

REQUEST FOR PROPOSAL (RFP)

1. **Invitation to Propose**

The Kentucky Public Service Commission (“Commission”) is seeking proposals for all consulting services required to perform a focused management audit of the Earnings Sharing Mechanism (“ESM”) of Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) or collectively (“the Companies”). For both KU and LG&E, this audit applies to their Kentucky retail electric businesses only. This audit is being conducted under the auspices of Case No. 2002-00472 for KU and Case No. 2002-00473 for LG&E.

2. **Background Information**

KU and LG&E are wholly-owned subsidiaries of LG&E Energy. KU is a distributor of electricity and LG&E is a distributor of electricity and natural gas. Both Companies’ business address is 220 W. Main Street, P.O. Box 32010, Louisville, KY 40232. KU sells electricity to customers in 77 Kentucky counties. KU also sells retail electricity to customers in Virginia, as well as wholesale (FERC jurisdiction) electricity to municipalities in both Kentucky and Virginia. LG&E sells electricity to customers in 9 Central Kentucky counties.

On January 7, 2000, the Commission issued Orders in Case Nos. 98-00426 and 98-00474 for LG&E and KU, respectively. In part, these orders rejected the Companies’ proposed Performance Based Ratemaking (“PBR”) mechanism and offered a simpler Earning Sharing Mechansim. The ESM was to be a pilot program for the three-year operating period 2000-2002, with a focused ESM audit following the end of 2002

operating period. The Companies accepted the offer. Final Orders on rehearing were issued in June 2000.

The ESM was based upon an 11.5% target ROE with a 100 basis point dead band above and below the ROE target. The Companies were required to remit 40% of earnings above the dead band back to customers. Similarly, in the case of under-earning, the Companies were allowed to increase rates to collect 40% of any under earnings from customers. Any effects from the Companies' allowed environmental surcharges were to be excluded, as were any effects from the fuel adjustment clauses. The environmental surcharge rate mechanism was excluded because the associated expenses and return on investments are recovered through a separate line item on bills. Also, all fuel-related expenses were already being fully recovered through the fuel adjustment clause, also a separate line item on customer bills. The Companies were required to make annual filings on March 1st of 2001, 2002, and 2003 for the operating periods 2000, 2001, and 2002, respectively.

The Companies made their first ESM filing in March of 2001, which was contested by the Attorney General and the Kentucky Industrial Utility Customers (KIUC). In addition to the ESM filings, both KU and LG&E had other cases before the Commission. On December 2001 the Commission issued an Order approving a global settlement among all parties. The settlement included some modifications to the Companies' ESM filings. In March 2002 the Companies filed their 2nd ESM filing, which was also contested. In October 2002, the Commission issued its Order on the 2nd ESM filing. Both KIUC and the Companies have filed for rehearing proposing additional changes to the ESM filings. In November 2002, the Commission granted rehearing on

all issues. The parties filed a settlement on December 23, 2002 and the Commission has yet to rule on the settlement.

In April 1997, LG&E Energy Corp. (“LG&E Energy”), the holding company for LG&E, offered to acquire all of the outstanding shares of KU Energy Corporation (“KU Energy”), the holding company for KU. In May 1998, following all the required regulatory approvals, this acquisition was completed with LG&E Energy as the surviving corporation and with LG&E and KU as subsidiaries of LG&E Energy. In February 2000, the decision of the Boards of Directors of LG&E Energy and Powergen plc (“Powergen”) of the United Kingdom that Powergen would acquire LG&E Energy (“the Powergen Acquisition”) was announced. In December 2000, following the necessary regulatory approvals, the acquisition was complete with LG&E Energy becoming an indirect subsidiary of Powergen, and with LG&E and KU remaining utility subsidiaries of LG&E Energy. In April 2001, the decision of the Boards of Directors of Powergen and E.ON AG (“E.ON”) of the Federal Republic of Germany that E.ON would acquire all of the outstanding shares of Powergen (“the E.ON Acquisition”) was announced. In July 2002, following the requisite regulatory approvals, that acquisition was complete with LG&E Energy becoming an indirect subsidiary of E.ON and LG&E and KU remaining subsidiaries of LG&E Energy.

