2007 plan in performing the Services. Contractor shall also require all Subcontractors to establish, implement and maintain appropriate quality control and safety programs with respect to their respective portions of the Services. Contractor shall provide Owner and its employees, agents, representatives and invitees with reasonable access to the Work wherever located for observation and inspection, including but not limited to auditing of all activities for conformance with the requirements of the plan and all requirements of the Agreement. Inspections and audits of Contractor's Subcontractors will be coordinated with Contractor.

3.8 Training. Contractor shall develop and implement a program to instruct and train Owner's personnel adequately in accordance with the provisions of Exhibit A. Contractor shall deliver to Owner no less than six (6) months prior to Substantial Completion of each of Unit 6 and the Unit 5 Scrubber, substantially complete versions of the Project Manuals for Unit 6 or the Unit 5 Scrubber (as applicable) that are sufficient for Contractor's use in training Owner's maintenance and operating personnel in respect thereof, and Contractor shall thereafter use such Project Manuals to train such Owner personnel.

3.9 Utility Use. Subject to Section 4.5, from the Effective Date until the latest of Final Completion of either Unit 5 Scrubber and Unit 6, Contractor shall be responsible in connection with Contractor's scope of Work for the temporary power distribution grid within the Site (from the Owner designated tie-in points), fuel (other than coal and fuel oil used for Commissioning, Performance Testing and operation), communication systems for Contractor's temporary office facilities (including telephones for Owner's staff), construction waste disposal, and wastewater disposal.

3.10 Spare Parts.

(a) Contractor shall provide the spare parts required for Commissioning and start-up of the Equipment and the cost of such spare parts shall be contained within the Contract Price. Acting as Owner's agent pursuant to Section 3.1(a)(ii)(A), Contractor shall obtain from each supplier of Owner Equipment a recommended list of spare parts required for Commissioning and start-up of such Owner Equipment, and Owner shall procure and provide such spare parts to Contractor approximately sixty (60) Days prior to start-up of any such Owner Equipment. Upon Owner's request and acting as Owner's agent pursuant to Section 3.1(a)(ii)(A), Contractor shall use its commercially reasonable efforts to obtain from each supplier of Equipment and Owner Equipment at least two hundred and seventy (270) Days prior to Substantial Completion a list of recommended spare parts for such Equipment and Owner Equipment for the ongoing operation and maintenance of the Project. Contractor shall request such spare parts list to include: (1) name of manufacturer, (2) manufacturer's description of spare part, (3) The manufacturer's part number, (4) required quantities, (5) lead time, and (6) price. *** cost for procurement of such recommended *** spare parts *** not included in the Contract Price. The parties shall mutually determine the process for procuring and providing such additional spare parts. Owner shall make available for Contractor at no cost to utilize during start-up and testing, all spare parts acquired by Owner for the Equipment and Owner Equipment. ***.

(b) As of the Amendment Date and as part of the *** within the Contract Price, Contractor has agreed to procure two recommended operations and maintenance spare parts, which spare parts *** and the ***, as noted in more detail in Table I-4a of Exhibit I.

3.11 Subcontractor Presence. Within the Contract Price component for which the technical assistance is provided as set forth in more detail in Exhibit I, Contractor shall be responsible for notifying and paying any Subcontractor representative that it deems necessary to be present for technical assistance at (a) any training session, (b) erection supervision, (c) Commissioning, or (d) the Performance Testing. Similarly, Owner, at its cost, shall ensure that an adequate number of qualified representatives from those suppliers supplying Owner Equipment are present for technical assistance at the same events.

3.12 Current Records; Record Drawings. Contractor shall maintain in good order and make available to Owner, for inspection at the Site at all times, at least one record copy of the Documentation marked currently to record material changes made during construction. Before, and as a condition to, Final Completion of Unit 6 and the Unit 5 Scrubber, Contractor shall deliver to Owner all of the preceding items and a set of reproducible of those as-built drawings listed in Exhibit A (in hard copy and electronic formats (non-native files) reasonably requested by Owner), showing all Changes made during construction with respect to Unit 6 and the Unit 5 Scrubber.

3.13 Transportation Costs. Contractor shall arrange and pay for all transportation, storage and transfer costs incurred in connection with the Work, except for the transportation and storage costs attributable to Owner Equipment, which transportation and storage costs shall be paid by Owner.

3.14 Project Manuals. Contractor shall deliver to Owner the first draft of the Project Manuals for each of Unit 6 and the Unit 5 Scrubber no less than one hundred and eighty (180) Days prior to Substantial Completion of Unit 6 or the Unit 5 Scrubber (as applicable) in accordance with the requirements of this Agreement, with such first draft containing sufficient operational and technical information to allow Owner to develop related Facility operating and maintenance procedures in order for Contractor to provide operator training. Contractor shall deliver to Owner the final draft of such Project Manuals, in both hard copy and electronic format, prior to Final Completion of Unit 6 or the Unit 5 Scrubber (as applicable).

3.15 Control of Work. Contractor shall control and be solely responsible for all construction means, methods, techniques, sequences, procedures, safety and quality assurance, and quality control programs in connection with the performance of the Services. Contractor, as part of the *** construction Indirects in Exhibit I shall provide all necessary security at that portion of the Site under Contractor's care, custody and control for the construction Work, including, without limitation, a suitable fence around such portion of the Site, and the prohibition and prevention of access and entrance to such portion of the Site by all unnecessary and unauthorized Persons. Contractor shall strictly control the admission of Persons to such portion of the Site and no such Person (other than the employees, officers or directors of the Parties or their Affiliates) who is not required for the performance or supervision of the Services shall be admitted without the prior approval of Owner (such approval not to be unreasonably withheld or delayed). From Substantial Completion through Final Completion of Unit 6 and the Unit 5 Scrubber, ***.

3.16 Emergencies. In the event of any emergency endangering life or property, Contractor shall take all actions as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall promptly report each such emergency, and Contractor's responses thereto, to Owner. Such steps shall include the incident reporting to Owner station management as required by Article 24 herein.

3.17 Local Conditions; Inspection of Interface Points.

(a) Contractor has reviewed the Site and the access to the Site, all as described in Exhibit B, and acknowledges that they are sufficient for the performance of the Services. Contractor represents and warrants that it has taken all steps necessary to ascertain the nature and location of the Services and that it has investigated and satisfied itself as to the general and local conditions that can affect the Project, the Site or the performance of the Services, including: (i) conditions bearing on access, egress, transportation, waste disposal, handling, lay down, parking and storage of materials; (ii) the availability of labor, water, electric power, other utilities and roads needed for construction; (iii) uncertainties of normal weather or other observable physical conditions at the Site; and (iv) the character of equipment and facilities needed before and during the performance of the Services. If Contractor has taken all reasonable steps as described in this Section, then, notwithstanding Article 9, Contractor shall be entitled to an adjustment in the Contract Price or Schedule for any differing Site conditions.

(b) Contractor has inspected the various interface points on the Owner's existing systems, each of which is identified on Exhibit A, and has satisfied itself that such interface points are sufficient and adequate for the performance and completion of

the Services. Contractor represents that it has taken all prudent and commercially reasonable steps necessary to ascertain the nature and location of the interface points and has satisfied itself as to their sufficiency and adequacy, except for the tie-in ducts which are scheduled for inspection during the outage for Unit 5 Scrubber Tie-In. In the event that Contractor discovers a differing interface point condition that affects the Services during the performance of the Services, Contractor shall not be entitled to a Change in accordance with Article 8 to the extent such differing condition could have been observed or discovered in a visual inspection of the applicable interface points; otherwise Contractor shall be entitled to a Change Order.

3.18 Use of Site; Owner Access. Contractor shall confine its operations at the Site to areas permitted by applicable Laws, this Agreement and the Exhibits hereto. Contractor shall prepare, implement and enforce written Site rules necessary for the safe, efficient and proper prosecution of the Work. Those rules shall, at a minimum, comply with the Owner Environmental Health and Safety manual and all applicable Laws. Contractor shall provide Owner, the Financial Institutions and their respective employees, agents, representatives and invitees with reasonable access to the Work wherever located for observation and inspection; provided, that Contractor may provide, and Owner and the Financial Institutions shall accept, an escort or other safety measures that Contractor, in its sole discretion acting reasonably, deems necessary or advisable. Contractor shall provide Owner with office facilities on the Site which shall be outfitted in a customary manner (including a conference room) as more fully described in Exhibit A. Those office facilities shall be connected to and serviced by the usual utilities, subject to Sections 3.9 and 4.5. Owner shall have the right to assign a maximum of five dedicated representatives to Contractor's facility on a full time basis.

