

## **CONFIDENTIALITY AND COMMON INTEREST AGREEMENT**

This Confidentiality and Common Interest Agreement (“Agreement”) is made, entered into and effective as of September 13, 2011, by and among the undersigned companies (each individually, a “Participant,” and collectively, the “Participants”). To the extent that a Participant is represented by outside counsel, such Participant may act by and through its respective outside counsel, in which case its respective outside counsel shall be set forth opposite the applicable Participant's signature on this Agreement (individually and collectively, “Counsel,” and, together with the Participants, a “Party” and the “Parties”).

**WHEREAS**, the Participants are PJM Interconnection, L.L.C. (“PJM”) and PJM Transmission Owners with transmission revenue requirements recovered pursuant to Attachment H of the PJM Open Access Transmission Tariff (“PJM TOs”);

**WHEREAS**, on July 21, 2011, the Federal Energy Regulatory Commission (“FERC”) issued Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*<sup>1</sup>;

**WHEREAS**, Order No. 1000 directed regional transmission organizations, including PJM, to file tariff revisions providing a cost allocation methodology for certain regional and interregional transmission facilities (“Compliance Obligation”);

**WHEREAS**, pursuant to the PJM Consolidated Transmission Owners Agreement and the PJM Open Access Transmission Tariff, the filing of tariff revisions concerning cost allocation pursuant to section 205 of the Federal Power Act is the responsibility of the PJM TOs;

**WHEREAS**, following the decision of the United States Court of Appeals for the Seventh Circuit in *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470 (7th Cir. 2009), certain issues concerning the allocation of costs of new high voltage transmission facilities in PJM are pending on remand before FERC in Docket Nos. EL05-121-000, *et al.*, following the conclusion of a paper hearing (“Remand Proceeding”);

**WHEREAS**, all or some of the Participants are parties to the Remand Proceeding and all of the Participants will be affected by the outcome of the Remand Proceeding;

**WHEREAS**, it is in the common interest of the PJM TOs with the assistance of PJM to develop mutually agreeable filings to be submitted to the FERC in satisfaction of the Compliance Obligation (the “Section 205 Filings”);

**WHEREAS**, it is in the common interest of the PJM TOs with the assistance of PJM to participate jointly in negotiations with neighboring regions to develop mutually agreeable Section 205 filings regarding interregional facilities;

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<sup>1</sup> 136 FERC ¶ 61,051 (2011).

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**WHEREAS**, the development of the Section 205 Filing could necessitate discussion of certain issues pending in the Remand Proceeding;

**WHEREAS**, communications between and among parties as part of settlement discussions are privileged and confidential under FERC precedent and Rule 602(e) of FERC's Rules of Practice and Procedure<sup>2</sup>;

**WHEREAS**, the Participants desire (i) to establish terms and conditions relating to the exchange of information among them, and to third parties, with respect to the Section 205 Filing and the Remand Proceeding; and (ii) to recognize the formation of a common interest to assess, prepare for, respond to and participate in the Section 205 Filings; and, if necessary, to defend against any claims raised in connection with the Section 205 Filings, including without limitation, defending against any disclosure, inconsistent with the terms of this Agreement, of any Confidential Information, as such term is defined in Section 2;

**WHEREAS**, the Parties wish (i) to continue to pursue their separate but common interests, and to avoid any suggestion of waiver of the confidentiality or immunity of communications and documents protected by the attorney-client privilege, the attorney work-product doctrine or any other privilege or immunity vis-à-vis potentially adverse parties; and (ii) to engage in any discussions related to the Remand Proceeding that may be necessary or appropriate to facilitate the Section 205 Filing without prejudice to their respective positions in the Remand Proceeding;

**WHEREAS**, it is the intention and understanding of the Parties that past and future communications among and between the Parties with respect to the Section 205 Filings and the Remand Proceeding were and are carried out in recognition of this common interest and are and shall remain confidential and are and shall continue to be protected from disclosure to any third party by any and all applicable privileges and immunities, except as set forth herein;