As a result of both the Powergen Acquisition and then the E.ON Acquisition, LG&E and KU are part of a registered holding company system under the Public Utility Holding Company Act. As such, LG&E Energy Services provides services both to LG&E and KU, and to other LG&E Energy affiliates within the registered holding

company system. As of December 31, 2001, following the Powergen Acquisition and prior to the E.ON Acquisition, LG&E Energy Services had 1,051 employees.

KU Background Information

The following information is for the calendar year 2001 from KU's Quarterly Supplemental Financial Statements to the Commission. KU's FERC Form 1 includes KU's total company operations, i.e., it includes retail sales in Virginia and wholesale sales in both Kentucky and Virginia. KU had 466,527 total sales customers (385,075 residential, 71,010 commercial, 2,017 industrial and 3,859 public authorities and 66 sales for resale) and sold a total of 23,461,297,807 kWh. Also, as of December 31, 2001, KU had 1,007 employees.

Other Selected Kentucky Jurisdictional Statistics for KU

Net Utility Operating Income	\$ 114,875,254
Net Utility Plant	\$1,395,579,429
Operating Revenue	\$ 740,506,805
Total Utility Operating Expenses	\$ 625,631,551
O&M Expenses	
Total	\$ 492,286,837
Power Production	\$ 380,353,471
Transmission	\$ 8,195,520
Distribution	\$ 21,277,075
Customer and Sales	\$ 16,960,556
Admin. And General	\$ 65,500,215

LG&E Background Information

The following information is for the calendar year 2001 from LG&E's Quarterly Supplemental Financial Statements to the Commission. LG&E had 375,990 total sales

customers (330,030 residential, 39,773 commercial, 408 industrial and 5,738 public authorities and 41 sales for resale) and sold a total of 18,334,295,964 kWh. Also, as of December 31, 2001, LG&E had 910 employees.

Other Selected Kentucky Jurisdictional Statistics for LG&E – Electric Only

Net Utility Operating Income	\$ 123,798,776
Net Utility Plant	\$1,720,944,729
Operating Revenue	\$ 705,924,207
Total Utility Operating Expenses	\$ 582,125,431
O&M Expenses	
Total	\$ 427,616,159
Power Production	\$ 317,366,912
Transmission	\$ 8,159,613
Distribution	\$ 22,644,026
Customer and Sales	\$ 9,993,532
Admin. And General	\$ 69,452,076

3. Objectives and Scope of the Audit

The overall objective of the audit is to examine and evaluate whether each of the Companies has achieved greater operating efficiencies or processes as a result of the adoption of the pilot ESM mechanism. The focus of the audit should be on reviewing the respective plans and the reasonableness of the plans. The scope of the audit shall not include an examination or otherwise an assessment of the reasonableness of the Companies' base rates or the impact of any changes to the ESM on the Companies' base rates. This is not a base rate investigation.

There are four primary objectives of the audit:

- Identify each Company's efforts and measurable results in achieving greater efficiencies as a result of the adoption of the incentive plan.
- Identify any effects on service levels resulting from the adoption of the incentive plan.
- Provide an objective appraisal of whether the incentive plan is an effective alternative to traditional rate of return regulation.
- If incentive regulation is determined to be an effective form of regulation with respect to each of the Companies, recommend specific changes, or if necessary, an alternative plan for continuation of incentive regulation.

This is not intended to be a comprehensive management audit. Therefore, the scope of this project is limited to the major functional areas and activities of KU and LG&E that may directly or indirectly affect the pilot ESM's impact on performance. Accordingly, this review is to be highly focused on the suitability of each of the Companies' policies, procedures, and general management processes in light of the incentive plan. Consequently, there are seven primary "areas of inquiry":

- Review the Companies' compliance with all applicable Kentucky and Securities and Exchange Commission requirements for affiliate transactions.
- Evaluate emerging management practices and policies and the level to which each Company has instituted policy changes in response to the incentive plan.
- Examine the ESM structure, the ESM monitoring process, including the accuracy and timeliness of filings, and the adequacy of information filed as required by the incentive plan.