3.19 Compliance With Laws. Contractor shall comply, and shall cause all Subcontractors to comply, with all applicable Laws and Change Orders that relate to Changes in Law relating to the Work or the Project, and Contractor shall give all applicable notices with respect to, and in accordance with, any applicable Laws. Contractor shall ensure that the Project, as designed and constructed, complies, and, when operated in accordance with Prudent Industry Practices, shall comply with all applicable Laws. Notwithstanding the foregoing, or anything else in this Agreement to the contrary, Contractor's obligation with respect to water, air and other emissions of the Project shall be limited to the requirements set forth in the Specifications. If not otherwise exempted by Title 48 and to the extent applicable, Contractor will make a good faith effort to comply with *48 C.F.R. § 52.219-8*, Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns, and 48 C.F.R. § 52.219-9, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting plan.

3.20 Permits and Approvals. Contractor shall be responsible for obtaining, renewing and maintaining all permits, licenses, approvals and certifications customary and necessary for Contractor to demolish, Site prepare, engineer, detail, fabricate, furnish, deliver, unload, store, erect, install, commission (but only those permits exclusively used for commissioning) and inspect the Work, all as described in Exhibit D (collectively, the **"Contractor Permits"**). At least three (3) Days prior to application for any of those items that are Site-specific and relate to Site activities, Contractor shall give to Owner a copy of such application. If Owner objects to such application, Contractor shall not proceed with such application and the Parties shall discuss and agree upon a mutually acceptable method to achieve compliance with such requirements; provided, that Contractor shall be entitled to a Change to the extent such delay in submitting the

application impacts the Contract Price or the Schedule, Contractor shall provide reasonable assistance and documents to Owner in connection with Owner's efforts to obtain the Owner Permits. Contractor represents that, to the best of its knowledge, the Contractor Permits listed in Exhibit D are the customary permits, approvals and certifications required to be obtained by Contractor for its performance of the Services. Upon Contractor's request, Owner shall provide Contractor reasonable cooperation and assistance in obtaining and maintaining Contractor Permits.

3.21 Periodic Reports and Meetings.

(a) Status Report. Within ten (10) Business Days after the end of each calendar month, Contractor shall prepare and submit to Owner a written status report covering the previous calendar month, which report shall be prepared in a manner and format (hard copy and electronic) reasonably acceptable to Owner and shall include (i) a detailed description of the progress of the Work, including an up-to-date Work Schedule depicting all critical path activities and Key Schedule Milestones and illustrating the progress which has been made against such activities and Key Schedule Milestones, (ii) if the description of the progress of the Work indicates that the Work does not comply with the Schedule, a brief description of the steps and actions that Contractor proposes to take in order to comply with the Schedule, (iii) a comparison of the actual amounts paid or payable by Owner through the previous calendar month for the Work completed by Contractor compared to the forecasted amounts payable for such Work as set forth in the Cash Flow Plan (including in each of the ***), (iv) ***, (v) ***, (vi) ***, (vii) a statement of any significant issues which remain unresolved and Contractor's recommendations for resolving the same, (viii) a summary of any significant Project events which are scheduled or expected to occur during the following thirty (30) Days, and (ix) all additional information reasonably requested by Owner (the **"Monthly Progress Report"**).

(b) Attendance and Participation. From the Effective Date until the latest of the Final Completion Dates of Unit 6 and the Unit 5 Scrubber, Contractor shall attend and participate in regular meetings with Owner which shall occur monthly (or upon such other interval as the Parties agree in writing) for the purpose of discussing the status of the Work and anticipating and resolving any problems (**"Progress Meetings"**). The Progress Meetings may also include, at the request of Owner, the Financial Institutions, consultants and other Persons. Contractor shall prepare and promptly deliver to Owner written minutes of each meeting; provided, that the publication or distribution of such minutes shall not constitute a permitted basis for providing notice, or otherwise asserting claims, under this Agreement by any Party. No implication whatsoever shall be drawn as consequence of a failure by any Party to comment on or object to any minutes prepared or distributed by Contractor. Unless otherwise mutually agreed, Contractor's Site Representative shall attend all Progress Meetings after Contractor mobilizes to the Site. In addition to the above monthly Progress Meetings, Contractor shall hold regularly scheduled (but not less frequently than weekly during construction) status or scheduling meetings with its Subcontractors as appropriate, and Owner shall have the right but not the obligation to attend and participate in such weekly status meetings; provided, that, if Contractor determines in its reasonable discretion that Owner's attendance at the meeting would prohibit Contractor from effectively addressing confidential or sensitive issues, Contractor shall have the right to bar Owner from all or a portion of such meetings.

3.22 Signage. Neither Contractor nor its Subcontractors shall display, install, erect or maintain any advertising or other signage at the Site without Owner's prior written approval, other than signs and notices required by applicable Laws, related safety or work rules, site identification, or used to solicit employees for the performance of the Services.

3.23 Interference with Traffic. Contractor shall carry out the Services so as not to interfere unnecessarily or improperly with (a) Owner's operations on the Site (after Owner has assumed custody and control of the Project) or (b) access to, use of or occupation of public or private roads, footpaths or properties in the possession of Owner or any other Person. Contractor shall communicate with, and ascertain the requirements of, all Government Authorities in relation to vehicular access to and egress from the Site and shall comply with any such requirements. Contractor shall be deemed to have satisfied itself as to, and shall be fully responsible for, the routing for delivery of heavy or large loads to the Site so as to satisfy any requirements of Government Authorities with respect thereto.

3.24 Supply of Water and Disposal of Sewage. Contractor shall provide, within the Site, an adequate supply of drinking and other water for the use of those Persons working on the Site. Contractor shall dispose of, either off-Site or through the Facility's septic system or other approved method, all on-Site sewage effluent during performance of the Services.

3.25 Housekeeping. At all times during the term of this Agreement, Contractor shall keep the Site and surrounding area adjacent to where the Services are actually being performed, free from waste materials, equipment, rubbish, debris and other garbage, and liquid and non-liquid materials whether spilled, dropped, discharged, blown out or leaked. Contractor shall employ adequate dust control measures. To the extent practicable, Contractor and all Subcontractors shall utilize reasonable waste reduction and recycling techniques at the Site. Before the latest of the Final Completion Dates of Unit 6 and the Unit 5 Scrubber, Contractor shall remove from the Site all tools, trailers, surplus and waste materials, and rubbish, and shall otherwise leave the Project and the Site in a neat and clean condition. With respect to all buildings on the Site, Contractor shall clean all glass (inside and out), remove all paint spots and other smears, stains or scuff marks, clean all plumbing and lighting fixtures, and clean all concrete, tile and finished floors. If Contractor fails to perform such housekeeping services, Owner, following notice and a reasonable opportunity for Contractor to cure, may perform such services, and the cost of such services shall be allocated to the Contract Price in accordance with the pricing component for which the Services are being performed. For example, if the housekeeping services are performed to remedy a problem with a ***, the Owner shall be entitled to ***. If the housekeeping services are performed to remedy a problem that would have been a ***, the costs for Owner to perform such services shall be counted towards the*** solely for the purpose of calculating ***.

4. OWNER RESPONSIBILITIES

Owner shall perform the responsibilities set forth in this Article at its own expense and at those reasonable times as may be required by Contractor for the successful completion of the Work in accordance with the Schedule.

4.1 Owner's Representative. Owner shall appoint Owner's Project Director with whom Contractor may consult at all reasonable times, and whose instructions, requests and decisions shall be binding upon Owner as to all matters pertaining to this Agreement and the performance of the Parties under this Agreement; provided, that no amendment or modification of this Agreement shall be effected except by an Amendment, and no Change shall be effected except as provided in Article 8.

4.2 Access. From the Effective Date until the latest of the Substantial Completion Dates of Unit 6 and the Unit 5 Scrubber, Owner shall provide Contractor, at no additional cost to Contractor, unrestricted right of access to such portion of the Site as Contractor may reasonably require for the construction of the Project and for Contractor's office, warehouse, shop buildings, welding facilities, Contractor's equipment storage, lay down area, and employee parking. Owner shall cooperate with Contractor so as to minimize disruption by Owner of Contractor's performance of the Services. After Substantial Completion of Unit 6 or the Unit 5 Scrubber and Owner takes over care, custody and control of Unit 6 or the Unit 5 Scrubber, Owner shall allow Contractor reasonable access to the applicable portion of the Site in order to achieve Final Completion of Unit 6 or the Unit 5 Scrubber.