**WHEREAS**, in order effectively to pursue the Participants' common interests with respect to the Section 205 Filings, the Parties have also each concluded that, from time to time, such interests will be best served by sharing Confidential Information; and

**WHEREAS**, it is the purpose of this Agreement to ensure that any exchange or disclosure of the Confidential Information contemplated herein does not diminish in any way the confidentiality of such Confidential Information and does not constitute a waiver of any privilege or immunity otherwise available;

**NOW, THEREFORE**, in consideration of the mutual representations, covenants and agreements herein set forth, including the foregoing paragraphs, which are part of this Agreement and not mere recitals, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. By signing this Agreement, the Parties agree and confirm that they have established a common interest in maintaining the confidentiality of communications in connection with the

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<sup>2</sup> 18 C.F.R. § 385.602(e).

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Section 205 Filings to the greatest extent possible under FERC's Rules of Practice and Procedure and applicable law, and that the obligations set forth herein shall survive any Party's withdrawal from this Agreement for a period ending the earlier of (i) three (3) years after the date of withdrawal, and (ii) the date determined in accordance with Paragraph 11.

2. "Confidential Information" shall include any data or information, including written attorney advice, in hard copy form, or in the form of e-mails or other electronic data, including information posted on a password restricted internet web site, that (i) relates to the purposes stated in Section 3 below, (ii) is provided by a Party to any other Party and (iii) is marked as confidential or privileged in accordance with Section 7. "Confidential Information" shall also include any other communication from a Party to any other Party that has (i) been furnished for the purposes stated in Section 3 below and (ii) that either incorporates, contains, reflects or is directly derived from Confidential Information as defined above provided by any other Party. Confidential Information may also include oral communications provided for the purposes stated in Section 3 below, including attorney advice. Unless otherwise indicated by the disclosing Party, all such oral communications furnished for the purpose stated in Section 3 below shall be presumed to be Confidential Information.
3. Except as otherwise set forth herein, the Parties may use Confidential Information for the purpose of jointly preparing, filing, or litigating in support of the Section 205 Filings or for the purpose of discussing settlement of any proceeding FERC establishes with respect to the Section 205 Filings. Nothing contained herein obligates a Party to provide any Confidential Information to any other Party.
4. Each Party agrees that it will hold and treat all Confidential Information in confidence and that it will not disclose Confidential Information in any manner whatsoever, in whole or in part (subject to the remaining provisions of this Section 4, including disclosure to affiliates), and will not use such Confidential Information other than in accordance with Section 3, except as hereinafter provided, without the prior written consent of each Party who produced, or participated in the production of, the Confidential Information. The Parties further agree that any disclosure or exchange of Confidential Information that has occurred prior to the effective date of this Agreement, to the extent such information was clearly marked as Confidential or Protected and was of a nature that would be covered by this Agreement, was subject to an oral agreement that was consistent with the terms of this Agreement, or that such Confidential Information exchanged or disclosed prior to the effective date of this Agreement nevertheless shall be treated as though exchanged or disclosed pursuant to this Agreement and shall be subject to the terms of this Agreement. Each Party shall protect such Confidential Information from disclosure to others using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care. A Party may disclose Confidential Information received hereunder only to its direct employees, agents, financial advisors, attorneys, directors or consultants and the employees, agents, financial advisors, attorneys, directors or consultants of its affiliates who have a need to know for the purposes stated in Section 3. Each Participant shall take all necessary and appropriate measures to ensure that any person who is granted access to any Confidential Information is familiar with the terms of this Agreement, and complies with such terms as they relate to the duties of such person. Each Participant shall be

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responsible for any breach of this Agreement by any of its employees, agents, financial advisors, attorneys, consultants, directors or affiliates, and agrees, at its sole cost and expense, to take all commercially reasonable measures (including, without limitation, court proceedings) to prohibit its employees, agents, financial advisors, attorneys, consultants, directors or affiliates from disclosure or use of the Confidential Information in any manner not authorized by this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, a Party shall not be deemed to have breached this Agreement as the result of the disclosure of Confidential Information if (i) the Confidential Information so disclosed was not marked as confidential in accordance with Section 7, was not conveyed through oral communications or was not posted on a password restricted internet web site, and (ii) such disclosure was without knowledge of the confidential nature of the information. The Parties agree that their obligations under this section shall survive expiration or any earlier termination of this Agreement.