- Examine the incentive plan, the Companies, and the Commission with respect to achievement of the objectives set forth in the final orders pursuant to Case Nos. 98-00426 and 98-00474.
- Review the Companies' operating budget procedures, and capital planning and budgeting procedures, to determine the extent to which the Companies have instituted more effective management processes and, therefore, better expenditure control.
- Examine the Companies' capitalization and deferral policies and practices since the beginning of the ESM plan and verify that that the Companies have not recorded certain transactions as Capital Expenditures or Deferred Assets when they should be recorded as operating expenses.
- Review the Companies' compliance with both the Commission's service-related regulations and their own service objectives, both internal and external, since the incentive plan was instituted.

Both the Commission and the Companies expect the final audit report to be objective and balanced and to include meaningful recommendations, if warranted. In order to perform this review and develop recommendations that meet these criteria, the Commission and the Companies believe that it is imperative that the selected Consultant possess an in-depth understanding of the electric industry, earning sharing mechanisms specifically, and forms of incentive regulation of regulated electric utilities incentive plans generally, as well as, the possible changes in utility management and operational processes that may occur as a result of shifting away from traditional rate regulation to incentive regulation. The proposal should reflect the Consultant's

understanding of all these issues and how they can affect the Companies and their customers.

4. Acceptance of Proposals

There will be **no bidders' conference** in conjunction with this project. All properly submitted proposals will be accepted for consideration and reviewed by the Commission. However, the Commission reserves the right to request necessary amendments to any proposal, reject all proposals, reject any proposal that does not meet the mandatory requirements of this RFP, or cancel this RFP.

The Commission also reserves the right to waive minor irregularities in proposals providing such action is in the best interest of the Commission and the Companies. Waiver of minor irregularities shall in no way modify this RFP's requirements or excuse the Consultant from full compliance with the RFP's specifications and other contract requirements. The successful bidder's proposal, the proposal contents, and any proposed amendments, which are approved by the Commission, will become part of the Consultants' contractual obligations.

If your firm is interested in performing this work, you should submit 14 bound copies, two unbound, copy-ready copies, and one electronic version in Microsoft Word of your proposal no later than 5:00 PM EST on **March 4, 2003**. The Commission reserves the right to not consider any proposal received after this deadline. All proposals become the property of the Public Service Commission of Kentucky. Upon selection of a Consultant to perform this engagement, all proposals will be made available for public inspection.

Your response should be addressed to:

Kentucky Public Service Commission
P.O. Box 615
211 Sower Blvd.
Frankfort, Kentucky 40601

Attention: John A. Rogness III
Staff Project Officer
Management Audit Branch
jarogness@mail.state.ky.us

Note that the P.O. Box number should be used for all regular mail and the street address is only necessary for overnight deliveries, i.e. Fed Ex, UPS, etc.

After receipt of proposals, the Commission may request certain firms bidding on the project to appear before the Commission and the staff to provide a proposal briefing and to respond to questions. It is anticipated that the evaluation phase of the project will take approximately **two months** to complete and that the project will culminate in the publication of a final report including findings and recommendations. The project will begin on or about **April 23, 2003**. If the bidder thinks additional time is needed, justification should be supplied along with an estimate of additional time.

5. Contents of Proposal

Consultant's proposals should include the following:

A. STATEMENT OF THE PROJECT

State in succinct terms your understanding of the project presented in this RFP.

B. MANAGEMENT SUMMARY

Include a narrative description of the proposed effort, a discussion of project management techniques, tools and practices, and a list of the end products that will be provided to the Commission throughout the project and at the conclusion of the project.

C. WORK PLAN

Task descriptions are to be the guide in describing your technical plan for accomplishing the work plan. The task descriptions should be in sufficient depth to afford the Commission and its staff a thorough understanding of your work plan. The description should include an estimate of the number of hours each primary member of the auditing team will devote to each task, functional area, and special interest area. A proposal may be rejected if the work plan does not specifically detail how each of the task descriptions is to be accomplished. **After orientation, initial interviews, and preliminary analysis, a final detailed work plan must be prepared and submitted to the Management Audit Branch for approval.**