4.3 Permits. Owner shall be responsible for obtaining, renewing and maintaining the permits, licenses, approvals and certifications necessary for the operation, maintenance, use and ownership of the Facility, including the permits listed in Exhibit E (collectively, the **"Owner Permits"**). Contractor shall provide Owner with all reasonably necessary information, documents, data, criteria and performance characteristics of the Project requested or required by Owner to assist Owner in obtaining Owner Permits.

4.4 Owner Equipment. Owner shall procure and provide Owner Equipment by the dates set forth in the Schedule in order to prevent delay. Except to the extent that Contractor's failure to perform its obligations in accordance with this Agreement hereof is the cause of such non-performance or schedule delay, any impact to Contractor from the delay (or re-sequence) in delivery or performance of Owner Equipment shall give rise to a Change.

4.5 Fuel and Utilities. Owner shall provide, at no cost to Contractor, the electrical interconnect for power export from the Facility at the interconnection points identified in Exhibit A, all electrical power necessary for construction of the Project (including back feed power) and such other fuel, ***.

4.6 Operation and Maintenance Staff. At least one year prior to Substantial Completion of Unit 6 and at least six months prior to Substantial Completion of the Unit 5 Scrubber, Owner shall provide, under the direction of Contractor through Substantial Completion of Unit 6 or the Unit 5 Scrubber but at no cost to Contractor, the complement of qualified operation and maintenance personnel for Commissioning, Performance Testing and operation of Unit 6 or the Unit 5 Scrubber; provided, that such action by Owner in connection with Commissioning, Performance Testing and operation of the Project shall not, in any way, modify or relieve Contractor from its obligations or void any warranties under this Agreement.

4.7 Job Site Rules. From the Effective Date until the latest of the Substantial Completion Dates of Unit 6 and the Unit 5 Scrubber, Owner, its representatives and agents shall abide by all reasonable Site safety rules promulgated by Contractor.

4.8 Payment. Owner shall pay Contractor the Contract Price, as such price may be adjusted from time to time pursuant to the provisions of this Agreement. Owner shall make all payments promptly when due.

5. EQUIPMENT AND WORKMANSHIP

5.1 Quality of Equipment and Workmanship. All Equipment and workmanship shall be of the respective kinds required by this Agreement, including those required by the Specifications and Prudent Industry Practices and shall be subjected from time to time to such tests as Owner may reasonably require at the place of manufacture, fabrication or preparation, or at the Site or at such other place or places as may be mutually agreed upon by the Parties, including any place of an independent third party. Contractor shall provide such assistance, labor, stores, apparatus and instruments as are normally required for examining, measuring and testing any Equipment and Owner Equipment (other than specialty tools as listed in Owner Equipment Contracts) and workmanship, before incorporation into the Project, for testing as may be reasonably selected and required by Owner. Contractor shall remove from the Site any Equipment that is not in accordance with this Agreement.

5.2 Cost of Tests. The cost of conducting any test related to the Work shall be allocated to the Contract Price in accordance with the price component for which the Work is performed unless such test is clearly intended by or provided for in this Agreement as being the responsibility of Owner. If the results of any such test indicate that the applicable Equipment or workmanship do not conform to the requirements of this Agreement (including the Specifications) and Owner has reasonable grounds to suspect that any other similar Equipment or workmanship may not conform to the requirements of this Agreement (including the Specifications), Owner may require Contractor to carry out further tests, which in the reasonable opinion of Owner are necessary to verify that such other similar Equipment or workmanship conforms to the requirements of this Agreement (including the Specifications). The costs of any such ***.

5.3 Samples. At the reasonable request of Owner and at Owner's cost, Contractor shall supply Owner with samples of Equipment (for which samples can reasonably be provided). The manufacturer's standard samples (with relevant information) and any additional samples shall be labeled as to origin and intended use in the Project.

5.4 Inspection of Operations. Owner (and its representatives) shall at all reasonable times have access to the Site and to all workshops and places where Equipment or Owner Equipment is being manufactured, fabricated or prepared for the Project. Contractor shall provide Owner a reasonable opportunity to be present for any tests of any Equipment or Owner Equipment.

5.5 Examination of Work before Covering. No part of the Equipment or Owner Equipment, as applicable, shall be permanently covered up at the Site or put out of view without affording Owner a reasonable opportunity to examine and measure any such part of the Equipment or Owner Equipment, as applicable, which is about to be covered up or put out of view, including examining foundations before any part of the Equipment or Owner Equipment, as applicable, is placed thereon. For certain agreed parts of the Work as set forth in Exhibit A, Contractor shall give notice to Owner whenever any such part of the Equipment or Owner

Equipment, as applicable, or foundations is or are ready or about to be ready for examination and Owner shall, without unreasonable delay, attend (or inform Contractor that it is unnecessary for it to attend) for the purpose of examining and measuring such part of the Equipment or Owner Equipment, as applicable, or of examining such foundations.

5.6 Uncovering and Making Openings. If, following discovery of defective workmanship or materials in any part of the Work, Owner has reasonable grounds to suspect that further parts of the Work may be similarly defective, Contractor shall, upon the reasonable request of Owner, provide Owner clear evidence that such other parts are not defective to the reasonable satisfaction of Owner or shall uncover such further parts of the Work or make further openings, in or through the same, and Contractor shall inspect and repair, if necessary, any such parts. Unless the cause of such defective workmanship is shown to be the result of Gross Negligence or willful misconduct, the costs of such work carried out by Contractor under this Section shall be added to the Craft Labor Costs and shall be applied against the existing Cost Target — Craft Labor without a Change. If the cause of such defective workmanship is shown to be the result of Gross Negligence or willful misconduct of Contractor, Contractor shall bear the full costs of repair.

6. SCHEDULE & CONTRACT PRICE

6.1 ***

6.2 Commencement of Work for Unit 6 and the Unit 5 Scrubber. Owner has issued the Full Notice to Proceed with respect to the Unit 5 Scrubber, and Contractor has commenced the performance of the Services with respect thereto and shall continuously and diligently fulfill its obligations under this Agreement with respect to the Unit 5 Scrubber through the Warranty Period. Owner has issued a Limited Notice to Proceed with respect to Unit 6, and Contractor has commenced the performance of the Services with respect thereto in a limited fashion. Upon issuance of the Full Notice to Proceed with respect to Unit 6, Contractor shall continuously and diligently fulfill its obligations under this Agreement through the Warranty Period. For Unit 6 and the Unit 5 Scrubber, Contractor shall perform its obligations under this Agreement in accordance with the Contract Price for Unit 6 and the Unit 5 Scrubber as set forth on Exhibit I and with the Key Schedule Milestones set forth in Exhibit C, as such may be modified and updated from time to time in accordance with the terms of this Agreement. Contractor hereby acknowledges and agrees that a portion of the Work for the Unit 5 Scrubber and Unit 6 includes: (a) Work performed under the *** and the Original EPC Agreement, which Work has already been paid by Owner under the *** and the Original EPC Agreement, and (b) Work performed under Duke purchase order FHP01564, which Work has already been paid by Owner under such purchase order (but is included as part of the Contract Price).

6.3 ***. Each Party shall, in good faith, cooperate with the other and use all commercially reasonable efforts to ***, in each case, in accordance with *** described in Exhibit I. ***.

6.4 Schedule Requirements; Updates. *** Contractor shall prepare and make available to Owner at all times at the Site, or such other location mutually agreed upon by the Parties, a current, working copy of the detailed Schedule depicting all critical path activities and illustrating the progress which has been made on the Work against the Schedule (in hard copy and electronic format), including critical path activities interconnected by schedule logics, for

Owner's review and comment. On a monthly basis, Contractor shall provide Owner with any and all updates to the working Schedule, including any forecasted changes in the Schedule and the resulting effects on achieving the Key Schedule Milestones; provided, however, that no update of or revisions to the working copy of the Schedule shall be deemed to alter, revise or otherwise change the date for any Owner obligation, any Key Schedule Milestones, the Guaranteed Tie-In Date, the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date, all of which shall be amended only by a duly executed Change Order or amendment hereto. Owner shall be entitled to have access to the Schedule in order to input, track and update Owner's and its subcontractors' activities within the Schedule (including logic ties) and to review and generate reports related to the Schedule in accordance with the terms of this Agreement. *** The Key Schedule Milestones shall be provided in the Schedule in such a way as to support the achievement of Substantial Completion by the ***.