5. Nothing in this Agreement shall restrict any Party from using or disclosing Confidential Information which (i) is or becomes generally available to the public other than as a result of a disclosure directly or indirectly by the disclosing Party or its representatives; (ii) was within the using or disclosing Party's possession prior to it being furnished hereunder, provided that such information is not subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other Party with respect to such information; (iii) is rightfully obtained by a Party from third parties authorized to make such disclosure without restriction, whether or not shared under this Agreement, in any manner it chooses; or (iv) is lawfully obtained through discovery or other legal means, and not subject to a protective order. Nothing in this Agreement is intended to preclude any Party from (i) pursuing independently any subject matter, including subjects reflected in Confidential Information, or (ii) disclosing to a third party information which is developed or obtained independently of Confidential Information supplied to any Party and subject to this Agreement. Nothing in this Agreement precludes any Party from seeking, through discovery or other legal means, any materials or information that the Party would otherwise be entitled to pursue, provided that disclosure of Confidential Material pursuant to this agreement does not constitute a waiver of any privilege or immunity against disclosure that would otherwise exist.
6. Any Confidential Information containing legal advice or opinion concerning the Section 205 Filings or potential settlement of the Remand Proceeding, whether oral or in writing, shall be confidential and subject to the common interest privilege and any other applicable privilege.
7. Each Party shall mark Confidential Information provided to another Party with an identifying symbol and words to the effect: "**Confidential Legal Materials: Common Interest, Attorney-Client Privileged and Attorney Work Product.**"
8. If another person or entity requests or demands, by subpoena or otherwise, any Confidential Information, the Party receiving the request or demand will immediately notify the Party that provided the Confidential Information, and will also notify all other Parties. All reasonable steps will be taken by the Party or Parties receiving the request or demand to permit the assertion of all applicable rights and privileges by the Party that provided the Confidential Information, and the Party receiving such request or demand will cooperate with the Party that

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provided the Confidential Information in the timely assertion of such rights and privileges, including obtaining a protective order where appropriate. Each Party further agrees that if the Party that provided the Confidential Information is not successful in precluding the requesting person or entity from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required, and will exercise all reasonable efforts, at the expense of the Party that originally provided the information, to obtain a ruling or reliable assurances that confidential treatment will be afforded the Confidential Information. The Party that received the request shall also cooperate, insofar as is consistent with the Party's own applicable privileges, in making the materials available to the requestor if the Party that provided the materials so directs.

9. Each Party understands and acknowledges that a Party disclosing Confidential Information hereunder, or its respective directors, officers, stockholders, partners, owners, employees, affiliates, financial advisors, attorneys, consultants, or agents make no representations or warranties, express or implied, as to the accuracy or completeness of the Confidential Information disclosed pursuant to this Agreement. Each Party agrees that no Party disclosing Confidential Information, or its respective directors, officers, stockholders, partners, owners, employees, affiliates, financial advisors, attorneys, consultants or agents shall have any liability to any other Party, or to any other Party's employees, agents, financial advisors, attorneys or consultants, or to any third parties, relating to or resulting from the disclosure, or use of the Confidential Information, or for any errors therein, omissions therefrom, or reliance thereon. The Parties agree to the reasonableness of the foregoing and agree that this section shall survive expiration or any earlier termination of this Agreement.
10. Upon (i) the conclusion of all Commission and court proceedings initiated in connection with the Section 205 Filings and the Remand Proceeding (whichever concludes last); or (ii) the expiration or any earlier termination of this Agreement; whichever of (i) and (ii) occurs first, any and all Confidential Information received pursuant to this Agreement, including all copies thereof, shall, at the providing Party's option, within thirty (30) calendar days, be either destroyed by the Party possessing the Confidential Information or returned by such Party to the Party that provided it. If any Counsel ceases representation of a Participant in connection with this Agreement, or if any Party withdraws from this Agreement, such Counsel ceasing representation or Party withdrawing from the Agreement shall, at the providing Party's option, within ten (10) calendar days, destroy or return all Confidential Information received hereunder, including all copies thereof and any documents (regardless of the form thereof) that incorporate, contain, reflect or are directly derived from the information contained in such materials. In addition, at the withdrawing Party's option, all other Parties shall, within ten (10) calendar days, destroy or return all Confidential Information provided by the withdrawing Party hereunder, including all copies thereof and any documents (regardless of the form thereof) that incorporate, contain, reflect or are directly derived from the information contained in such materials. Each Party, upon request by the providing Party, shall certify in writing its compliance with this Section. The remaining Parties to the Agreement shall not use Confidential Information received from the withdrawing Party in a manner adverse to the withdrawing Party. The withdrawing Party shall not use Confidential Information received from the remaining Parties to the Agreement in a manner adverse to the remaining Parties to the Agreement. Notwithstanding the return