D. PRIOR EXPERIENCE

Submit a statement of similar projects conducted in the previous five years. Provide a copy of the Consultants' most recently completed relevant audit report. This requirement would also apply to a subcontractor, if appropriate. Indicate specifically any projects of utilities and provide copies of such audit reports. Experience cited should be that performed by your company as well as by individuals. **Projects referred to should be identified and the name of the client shown, including the name, address and phone number of the responsible official of the client company or agency who may be contacted.**

E. PERSONNEL

Include the names of all personnel -- executive, professional, management analysts, systems analysts, auditors, staff consultants, etc. -- who will be engaged in the audit. Their education and experience in auditing and management/process evaluations, especially for electric utilities, in general, and electric utility ESM and other forms of incentive regulation evaluations in particular, must be included. If the contract is awarded, the personnel assigned to conduct the audit may not be changed without the written approval of the Commission or its designated representative.

F. STATEMENT ON POTENTIAL CONFLICTS OF INTERESTS

The Consultant shall identify any relationships between itself or any of its affiliated Companies or proposed subcontractors (including prior relationships of individual personnel engaged in performing the audit) and the utility (or any affiliate) which is the subject of this contract. This would include any services provided during the last five years to the utility, any subsidiaries, parent corporation, subsidiaries of the parent corporation, or any other related organizations associated with the utility industry. If there have been no such relationships, a statement to that effect is to be included in the proposal. If, during the audit, it is determined that an undisclosed conflict exists or has existed between the Consultant and either or both of

the Companies, the Commission reserves the right to terminate the contract.

Any engagements, including but not limited to consulting or preparing studies or testimony, for another utility, a regulatory agency, consumer advocate group, attorney general, or similar entity shall also be disclosed.

The requirement to inform the Commission of any possible conflict of interest is a continuing obligation until the contract is completed.

G. BUDGET ESTIMATES

For each task described in Section 5.C. above, a cost estimate shall be provided. The cost estimate for each task shall include manpower costs, costs of supplies and materials, subcontractor costs, transportation costs and total cost. The manpower costs should be broken down to identify the category of personnel, estimated hours, rate per hour and total cost. **In addition, those costs that can be applied specifically to either KU or LG&E should be broken out as such. Those costs that should be applied equally between the Companies should also be itemized as such. A firm, total cost for the audit shall be provided.**

H. TIME ESTIMATES

For each task described in Section 5.C. above, an estimate of the time required for completion shall be provided in schedule form. Show all audit tasks, the estimated hours to complete each task, and the total estimated hours to complete the audit. An estimate of the percentage of time spent on-site shall also be provided.

I. INITIAL REQUEST FOR DOCUMENTS

The Consultant shall submit an initial information request for pertinent documents as a part of the proposal. Upon final selection of the Consultant by the Commission, the Companies shall initiate responses to the initial information request, thus enabling the Consultant to have access to the requested information during the early stages of the audit. **The Commission will require the Companies to make some of this data available prior to the start of the audit. Therefore, the initial information request should be clearly prioritized and should not be overly burdensome.**

J. WORK SPACE

Requirements for working space at the Companies' headquarters should be specified in the proposal.

K. PERIOD OF OFFER

A statement should be included stating that the Consultant's proposal shall remain valid for three months from the final date for submitting proposals as stated in Section 4. of this RFP.

L. SIGNATURES

All proposals must be signed by an official authorized to bind the Consultant and any subcontractors to the proposal's provisions.

M. WILLINGNESS TO WORK

The Consultant's willingness to work with the Staff Project Officer in the manner described in this RFP should be stated in the proposal.

6. Selection Criteria

All proposals received will be evaluated by the Commission and the Management Audit Branch which will consider several factors in selecting the proposal which most closely meets the requirements of this RFP. These factors are: the Consultant's understanding of the Commission's needs and a proposed approach that satisfies these needs; the Consultant's willingness to work with the Companies and their staff; the experience and ability of the consulting staff assigned to the project and their capability to perform the proposed work; the proposal's description of tasks in the work plan to determine if the Consultant possesses the knowledge and understanding of the technical functions to be examined in the study; the Consultant's willingness to include the Management Audit Branch in the various stages of the audit; demonstrated ability to meet stated deadlines; the project management techniques and practices; and comments from the Companies. **Since this is a focused review of the effects of the ESM pilot upon each of the respective Companies, the total cost will be an**

important consideration. The cost should be less than the cost of a comprehensive management audit.