6.5 Enhanced Project Management Process.

(a) ***.

(b) ***.

(c) ***.

(d) ***.

(e) ***.

6.6 Unit 5 Scrubber Tie-In. Contractor shall perform Unit 5 Scrubber Tie-In in accordance with the Guaranteed Unit 5 Tie-In Commencement Date and Guaranteed Unit 5 Tie-In Completion Date, both as may be adjusted pursuant to a Change Order. Owner shall have the right to make adjustments to such outage schedule, including delaying or accelerating the Guaranteed Unit 5 Tie-In Commencement Date or the Guaranteed Unit 5 Tie-In Completion Date; provided, that as a result of any such adjustment, Contractor shall be entitled to an equitable adjustment in the Contract Price and the Schedule in accordance with Article 8. *** to such portion of the Site as Contractor may reasonably require to perform the following Work during the outage for the Unit 5 Scrubber Tie-In: (1) removal of blanking plates and (2) activation of the previously installed *** quick acting relief dampers, as set forth in more detail in Exhibit A.

7. COMPENSATION AND PAYMENT

7.1 Cash Flow Plan. ***:

(i) ***;

(ii) ***;

(iii) ***; and

(iv) ***.

(collectively, the ***).

(b) Revisions to Cash Flow Plan. If any Monthly Progress Report shows that the amount actually paid or payable by Owner for *** incurred by Contractor in performing the Work through the *** for which such Monthly Progress Report relates varies or is reasonably forecasted to vary by more than *** in each of *** from the aggregate amounts scheduled to be paid during such two-month period as reflected in *** or *** actually incurred by Contractor in performing the Work through the end of the month for which such Monthly Progress Report relates varies substantially (as determined by Owner in its reasonable discretion) from the amounts scheduled to be paid as reflected in the ***, prior to the issuance of the next Invoice, Contractor shall create a revised forecast of future payments to be made by Owner for the *** to be incurred by Contractor in performing the Work for the Project (it being understood that the intent of such revised forecast shall be to make adjustments necessary to eliminate any such forecasted variance), which revised forecast shall be reasonably acceptable to Owner, and Owner shall issue a Change Order to amend the *** to reflect such revised forecast; provided, that such revised forecast shall not result in any adjustment to the Contract Price except by Change Order. *** shall be equitably adjusted as a result of any delay in the Work, whether caused by an event of Force Majeure or breach of this Agreement by Contractor.

7.2 Payments of the Contract Price. In consideration of Contractor's performance and provision of the Work and subject to this Article 7, Owner shall pay to Contractor the Contract Price as provided in ***.

7.3 Invoicing.

(a)***, submit to Owner a ***, broken out by Unit 6 and the Unit 5 Scrubber, in accordance with*** for the aggregate amount that is due for such calendar month pursuant to the Cash Flow Plan and for which Contractor has not been paid (the "**Invoice**"). Each Invoice shall include:

***.

***. Contractor shall make available such documentation and materials as Owner may reasonably require to substantiate Contractor's right to payment of such Invoice.

(b) If any Invoice is deficient in any material respect, Contractor shall be required to resubmit that Invoice in proper form; provided, however, that Owner shall pay any portion of it that is not deficient or subject to dispute. Owner shall review each Invoice and shall make exceptions, if any, by providing Contractor with written notice within fifteen (15) Days after Owner receives the Invoice and such substantiating documentation and materials as Owner may have reasonably required. Notwithstanding anything in this Article to the contrary, the failure of Owner to raise an exception shall not preclude Owner from subsequently seeking, and Contractor from paying, a refund of any amounts to which Contractor was not entitled under this Agreement, and Owner may, by any payment pursuant to Section 7.3(c) below, make any correction or modification that should properly be made to any amount previously considered due.

(c) If Owner provides no exceptions within such time period set forth in Section 7.3(b), Owner shall pay Contractor, within thirty (30) Days of receipt of such

Invoice and such substantiating documentation and materials as Owner may have reasonably required, in U.S. dollars the amounts designated in such Invoice, plus any additions and less any deductions which may have become due under this Agreement, as reflected in the Invoice. Any amount of an Invoice that Owner disputes shall be resolved promptly in accordance with Article 28. Once the dispute is resolved, Owner or Contractor, as applicable, shall pay any amount owing promptly after the date of the final resolution. If for any reason Owner fails to pay Contractor for all sums due and owing (other than sums that are the subject of a good faith dispute or permitted to be withheld pursuant to this Section 7.3(c)) within thirty (30) Days of receipt of a substantiated Invoice which complies with the requirements of this Article, a late payment charge shall accrue that is based on an annual percentage rate (APR) equal to the Prime Interest Rate plus one percentage point (1%), payable each month or portion thereof that payment is delayed beyond such 30th Day.

(d) If any Services performed or Equipment supplied by Contractor is not in accordance with this Agreement, Owner may withhold from any Invoice the cost of rectification or replacement until such rectification or replacement has been completed, and, if Contractor is failing to perform any Services or provide any Equipment in accordance with this Agreement and Owner has so notified Contractor in writing, Owner may withhold the estimated value of such Work until it has been performed or provided in accordance with this Agreement.

(e) Each monthly Invoice shall include ***.

7.4 Cash Flow. The Parties acknowledge and agree that, in managing its cash flow, Owner is relying on all payments to be made *** in accordance with the Cash Flow Plan in Exhibit F and that any significant excess over the amounts set forth in the Cash Flow Plan would adversely affect Owner's ability to manage its cash flow. ***, and the Parties shall not construe this Section as limiting, Contractor's ability to accelerate or substitute *** updated Schedule forecast *** revise the Cash Flow Plan to match as closely as possible the updated *** to the extent that doing so will not adversely impact the ability of Owner to manage its cash flow as contemplated by this Section.

7.5 Final Payment. Upon achievement of Final Completion of Unit 6 or the Unit 5 Scrubber, Contractor shall submit to Owner an Invoice for the final Cash Flow payment and other payments due under this Agreement with respect to Unit 6 or the Unit 5 Scrubber (the "Final Payment Invoice") which shall set forth all remaining amounts due to it pursuant to this Agreement with respect to Unit 6 or the Unit 5 Scrubber. When submitting the applicable Final Payment Invoice, Contractor shall submit a written discharge, in form and substance reasonably satisfactory to Owner, confirming that the total of the applicable Final Payment Invoice represents full and final settlement of all monies due to Contractor under this Agreement with respect to Unit 6 or the Unit 5 Scrubber. If requested by Owner, the applicable Final Payment Invoice shall also include a waiver (or a bond if a Lien exists to indemnify Owner against such Lien) of any Liens; provided, that the waiver or bond shall be conditioned on Contractor receiving payment pursuant to such Final Payment Invoice. The procedures set forth in Section 7.3 above (including application of any late payment charge) shall be followed for payment of the applicable Final Payment Invoice, and Owner shall be entitled to offset against any Invoice or Final Payment Invoice any undisputed amounts owing by Contractor to Owner under this Agreement with respect to Unit 6 or the Unit 5 Scrubber, including any undisputed Liquidated Damages as may be applicable.

7.6 Certification by Contractor. In each Invoice, Contractor shall certify as follows:

"There are no known Liens (or such Liens are bonded over) outstanding at the date of this Invoice, all amounts that are due and payable to any third party (including Subcontractors) with respect to the Work as of the date of this Invoice have been paid or are included in the amount requested in this Invoice, and, except for those bills not paid but so included and amounts disputed between Owner and Contractor, there is no known basis for the creation of any Liens except in respect to payments to Subcontractors withheld for proper reasons. Contractor hereby waives and releases, to the extent of the receipt of payment requested in this Invoice, any right to any Lien with respect to payment for such portion of the Work included in this Invoice."

7.7 No Acceptance by Payment. Owner's payment of any Invoice, including a Final Payment Invoice, does not constitute approval or acceptance of any item or cost in that Invoice nor shall be construed to relieve Contractor of any of its obligations under this Agreement.

7.8 Revenue from Use of Unit 6 and Facility. Owner shall be entitled to all revenue derived from or in connection with operation or use of Unit 6 and the Facility before (as contemplated in Section 10.4) and after the Substantial Completion Date for Unit 6.