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or destruction of Confidential Information, each Party shall continue to be bound by its obligations of confidentiality as to such information.

11. This Agreement shall be effective as of the date set forth above and shall remain in full force and effect until the earlier of (1) conclusion of all Commission and court proceedings initiated in connection with the Section 205 Filings and the Remand Proceeding (whichever concludes last) and (2) termination of this Agreement in writing signed by all existing Participants.
12. Nothing contained herein shall be deemed to create an attorney-client relationship between any Counsel and anyone other than the Participant who is the client of that Counsel, as listed below, and the fact that any Counsel has entered into this Agreement shall not in any way preclude the Counsel from representing any interest that may be construed to be adverse to any other Party to this Agreement, during the term hereof or after expiration or any earlier termination of the Agreement, or be used as a basis for seeking to disqualify any Counsel from representing any other Participant in the above identified discussions, negotiations or proceedings regarding the Section 205 Filings or the Remand Proceeding, or any other present or future negotiations or proceeding, and no Counsel shall be disqualified from examining or cross-examining any witness who testifies at any proceeding, whether under a grant of immunity or otherwise, because of such Counsel's participation in this Agreement. Confidential Information provided by a Party (the "providing Party") will not be introduced or otherwise disclosed by the other Parties in a future litigation or proceeding or in connection with direct or cross-examination or otherwise, unless introduced by the providing Party during the litigation or proceeding, or unless independently obtained or developed by one or more of the other Parties. Nothing in this Agreement waives or limits the right of any Party hereto to assert any present or future claim for relief, or any cause of action, against any other Party hereto, now or in the future. Each Counsel represents that he or she has specifically advised his or her Participant-client of this clause.
13. If the interests of the Parties become adverse with respect to the Section 205 Filings, the terms of this Agreement shall continue to apply to all Confidential Information. In the event that one Party determines, in good faith, that its interests with respect to the Section 205 Filings are adverse to the interests of any other Party, such Party shall withdraw from this Agreement, and, in accordance with Section 10, return or destroy all Confidential Information received. In the event that two or more Parties are involved in a dispute over adverse interests with respect to the Section 205 Filings, and are unable to resolve which Party should withdraw from the Agreement within thirty (30) days, each Party involved in such dispute shall withdraw from the Agreement. Notwithstanding the foregoing, neither the positions taken nor proposals proffered by any Party in the discussions and/or negotiations of settlement of the Remand Proceeding, or any Party's decision not to agree to a proposed settlement of the Remand Proceeding shall require a Party to determine, in good faith, that its interests with respect to the Section 205 Filings are adverse to the interests of any other Party within the meaning of this Paragraph.
14. Each Party recognizes and acknowledges the confidential nature of the Confidential Information and that harm may result to a providing Party if information contained therein or derived therefrom is disclosed to any third party except as herein provided or is used other