7. Role of Commission Staff

The Commission is the principal client and, therefore, it is necessary that the Commission maintain control of this engagement. Mr. John A. Rogness III will be the Staff Project Officer designated by the Commission to ensure satisfactory and timely performance of the proposed work. Upon initiation of the audit, Mr. Rogness will be the sole contact for the Consultant in any discussions with the Commission.

The Consultant will be responsible for including the members of the Management Audit Branch in the planning and organizational meetings and in all stages of the project as directed by the Staff Project Officer.

The Commission will rely upon the Staff Project Officer to answer questions from time to time about the progress and status of the project. It will be necessary, therefore, that the Staff Project Officer and the Management Audit Branch be involved in the work of the management Consultants. This involvement will include attending selected interviews, reviewing analytical procedures, and monitoring the project's progress as to scope, budget, work plans, time, etc. It is expected that the Consultant will frequently discuss the audit's progress informally and directly with the Staff Project Officer.

The Consultant shall include in the proposal an estimate of the amount of time to be spent on-site during the audit. A schedule should identify on-site hours for each task area. The Commission expects that a majority of the Consultants' total hours will be spent on-site to allow the Management Audit Branch to effectively maintain control of

the engagement. The Commission expects the consulting firm to have a Project Manager on-site for the majority of this project.

In order to be kept apprised of the project's progress, periodic oral and written reports will be necessary in addition to the informal contact between the Consultant's staff and the Staff Project Officer. These reports are described below:

Weekly Informal Reports: By the first of each week, the Consultant will provide written notice of the interviews and site visits scheduled for the next following week to the Staff Project Officer for review and approval. It will be important for the Consultant to closely coordinate the schedule for interviews and site visits with each individual Companies' coordinator and the Staff Project Officer in order to minimize disruption of daily management activities. **At a minimum, ten (10) working days notice should be provided to the Staff Project Officer and the Companies' Coordinators.**

Monthly Written Status Reports: Based on the task plan submitted with the proposal, the monthly reports should consist of two parts:

- A. General narrative briefly describing progress-to-date and outlining reasons for any deviations from the task plan schedule. This narrative should also contain a statement indicating the status of the project in relation to time -- ahead, behind, or on schedule.
- B. Status sheet indicating actual hours logged by category (i.e., project manager, senior analyst or auditor, junior analyst or auditor, etc.), by consultant, material and supplies cost, and other costs, showing percentage of each in relation to proposal costs.

Monthly reports should be in the hands of the Staff Project Officer and the Companies' Coordinator by the tenth working day following the month's end and shall be submitted for any month worked.

Interview Summaries: By the fifth working day after each interview, formal summaries of each interview, including participants' conclusions and observations, data requests generated, issues identified, and follow-up required, shall be forwarded to the Staff Project Officer.

Interim Written Status Reports: The Consultant shall include in the proposal provision for other interim written status reports consistent with the overall project design.

8. Draft/Final Report

There shall be a combined report for both Companies. The final report must evolve from a draft report prepared at least thirty (30) days prior to the submission of the final report. The draft report should contain functional area task reports, a management summary, which includes findings of operating effectiveness and efficiency, and recommendations. All reports provided to the Management Audit Branch (task reports, draft report, final report) must be fully footnoted. The Management Audit Branch, the Companies and the Consultant will review the findings of each task report at a three-party roundtable meeting prior to the issuance of each task report to the Management Audit Branch. Task reports shall be submitted early enough in the project to allow for additional in-depth analyses and subsequent revisions. Following initial review of the task reports by the Management Audit Branch, the Companies will be afforded an opportunity to review the task reports. The Companies' written comments shall be submitted to the Consultant and the Management Audit Branch within ten (10) working days after it receives each task report so that the Consultant can make any changes of fact, conclusions, or recommendations before completing the draft report. After review of the task reports has been completed, the Consultant will be required to prepare a draft report for review by the Management Audit Branch. The Commission requires the final report to be in a narrative form and include the following terminology that will be meaningful to the Companies' management and others generally familiar with the subject areas:

- A. General Statement and Management Summary;

- B. Findings and Conclusions with Respect to the Four Primary Objectives of the Audit; and
- C. Recommendations Relating Specifically to the Seven “Areas of Inquiry”.
- D. Recommendations for immediate changes that management can institute involving potential cost savings, efficiency in operations, improvements in productivity, or enhancements to operational processes (“operating recommendations”). This would include a schedule listing the priority for each recommendation.