8. CHANGE ORDERS & PROVISIONAL SUMS

8.1 Change Requests. Without invalidating this Agreement, Owner may order changes in the Specifications or the Work consisting of additions, deletions or other revisions (each, a "**Change**"), including deletion of Unit 6 or the Unit 5 Scrubber (such deletion being only in the event: (x) the DENR permit for Unit 6 is reversed or stayed on appeal, or (y) Owner has cancelled the Work associated with Unit 6 or the Unit 5 Scrubber and does not intend to proceed with another contractor for such Work); provided, that Owner may not delete all Work through this Article. Without limiting the generality of the foregoing, Owner may order:

(a) an increase or decrease in the quantity of any Work,

(b) any Work omitted,

(c) a Change in the character or quality or kind of any such Work,

(d) a Change in the levels, lines, position and dimensions of any part of the Project,

(e) execution of additional Services of any kind prudent for the completion of the Work, or

(f) a Change in any specified sequence or timing of the Services.

If Owner desires to make a Change, it shall submit a written proposal to Contractor describing the Change requested. Contractor shall promptly review Owner's proposal and submit to Owner an estimate of the cost to develop a Change Order for such Change, such development costs to be determined on a time and materials basis utilizing the rates set forth in Exhibit K. If the estimated costs to develop the Change Order are reasonably acceptable to Owner, Owner shall promptly provide notice thereof to Contractor in writing. Upon receipt of such notice, Contractor's Project Manager shall promptly notify Owner in writing, as soon as practicable, either by giving reasons why Contractor, either directly or indirectly through a Subcontractor, could not effect such Change (if this is the case) or by submitting a proposed Change Order, which shall include in reasonable detail:

(i) the effect and impact, if any, that the Change would have, in Contractor's reasonable judgment, on the Work, the Contract Price or the Schedule,

(ii) Contractor's proposal for any necessary modifications to the Work, the Contract Price or the Schedule, and

(iii) Contractor's proposal for any necessary modifications to any other provisions of this Agreement, including the Specifications, the Key Schedule Milestones, the Cash Flow Payments or the Performance Guarantees.

Contractor shall provide Owner such supporting documentation for the foregoing as Owner may reasonably request. Notwithstanding the foregoing, Contractor shall not be entitled to any increase in the Contract Price or any extension of the Schedule if such Change was necessary as a result of a breach by Contractor of this Agreement. Owner shall, as soon as practicable after receipt of such submittal and supporting documentation, respond with any comments or questions. Contractor shall not delay any Work while awaiting a response. If Owner responds with comments or questions, Contractor shall endeavor to address such comments or answer such questions as soon as practicable. If Owner decides not to proceed with a Change, it shall reimburse Contractor for its efforts in developing the estimates and other information regarding the potential Change, on a time and material basis utilizing the rates set forth in Exhibit K (such reimbursement to be either outside the Contract Price or through a separate Change Order); provided, that Owner shall only be required to reimburse Contractor if Contractor has complied with the cost proposal requirements set forth above. If Owner wishes to proceed with the Change, Owner shall issue a written order to Contractor authorizing the Change and setting forth any revisions to this Agreement necessary to effect the Change (the **"Change Order"**). If Contractor refuses to accept such necessary revisions in the Change Order, Owner shall be entitled to require Contractor to continue to perform its obligations hereunder as would be modified by the Change Order; provided, that, if Owner requires Contractor to so perform, (x) the Parties shall resolve the Dispute over the necessary revisions in accordance with the dispute resolution procedures set forth in Article 28 and (y) if the Change requires additional or disputed Work, Owner shall continue to pay Contractor pursuant to the payment terms hereof based, subject to resolution of the Dispute pursuant to Article 28, on the time and materials rates set forth in Exhibit K. Once the Dispute is resolved, any amount owing will be paid within thirty (30) Days after the date of resolution.

If Contractor experiences an increase in costs or a delay in Contractor's ability to perform the Work due to a delay in the delivery of any Owner Equipment or a delay resulting from a defect in any Owner Equipment or a breach of the Owner Equipment Contracts by the suppliers of the Owner Equipment, and such delay or defect is not the result of Contractor's failure to comply with the requirements of this Agreement, Contractor shall be entitled to a Change and an equitable adjustment in the Contract Price and/or the Schedule.

Contractor shall have the right to request a Change but shall have no right to require a Change which is not contemplated by this Agreement without the prior written consent of Owner. If Contractor determines that a Change is necessary or advisable for any reason, including a Change in Law, Contractor shall give Owner written notice within twenty-one (21) Days thereof.

8.2. Change Order Pricing. All Change Orders will be developed on an open book basis, and the Owner shall have the right to review the detailed cost estimates and assumptions for the Work to be included in the Change Order. For each Change Order, the Parties may agree to have Contractor perform the Work under such Change Order in accordance with any of the pricing categories set forth in this Agreement, or a combination thereof, and, if the Parties are unable to agree on a pricing category under which such Work shall be performed, such Work shall be performed ***. All Contingency will be negotiated on a case by case basis, depending upon the risks associated with the Change Order Work.

8.3 Change Order Billing. All Change Orders shall be invoiced and paid in accordance with the payment terms set forth in the Change Order.

9. FORCE MAJEURE

9.1 Event of Force Majeure. The performance by Owner or Contractor under this Agreement shall be excused to the extent that such Party's performance is delayed or prevented by reason of an event of Force Majeure. If a Party is or will be reasonably prevented from performing its obligations under this Agreement by an event of Force Majeure, such Party shall use all commercially reasonable efforts to remove the cause affecting such non-performance and to minimize any delay in or impact upon the performance of this Agreement or any damage to or other impact upon the Equipment or the Owner Equipment. If an event of Force Majeure occurs, the Parties shall negotiate an equitable adjustment to: ***, and (b) the Contract Price; provided, that Contractor shall *** on Change Orders which result from an event of Force Majeure.

9.2 Notice. If a Party is or will be reasonably prevented from performing its obligations under this Agreement by an event of Force Majeure, then it shall notify the other Party of the obligations, the performance of which is or will be prevented, and the nature and cause of the event in writing within thirty (30) Days after the notifying Party or its Project Manager becomes aware, through the exercise of reasonable diligence, of the event of Force Majeure. The Party affected by an event of Force Majeure shall provide the other Party with weekly updates (a) estimating its expected duration, the cost of any remedial action, and the probable impact on the performance of its obligations hereunder, (b) of the actions taken to remove or overcome the event of Force Majeure and (c) of the efforts taken to mitigate or limit damages to the other Party. The Party affected by an event of Force Majeure shall also provide written notice to the other Party when it ceases to be so affected.

9.3 Suspension; Termination Due to Force Majeure. If any event of Force Majeure by Contractor delays Contractor's performance for an aggregate time period greater than *** consecutive Days, then Owner, in its sole and absolute discretion, shall have the right to terminate this Agreement without penalty upon payment of all due and owing payments in accordance with Section 23.5. If any event of Force Majeure by Owner delays Contractor's performance for an aggregate time period greater than *** consecutive Days, then Contractor, in its sole and absolute discretion, shall have the right to suspend performance and demobilize under this Agreement without penalty in accordance with Section 23.7. If any event of Force Majeure delays Contractor's performance in any three year time period for an aggregate time period greater than *** Days, then Contractor, in its sole and absolute discretion, shall have the right to terminate performance and demobilize under this Agreement without penalty, and such termination shall be deemed and treated as a termination under Section 23.4.

10. INSPECTION; PERFORMANCE TESTING; PERFORMANCE GUARANTEES

10.1 Mechanical Completion Inspection. At least thirty (30) Days prior to the date upon which Contractor expects that Unit 6 or the Unit 5 Scrubber will satisfy the conditions for Mechanical Completion set forth in Section 11.1, Contractor shall notify Owner in writing thereof and shall take necessary measures to allow a preliminary Mechanical Completion inspection of the relevant Unit 6 or the Unit 5 Scrubber to be conducted by Owner and its representatives. Contractor shall include with such notice documents and information prudent or convenient for Owner to determine whether Unit 6 or the Unit 5 Scrubber will satisfy the conditions for Mechanical Completion set forth in Section 11.1. If Owner notifies Contractor of any deficiencies in the Work, Contractor shall immediately remedy such deficiencies as part of the Contract Price and provide Owner with the relevant documentary evidence of the correction.