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than in accordance with Section 3. It is further understood and agreed that a providing Party shall be entitled to seek equitable relief, including injunction and specific performance, as a remedy for any breach or threatened breach of this Agreement by a Party, or any of its employees, agents, financial advisors, attorneys or consultants. These remedies will not be deemed to be the exclusive remedies for a violation of the terms of this Agreement, but will be in addition to all other remedies available to the Parties as the case may be, at law or equity, provided, however, that no Party shall have responsibility or liability whatsoever under this Agreement for any and all liabilities, losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with the release of Confidential Information to persons not authorized to receive it, except (i) as expressly provided for in this paragraph or (ii) where it is found that such release of Confidential Information resulted from the gross negligence or willful misconduct of such Party. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines, in a final, nonappealable order, that a Participant or any of its representatives has breached this Agreement, then, in addition to any equitable relief granted, the Participant shall be liable and pay to the affected Party(ies) the reasonable legal fees and disbursements incurred by the affected Party(ies) in connection with such litigation, including any appeal therefrom.

15. The existence of this Agreement shall not be used in any fashion against the Parties other than as set forth in this Agreement.
16. This Agreement constitutes the entire and complete agreement between the parties and any earlier agreements between or among any of the undersigned, whether written or oral, pursuant to which Confidential Information have been exchanged are merged into this Agreement.
17. This Agreement may be signed in counterparts, each of which shall be circulated to every other Party and shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
18. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibitions or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
19. This Agreement shall be binding upon each Party's respective successors, legal representatives and permitted assigns. The rights and obligations of each Participant under this Agreement may not otherwise be assigned to any person or entity without the prior written consent of all other Participants, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding on the respective successors and assigns of the Parties hereto.
20. No amendment to this Agreement shall be effective unless in writing and signed by all existing Parties to this Agreement at the time the amendment is intended to go into effect.

## **Confidentiality and Common Interest Agreement**

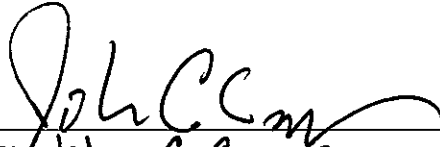
21. Additional parties may join this Agreement, by executing an Addendum hereto, provided there is unanimous, written consent, which consent shall not be unreasonably withheld, of all existing Participants to this Agreement at the time the new party or parties join.
22. Any notice required by this Agreement shall be made to a Party's representative designated below (or another representative if one is designated by the Party in writing). Notice shall be by hand delivery, overnight delivery, telecopy or electronic mail.
23. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

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



**Confidentiality and Common Interest Agreement**

American Electric Power Service Corporation on behalf of its transmission-owning affiliates in PJM

By:   
Name: John C. Crespo  
Title: Deputy General Counsel  
Date: OCT 01, 2011

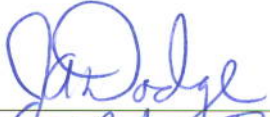
**Confidentiality and Common Interest Agreement**

Allegheny Electric Cooperative, Inc.

By: David J. Dulick  
Name: DAVID J. DULICK  
Title: GENERAL COUNSEL  
Date: 10/5/11

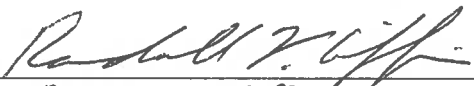
**Confidentiality and Common Interest Agreement**

Baltimore Gas and Electric Company

By:   
Name: J. Andrew Dodge, Sr.  
Title: VP-Transmission  
Date: 9/27/2011

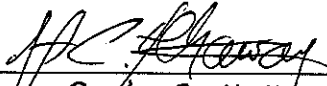
**Confidentiality and Common Interest Agreement**

The Dayton Power and Light Company

By:   
Name: Randall V. Griffin  
Title: Chief Regulatory Counsel  
Date: Oct. 5, 2011

**Confidentiality and Common Interest Agreement**

Virginia Electric and Power Company  
doing business as Dominion Virginia Power

By:   
Name: Scott C. Hathaway  
Title: Vice President  
Date: 9/22/2011

*DMC  
15/2/11*

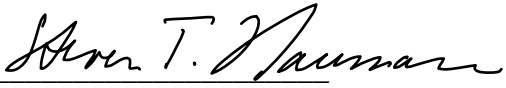
**Confidentiality and Common Interest Agreement**

Duquesne Light Company

By: Frederick J. Eichenmiller  
Name: Frederick J. Eichenmiller  
Title: Director External Affairs  
Date: September 28, 2001

## Confidentiality and Common Interest Agreement

Exelon Corporation on behalf of its subsidiaries  
PECO Energy Company, Commonwealth Edison  
Company and Commonwealth Edison Company of  
Indiana, Inc.