Recommendations must be justified and accompanied by adequate supporting information. **The final report should consist of a chapter describing the project, a summary chapter that ties all the issues together from the Companies’ perspectives and chapters for each Task Area.**

The Commission expects balanced report(s) to be prepared. The report(s) should identify opportunities for improvement, as well as make findings of superior management and process effectiveness.

The Consultant shall provide the Commission with 15 bound copies, one electronic copy, and one unbound, copy-ready copy of the final report. The Companies shall be provided with 10 copies, one electronic copy, and one unbound, copy-ready copy of the final report each.

9. Testimony

There are ongoing cases in connection with this management audit. The selected consulting firm must be willing to stand behind its findings, conclusions and recommendations by testifying, upon request by the Commission, in a future hearing

before the Commission at the Consultant's standard compensation rates as identified in the proposal. In addition, the selected firm can expect to be asked its opinion regarding any testimony submitted by the Companies or any intervenors in the proceedings.

All properly identified and related costs incurred by the Consultants for purposes identified under this Section will be paid by the Companies to the extent that: (a) the Consultant is providing testimony directly related to the content of the final report and action plans, (b) such testimony is within two years of the final audit report completion or in each of the Companies' next rate cases, whichever is later, and (c) the Consultant is providing testimony at the request of the Commission.

10. Action Plans

The Commission will not follow its usual process of developing management audit action plans. However, the consultant is expected to make recommendations regarding potential cost savings, efficiency in operations, improvements in productivity or enhancements to operational processes, based upon his observations and findings.

11. Work Papers

All work papers utilized by the Consultant during the course of the audit shall be available to the Commission and the Companies as appropriate during the audit and shall be turned over to the Commission concurrent with the submission of the finalized action plans. At a minimum, the work papers should include interview summaries, data request responses, and any special analyses prepared by the Consultant.

12. Contractual Arrangement

The contract for this engagement will be among the Commission, KU, LG&E, and the Consultant. Payments to the Consultant on a contract entered into as a result of this RFP will be based upon hours actually expended and actual expenses incurred on this engagement at rates quoted in the proposal. **Total payments under this contract shall not exceed the total cost quoted in the proposal.** Total cost includes itemized cost of supplies and materials, reasonable and customary cost of transportation and per diem expenses, and subcontract costs. Ten percent (10%) of the total cost of the project will be withheld until Commission acceptance of the final report. Neither the Commission nor the Companies will be liable for any costs incurred prior to the issuance of the contract, including such costs incurred by the successful bidder and such costs shall not be included in the charges submitted by the successful bidder as part of the project cost.

The audit must be completed in a timely manner. The audit shall be completed no later than **July 31, 2003**, approximately three (3) months from its commencement date unless the Commission and the Consultant agree to the extension. If the final report has not been issued by **August 31, 2003**, approximately four (4) months from the commencement date, absent agreement, the Consultant may be required to forfeit ten percent (10%) of the total cost of the project.

The Consultants' invoices, with supporting documentation, shall be presented to the Staff Project Officer by the 10th of each month for services provided and expenses incurred in the previous month. The Staff Project Officer shall review and approve all invoices, and forward them to each of the Companies. Payment shall be made by the

Companies to the Consultant within 20 working days of receipt of the approved invoices.

13. Conflicts of Interest

It is the intent of the Commission to assure that any consulting firm, any employees of such firm, or any approved sub-contractor of the consulting firm and any employees of such sub-contractor, who are in a position to affect the outcome of the reports or services rendered under this contract, shall, during the course of the contract, strictly comply with the following provisions concerning conflict of interest:

A. Solicitation or Acceptance of Gifts or Favors or Offers of Gratuities

No consulting firm or persons shall solicit or accept anything of value to the recipient, including a gift, loan, reward, meal, promise of future employment, favor, or service (except the Companies' services that are provided under existing tariffs) from employees or representatives of the Companies (or any affiliate) which is the subject of this contract.