10.2 Performance Testing. As soon as reasonably practicable following Mechanical Completion of Unit 6 or the Unit 5 Scrubber as set forth in Article 11 below, and after providing Owner at least five (5) Days prior written notice (unless Owner agrees to a shorter notice period or regulatory requirements necessitate a longer notice period), Contractor shall commence Performance Testing of Unit 6 or the Unit 5 Scrubber. All Performance Testing shall be conducted in accordance with the Testing Procedures developed in accordance with the requirements of Exhibit L-1 or Exhibit L-2, as applicable, and approved by Owner (such approval not to be unreasonably withheld or delayed). Owner and its agents, representatives and invitees, including any independent third party inspector, shall have the right to attend and witness the Performance Testing. After the completion of each successful Performance Test, Contractor shall determine and submit to Owner, in writing and electronically, the raw data and completed results of such Performance Test, together with a comparison of such results to the applicable Performance Guarantees and a statement whether such results satisfy the applicable Performance Guarantees. By submitting such raw data and completed results, Contractor represents that such raw data, and the conversion of such raw data into the test results, is accurate. All Performance Testing shall be conducted in conformance with the applicable requirements of this Agreement and the Testing Procedures and with the required prior notification to Owner.

10.3 Satisfaction of Performance Testing. Within ten (10) Days after it receives the results for all of the Performance Testing, the underlying raw data and other information required by Section 10.2, Owner shall respond in writing to Contractor stating whether (a) such

Performance Testing was performed according to the Testing Procedures, and (b) the results of such Performance Testing satisfied the applicable Performance Guarantees, or, if Owner does not believe that is the case, Owner shall provide its reasons therefore. Upon its receipt of any such response from Owner that is not in the affirmative, Contractor shall promptly take whatever action shall be necessary to cure the defect in the Performance Testing, adjust or modify any of the Equipment, or request adjustment or modification of Owner Equipment in accordance with Section 3.1(a)(ii), or otherwise in order to satisfy the applicable Performance Guarantees so noted by Owner and shall promptly repeat the Performance Testing in accordance with Section 10.2 and this Section. If, following the Performance Testing, either: (a) Owner agrees that the Performance Guarantees have been satisfied and that the Performance Testing was performed according to the Testing Procedures, (b) the failure to meet any Performance Guarantees is attributable to the performance of Owner Equipment (other than due to Contractor's obligations set forth in Section 3.1(a)(ii)(B)), or (c) Owner fails to respond within the time period set forth above, then the applicable Performance Guarantees shall be deemed to have been satisfied on the date of completion of such Performance Testing for the purposes of calculating Delay Liquidated Damages or Early Completion Bonus. Notwithstanding anything in this Article to the contrary, no agreement, confirmation, statement or otherwise of Owner relating to whether the Performance Testing was performed according to the Testing Procedures or whether the results of such Performance Testing satisfied the applicable Performance Guarantees shall relieve Contractor of any of its obligations under this Agreement. All costs that Contractor incurs in satisfying its obligations under this Article are the sole responsibility of Contractor and included in the Contract Price, except that Contractor shall be reimbursed through a Change Order for additional costs it may incur due to problems with Owner Equipment that are not the result of Contractor's failure to comply with the requirements set forth in this Agreement (other than Section 3.1(a)(ii)(A)), including for any repeat Performance Testing and the consumables and spare parts associated therewith.

10.4 Owner's Right to Operate Prior to Satisfaction of Performance Guarantees. If Unit 6 or the Unit 5 Scrubber fails to satisfy the Performance Guarantees during the Performance Testing for Unit 6 or the Unit 5 Scrubber or fails to achieve Substantial Completion by the Guaranteed Substantial Completion Date for Unit 6 or the Unit 5 Scrubber and Unit 6 or the Unit 5 Scrubber can be operated in compliance with applicable Laws, Owner, in its sole discretion, shall have the right nonetheless to operate Unit 6 or the Unit 5 Scrubber and shall give Contractor written notice of its decision; provided, that if by doing so Owner would cause material damage or deterioration to Unit 6 or the Unit 5 Scrubber, Contractor shall not be responsible for such material damage or deterioration to Unit 6 or the Unit 5 Scrubber to the extent caused by Owner's election to operate prior to Contractor having an opportunity to cure any Defects. If Owner elects to operate Unit 6 or the Unit 5 Scrubber and, during such time, does not permit Contractor to cure the Defects necessary for Unit 6 or the Unit 5 Scrubber to satisfy the Minimum Performance Guarantees of Unit 6 or the Unit 5 Scrubber, then the Guaranteed Substantial Completion Date and Guaranteed Final Completion Date (if such dates have not passed) for Unit 6 or the Unit 5 Scrubber shall be extended on an equitable basis until such time as Owner tenders Unit 6 or the Unit 5 Scrubber to Contractor for further Services and Performance Testing, and Contractor shall be entitled to a Change Order for equitable schedule and/or price adjustment. Owner shall bear the risk of loss during such time as it operates Unit 6 or the Unit 5 Scrubber. Owner's operation of Unit 6 or the Unit 5 Scrubber under this Section shall not reduce Contractor's obligations under this Agreement, including Contractor's obligation to cause Unit 6 or the Unit 5 Scrubber to satisfy the Specifications and Performance

Guarantees for Unit 6 or the Unit 5 Scrubber, except for normal wear and tear, degradation, and operation not in accordance with Contractor's instructions. In any event, if Owner elects to operate any Unit 6 or the Unit 5 Scrubber as contemplated in this Section 10.4 for more than *** Days, then Substantial Completion of Unit 6 or Unit 5 Scrubber shall be deemed to have been achieved on the Day Owner made such election, and ***.

10.5 Failure of Component to Meet Performance Criteria. If Unit 6 or the Unit 5 Scrubber satisfies the Performance Guarantees of Unit 6 or the Unit 5 Scrubber under this Agreement but an item of Equipment within Unit 6 or the Unit 5 Scrubber does not meet its specific performance criteria as set forth in the Specifications, Contractor shall, in addition to its warranty obligations hereunder, provide Owner with all commercially reasonably paid assistance in pursuing the available remedies against the Subcontractor which provided such Equipment. This assistance may include but shall not be limited to assistance in enforcing the repair, replacement or refurbishment of the Equipment by Subcontractor or the collection of monetary remedies from the Subcontractor for failure to meet its guarantees. The Owner shall be entitled to the benefits of any recovery from such Subcontractor.

11. MECHANICAL COMPLETION; SUBSTANTIAL COMPLETION; FINAL COMPLETION

11.1 Mechanical Completion. **"Mechanical Completion"** shall be deemed to have occurred with respect to Unit 6 or the Unit 5 Scrubber upon the satisfaction of all of the following conditions:

(a) All materials, equipment and systems related to the safe start-up and testing of Unit 6 or the Unit 5 Scrubber shall have been constructed and installed in accordance with this Agreement, including the Specifications and applicable Laws, and in a manner that does not void any warranties, and the Equipment and Owner Equipment shall be mechanically and electrically sound, all required pre-operational testing shall have been satisfactorily completed, and all systems shall have been checked for alignment, lubrication, rotation and hydrostatic and pneumatic pressure integrity.

(b) All systems and components shall have been flushed and cleaned out as necessary, and the Equipment and Owner Equipment shall be ready to support the commencement of Performance Testing;

(c) The Parties shall have agreed upon the Testing Procedures;

(d) For Unit 6, Contractor shall have synchronized Unit 6 to the transmission grid as described in Exhibit A;

(e) The Equipment and Owner Equipment shall be capable of being tested in accordance with Exhibit L without damage thereto (including any portion of the Facility) or to any property or injury to any Person and in compliance with all applicable Laws and all permits and licenses required by such Laws;

(f) Contractor shall have provided the applicable Documentation that is needed to start-up, operate and maintain Unit 6 and the Project (including the Project Manuals), which Documentation shall have been approved, in the reasonable determination of Owner, as adequate for the start-up, operation and maintenance of Unit 6 and the Project (such approval not to be unreasonably withheld or delayed);

(g) Contractor shall have provided the training of Owner's personnel and representatives as required by Exhibit A; and

(h) Contractor shall have delivered to Owner a certificate signed by Contractor certifying that all of the preceding conditions in this Section have been satisfied.

Contractor shall not commence Performance Testing of Unit 6 or the Unit 5 Scrubber until all of the above conditions have been satisfied with respect to Unit 6 or the Unit 5 Scrubber and Contractor shall have provided the required prior notice to Owner of the Performance Testing and given Owner an opportunity to attend.