By: 

Name: Steven T. Naumann

Title: Vice President, Wholesale Market  
Development

Date: September 20, 2011

**Confidentiality and Common Interest Agreement**

FirstEnergy Service Company  
on behalf of its transmission-owning affiliates


Outside Counsel:  
Alston & Bird

By: Stanley F. Szwed  
Name: Stanley F. Szwed  
Title: Vice President, Compliance & Regulated  
Services  
Date: 9/20/11



**Confidentiality and Common Interest Agreement**

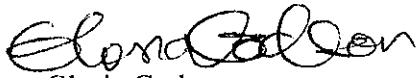
Old Dominion Electric Cooperative

By:   
Name: John McCaffrey  
Title: Attorney - Stinson Morrison Hecker LLP  
Date: 9-23-2011

**Confidentiality and Common Interest Agreement**

Pepco Holdings, Inc.  
on behalf of its transmission-owning affiliates


outside counsel:  
Brodie, Gentile & Marcoux

By:   
Name: Gloria Godson  
Title: VP, Federal & PJM Regulatory Policy  
Date: September 20, 2011

**Confidentiality and Common Interest Agreement**


PPL Electric Utilities Corporation

Donald A. Kaplan  
William M. Keyser  
K& L Gates LLP  
1601 K Street, NW  
Washington, DC 20006  
*Attorneys for PPL Electric Utilities Corporation*

By:   
Name: Paul E. Russell  
Title: Associate General Counsel  
Date: September 21, 2011

**Confidentiality and Common Interest Agreement**

Public Service Electric and Gas Company

By:   
Name: Vilna Waldron Gaston  
Title: Associate General Regulatory Counsel  
Date: September 13, 2011

**Confidentiality and Common Interest Agreement**

Rockland Electric Company

By: Margaret Comes  
Name: Margaret COMES  
Title: Senior Attorney  
Date: September 28, 2011

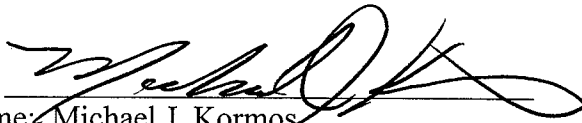
**Confidentiality and Common Interest Agreement**

UGI Utilities, Inc.

By: RR Stoyko  
Name: Robert R Stoyko  
Title: Vice President Northern Region  
Date: 9/22/2011

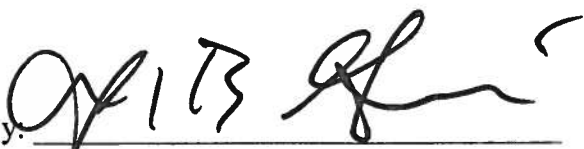
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PJM Interconnection, L.L.C.

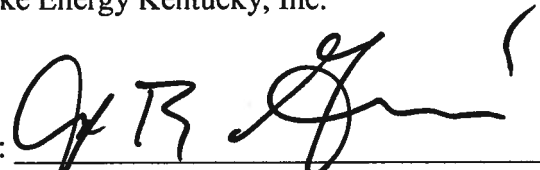
By:   
Name: Michael J. Kormos  
Title: Senior Vice President – Operations  
Date: October 7, 2011

**Confidentiality and Common Interest Agreement**

Duke Energy Ohio, Inc.

By:   
Name: James B. Gainer  
Title: VP, Federal Regulatory Policy  
Date: December 7, 2011

Duke Energy Kentucky, Inc.

By:   
Name: James B. Gainer  
Title: VP, Federal Regulatory Policy  
Date: December 7, 2011