11.2 Substantial Completion. **"Substantial Completion"** shall be deemed to have occurred with respect to Unit 6 or the Unit 5 Scrubber upon the satisfaction of all of the following conditions:

(a) Mechanical Completion of Unit 6 or the Unit 5 Scrubber shall have been achieved;

(b) Unit 6 or Unit 5 Scrubber shall be capable of being operated in accordance with the Specifications without damage to Unit 6 or the Unit 5 Scrubber, the Facility or to any property or injury to any Person and in compliance with all Owner Permits, Laws and orders of all Government Authorities then in effect;

(c) Contractor shall have completed the initial Performance Testing of Unit 6 or Unit 5 Scrubber and the results of such initial Performance Testing shall have satisfied the Minimum Performance Guarantees of Unit 6 or Unit 5 Scrubber, all according to the Testing Procedures and the requirements of Article 10;

(d) Contractor shall have completed the performance of the Services with respect to Unit 6 or the Unit 5 Scrubber according to all of the provisions of this Agreement, with the exception of those items specified in the Substantial Completion Punch List with respect to Unit 6 or the Unit 5 Scrubber, which Contractor shall have prepared and for which Contractor shall have received approval from Owner (such approval not to be unreasonably withheld or delayed);

(e) Contractor shall have delivered to Owner the Documentation relating to Unit 6 or the Unit 5 Scrubber that Contractor is required to deliver to Owner pursuant to Exhibit A; and

(f) Contractor shall have delivered to Owner a certificate signed by Contractor certifying that all of the preceding conditions in this Section have been satisfied.

Upon the satisfaction of all of the foregoing conditions, Owner shall accept Unit 6 or the Unit 5 Scrubber, subject to Final Completion of Unit 6 or the Unit 5 Scrubber according to Article 11.

by delivering to Contractor notice of that acceptance within a reasonable time, and Contractor shall turn over risk of loss and care, custody, control and operation of Unit 6 or the Unit 5 Scrubber to Owner. For the purposes of calculating Delay Liquidated Damages ***, the date upon which Contractor submits the certifying notice required by this Section 11.2 (if such notice is accurate) shall be deemed the Substantial Completion Date with respect to Unit 6 or the Unit 5 Scrubber.

11.3 Final Completion. **"Final Completion"** shall be deemed to have occurred for Unit 6 or for the Unit 5 Scrubber upon the satisfaction of all of the following conditions for Unit 6 or the Unit 5 Scrubber:

(a) for Unit 6 or the Unit 5 Scrubber, Contractor shall have achieved all conditions for Substantial Completion of Unit 6 or the Unit 5 Scrubber;

(b) Contractor shall have completed the Performance Testing of Unit 6 or Unit 5 Scrubber and either (i) all Performance Guarantees of Unit 6 or the Unit 5 Scrubber shall have been satisfied according to the Testing Procedures, or (ii) Contractor shall have satisfied all of the Make Right Performance Guarantees of Unit 6 or the Unit 5 Scrubber and shall have paid to Owner Performance Liquidated Damages as required by Article 12 for those guarantees that allow a performance buy-down;

(c) The performance of the Services (except for Services relating to any warranty Work) shall be one hundred percent (100%) complete, including the Reliability Testing and the completion (or buying down) by Contractor of all items on the Substantial Completion Punch List with respect to Unit 6 or the Unit 5 Scrubber in accordance with this Agreement;

(d) Contractor shall have delivered to Owner the Documentation Contractor is required to deliver to Owner pursuant to Exhibit A as of the Final Completion Date for Unit 6 or the Unit 5 Scrubber;

(e) There shall exist no Default of Contractor and no event which, with the passage of time or the giving of notice or both, would be a Default of Contractor; and

(f) Contractor shall have delivered to Owner a certificate signed by Contractor certifying that all of the preceding conditions in this Section have been satisfied.

12. DELAY AND PERFORMANCE LIQUIDATED DAMAGES; EARLY COMPLETION BONUS

12.1 Delay Liquidated Damages.

(a) The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur if Contractor does not achieve Substantial Completion of Unit 6 by the Guaranteed Substantial Completion Date for Unit 6 (as the Guaranteed Substantial Completion Date for Unit 6 may be extended due to Force Majeure, Owner caused delays, differing site conditions, discovery of Hazardous

Materials, Changes in Law, or as otherwise contemplated in this Agreement), and, accordingly, if Contractor does not achieve Substantial Completion of Unit 6 by that date, subject to Section 12.1(c) below, Owner's sole and exclusive remedy for such delay shall be to recover from Contractor as liquidated damages, and not as a penalty, the Delay Liquidated Damages for each Day that Substantial Completion of Unit 6 is delayed beyond the Guaranteed Substantial Completion Date for Unit 6; provided, that in no event shall the aggregate Delay Liquidated Damages for Unit 6 exceed its Delay Liquidated Damages Cap.

(b) The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur if (i) Unit 5 Scrubber Tie-In does not commence by the Guaranteed Unit 5 Tie-In Commencement Date, (ii) Contractor does not complete the successful Tie-In of the Unit 5 Scrubber by the Guaranteed Unit 5 Tie-In Completion Date or (iii) after the successful Tie-In of the Unit 5 Scrubber, Contractor does not achieve Substantial Completion of the Unit 5 Scrubber by the Guaranteed Substantial Completion Date (in each case, as the Guaranteed Unit 5 Tie-In Commencement Date, the Guaranteed Tie-in Completion Date or the Guaranteed Substantial Completion Date of the Unit 5 Scrubber, as applicable, may be extended due to Force Majeure, Owner caused delays, differing site conditions, discovery of Hazardous Materials, Changes in Law, or as otherwise contemplated in this Agreement), and, accordingly, upon the occurrence of either event, subject to Section 12.1(c) below, Owner's sole and exclusive remedy therefore shall be to recover from Contractor as liquidated damages, and not as a penalty, the Delay Liquidated Damages for each Day after the Guaranteed Unit 5 Tie-In Commencement Date that Unit 5 Scrubber Tie-In does not commence, each Day after the Guaranteed Unit 5 Tie-In Completion Date that the successful Tie-In of the Unit 5 Scrubber has not been achieved, and, after the successful Tie-In of the Unit 5 Scrubber has been achieved, each Day after the Guaranteed Substantial Completion of the Unit 5 Scrubber that Substantial Completion of the Unit 5 Scrubber is not achieved, as applicable; provided, that in no event shall the aggregate Delay Liquidated Damages for the Unit 5 Scrubber exceed its Delay Liquidated Damages Cap. The Parties hereby agree that the Delay Liquidated Damages payable pursuant to this Section 12.1(b) shall not be duplicative. By way of example, if Contractor is assessed Delay Liquidated Damages due to the commencement of Unit 5 Scrubber Tie-In on a date that is two (2) Days after the Guaranteed Unit 5 Tie-In Commencement Date, Contractor shall not be liable for Delay Liquidated Damages for the same two (2) Day delay in completing Unit 5 Scrubber Tie-In or in achieving Substantial Completion of the Unit 5 Scrubber.

(c) Contractor shall have no liability or obligation to pay Delay Liquidated Damages to Owner hereunder for any delay in Contractor's performance of the Work to the extent attributable to the performance of any Owner Equipment, unless such delay is the result of Contractor's failure to comply with the requirements set forth in this Agreement.

12.2 Performance Liquidated Damages.

(a) The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the

actual damages Owner would incur if Unit 6 or the Unit 5 Scrubber does not meet the corresponding Performance Guarantees on or before the Guaranteed Final Completion Date for Unit 6 or the Unit 5 Scrubber, and, accordingly, and subject to Section 12.2(c) below, Owner's sole and exclusive remedy for such failure shall be to recover from Contractor as liquidated damages, and not as a penalty, the applicable Performance Liquidated Damages; provided, however, that in no event shall the aggregate Performance Liquidated Damages for Unit 6 or the Unit 5 Scrubber exceed the respective Performance Liquidated Damages Cap.

(b) Notwithstanding anything set forth in Section 12.2(a) to the contrary, Contractor shall have the right, exercisable by written notice to Owner, to delay the payment of Performance Liquidated Damages by Contractor with respect to Unit 6 or the Unit 5 Scrubber and to continue to use all commercially reasonable efforts to achieve the Performance Guarantees of Unit 6 or the Unit 5 Scrubber for a period of up to *** after the Guaranteed Final Completion Date for Unit 6 or the Unit 5 Scrubber.

(c) Contractor shall have no liability or obligation to pay any Performance Liquidated Damages to Owner hereunder for the failure to meet any Performance Guarantee to the extent that such failure is attributable to the performance of any Owner Equipment, unless such failure is the result of Contractor's failure to comply with the requirements set forth in Section 3.1(a)(ii)(B).

12.3 Early Completion Bonus. Owner shall pay Contractor the Early Completion Bonus for Unit 6 for Contractor's early achievement of Substantial Completion of the Work for Unit 6 as compared to the Guaranteed Substantial Completion Date for Unit 6. Contractor shall only be entitled to such Early Completion Bonus if the Work meets the Minimum Performance Guarantees for Unit 6 at the time of Substantial Completion of Unit 6.

12.4 Payment. Unless disputed in good faith, the Liquidated Damages specified in Section 12.1, Section 12.2 and the Bonus specified in Section 12.3 shall be due and payable within thirty (30) Days after written demand by Owner or Contractor, as the case may be. Any undisputed Liquidated Damages or Bonus that remain unpaid after the expiration of such thirty-Day period shall bear interest at the Prime Interest Rate plus 1% per annum or the highest rate allowed by Law, whichever is less. If any Liquidated Damages or Bonus are disputed by either Party, any Liquidated Damages or Bonus that are determined to be payable pursuant to the resolution of such dispute in accordance with this Agreement shall also bear interest from the expiration of the thirty-Day period referred to above at the Prime Interest Rate plus 1% per annum or the highest rate allowed by Law, whichever is less. Notwithstanding the assessment of interest, and in addition to its other rights and remedies, Owner and Contractor shall have the right to offset the amount of any unpaid Liquidated Damages or Bonus plus interest against any amounts due or that may become due to Contractor or Owner (as the case may be) under this Agreement.

13. WARRANTY

13.1 Services Warranty Period. Contractor warrants that the Services will be performed in a professional and workmanlike manner, will conform to the requirements of this Agreement, including the requirements set forth in Section 3.1(a)(ii), and will reflect competent

professional knowledge and judgment. For Unit 6 and the Unit 5 Scrubber, if any portion of the Services fails to comply with this warranty obligation and Contractor is so notified in writing prior to *** after the respective Substantial Completion Date (the "Services Warranty Period"), Contractor will promptly re-perform such portion of the Services without additional compensation from Owner or, if re-performance is impossible or commercially impracticable, Owner and Contractor shall meet and discuss in good faith an equitable way to resolve such matter in order to place Owner in as good a position as Owner would have been in had there been no such breach of the warranty obligation. If the Parties are unable to resolve such matter in a manner reasonably acceptable to both Parties, either Party may initiate the Dispute resolution procedures set forth in Article 28.

13.2 Equipment Warranty Period. Unless otherwise mutually agreed in writing for a particular piece of Equipment, Contractor warrants that all Equipment furnished to Owner will be free from Defects in workmanship and material and will conform to this Agreement, including the Specifications, for a period that is the earlier of: (a) *** from the date Substantial Completion of Unit 6 or the Unit 5 Scrubber is achieved or (b) for items of Engineered Equipment provided by a Subcontractor, the expiration of such Engineered Equipment Subcontractor warranty; provided that, ***. If Contractor fails to so notify Owner, Contractor shall be responsible for the full *** warranty obligation on such ***. Except for Equipment noted in Section 13.2(b) above, the Equipment Warranty Period for each item on a Substantial Completion Punch List shall commence upon Contractor's completion (or buying down) of, and Owner's acceptance of, the particular Punch List item and shall continue until the *** thereof (the warranty periods set forth in this Section are, collectively, referred to as the "Equipment Warranty Period").

13.3 Extension of Warranty Periods. If a Defect (as defined in Section 13.4) is discovered within the Services Warranty Period or Equipment Warranty Period, as applicable, and such Defect is not cured to the reasonable satisfaction of Owner, then the Services Warranty Period or Equipment Warranty Period, as applicable, shall be extended to the *** of the date such Defect was corrected, but only with respect to the Equipment or Service that was the subject of such Defect. In no event shall any Services Warranty Period or Equipment Warranty Period for Unit 6 or the Unit 5 Scrubber extend beyond *** from the Substantial Completion Date for Unit 6 or Unit 5 Scrubber, respectively.

13.4 Defects. If, within the Services Warranty Period or Equipment Warranty Period, as applicable, deviations from, breaches of, or failures of the foregoing warranties ("Defects") in the Equipment or Services are discovered by Owner or Contractor, Contractor shall at no additional cost to Owner, commence within a timely manner upon being discovered or upon notice from Owner to correct those Defects, including re-performance or re-provision of any affected portion of the Work and repair of any resulting damage, and shall demonstrate to Owner's reasonable satisfaction that the Defects have been properly corrected. Warranty Work critical to the operation of the Facility shall be performed at such time and in such manner as to take into consideration Owner's requirements to avoid disruption of Owner's operations at the Facility. Contractor shall be responsible for, and shall pay as and when due for, all inspection, removal, packaging, transportation, installation, consulting and other costs for the correction of Defects. Owner shall provide Contractor with reasonable access at the Site to correct Defects; provided, that any such access shall be restricted, and subject to such conditions, as Owner may have instituted generally for its contractors.

13.5 Responsibility for Warranty Work. Contractor shall have primary liability with respect to the warranties in this Agreement, whether or not any Defect or other matter is also covered by a warranty of a Subcontractor or other third party, and Owner need only look to Contractor for corrective action. In addition, Contractor's warranties shall not be restricted in any manner by any warranty of a Subcontractor or other third party (except as delineated in Section 13.2), and the refusal of a Subcontractor or other third party to provide or honor a warranty or to correct defective, deficient or nonconforming Work shall not excuse Contractor from its liability on its warranties to Owner. Contractor shall have no responsibility to perform any warranty Work with respect to Owner Equipment unless any Defect with respect to such Owner Equipment is attributable to Contractor's failure to comply with the requirements set forth in Section 3.1(a)(ii)(B).

13.6 Conditions of Warranty. To the extent that any failure by Contractor to meet the foregoing warranties is the result of (a) Owner's failure to receive, handle, store, maintain, or install the Equipment furnished in a reasonable manner or in accordance with any reasonable Contractor requirements conveyed to Owner, (b) Owner's failure to operate the Equipment within its rating or operated and maintained in a reasonable manner consistent with Contractor's or Equipment vendors' instructions, (c) Owner subjecting the Equipment to abuse or misuse, or (d) normal wear and tear or corrosion inherent in the operation of the Facility, then, to that extent, Contractor shall be excused for said failure.

13.7 Title Warranty. Contractor represents and warrants that it shall provide to, and, effective as of the applicable date set forth in Section 22.1, hereby assigns and transfers to, Owner good, marketable and exclusive title to the Equipment, free and clear of all Liens (other than Liens created solely by the actions of Owner); provided, however, that Contractor shall not be required to assign and transfer to Owner good, marketable and exclusive title to certain intellectual property to be licensed to Owner as provided in Article 19, but Contractor shall, and hereby does, grant, effective upon the date on which Owner takes over care, custody and control of the Facility, to Owner the licenses to such intellectual property as described in Article 19. In the event of any nonconformity with or breach of this warranty, Contractor shall, as part of the Fixed Prices, promptly, and in any event within thirty (30) Days thereof, remove any Lien on any of such Equipment or otherwise provide Owner good, marketable and exclusive title to such Equipment, free and clear of all Liens; provided, that if Contractor is unable within such thirty (30) Day period to remove such Lien, Contractor may post a bond in an amount (and otherwise in form and substance) reasonably acceptable to Owner so long as Contractor continues to use all commercially reasonable efforts to remove such Lien as promptly as practicable. This Section shall survive the expiration, cancellation or termination of this Agreement.

13.8 Intellectual Property Warranty. Contactor warrants that the Services performed by Contractor or its Subcontractors, the Equipment and the Documentation, or any part of any of the foregoing, shall not infringe or constitute a misappropriation of any right of any third party, including, without limitation, any copyrights, mask work rights, patent rights, trademark rights, trade secret rights or confidentiality rights.

13.9 Warranty Assistance. During the Warranty Periods, Owner shall, without cost to Contractor: (a) provide Contractor reasonable working access (subject to such restrictions and conditions as Owner may have instituted generally for its contractors) to the Site to remove, disassemble, replace and reinstall any Equipment with respect to which a Defect exists; (b) remove,