By submission of a bid, the bidder certifies that no member of or delegate of Congress, nor any elected or appointed official or employee of the Commonwealth of Kentucky ("the Commonwealth") has or will benefit financially or materially from this procurement. Any contract arising from this procurement may be terminated by the Commission if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned officials or employees from the bidder, his agent or employee.

B. Conflicting Employment or Contractual Relationship

No consulting firm or persons shall have or accept any employment or enter into a contractual relationship with the Companies (or any affiliate) which is the subject of this contract for a period of two years following the completion of the audit. It is further required that any such relationship (held or acquired during the course of this contract) with any other utility, which is subject to the regulation of this Commission, shall be discussed with this Commission as to the timing and subject of such relationships. The consulting firm selected shall certify that it will not perform subsequent work for the Companies (or any affiliate) which is the subject of this contract for a

period of two years following the completion of the audit unless authorized in writing by the Commission.

C. Disclosure or Use of Certain Information

No consulting firm or persons shall disclose to any other person or entity any confidential or proprietary information ("Confidential Information") concerning the Companies (or any affiliate or member) which is the subject of this contract which has been gained in the course of performing services under this contract, nor shall such firm or persons use such information for any purpose other than the subject audit, without the prior written approval of the Commission and the Companies which are the subject of this contract. The Consultant shall take all reasonable steps to safeguard such Confidential Information to prevent unauthorized disclosure or use. Access to the Confidential Information shall be limited to employees, representatives and agents of the firm who have a need to use the Confidential Information for the purposes of the audit and who have executed a Nondisclosure Certificate, as provided by the Commission (the "Authorized Recipients"). Such Authorized Recipients agree not to disclose Confidential Information to any other persons or entities or to retain or use Confidential Information obtained hereunder for any purpose other than the audit. In the event that disclosure of any Confidential Information is compelled by a lawful order of a court or administrative agency with jurisdiction over the subject matter, the firm shall promptly give the Companies advance notice so that it can seek to protect its interests in keeping the information confidential.

Both KU and LG&E have the obligation to clearly identify and mark any materials that it deems Confidential Information so as to alert the Consultant that such materials are governed by this provision and are to be maintained as confidential. The Consultant's obligations and Authorized Recipients hereunder shall survive the termination of the contract.

The forgoing shall not be construed to limit access to, or use of, any information gained by the Authorized Recipients during the course of the audit by the Commission or its duly authorized staff.

D. Disclosure of Specified Interests

If any firm or persons holds any interest (other than as described in Section 12.B.) or owns or acquires a material financial position in the net worth of the Companies (or any affiliate) which are the subject of this contract, a statement shall be filed disclosing such interests prior to signing any contract with this Commission, or immediately upon the establishment of such an interest, if it occurs during the course of the contractual obligation to this Commission.

E. Corporate Conflict of Interest Policy

All consulting firms desiring to do business with this Commission must submit, as part of their proposal or potential contract, a copy of their Corporate Conflict of Interest Policy, particularly in regard to stock ownership or financial relationships with clients. In the case of non-incorporated consultants or where no corporate policy exists, a statement of intention to comply with the preceding provisions must be submitted.

14. Conditions

The following are additional conditions to the RFP. Bidders must state in the proposal that they will comply with these conditions.

- A. General - The Contract among the Commission, the Companies, and the Consultant shall consist of (1) the RFP and any amendments thereto, (2) the Consultant's offer submitted in response to the RFP, (3) any amendments to the Consultant's offer which are approved by the Commission, and (4) the Letter of Agreement between the Commission, the Companies, and the Consultant. In the event of a conflict in language among these documents, the provisions and requirements set forth and/or referenced in the Letter of Agreement, then the RFP shall govern.

No modification or change of any provision in the Contract shall be made unless agreed to in writing by the Consultant, the Companies, and the Commission.

The Contract shall be construed according to the laws of the Commonwealth of Kentucky. Any legal proceedings against the Commission or the Companies regarding this RFP or any resultant contract shall be brought in Commonwealth of Kentucky administrative or judicial forums. Venue will be in Franklin County, Commonwealth of Kentucky.

- B. Deviations from the Contract - The stated requirements appearing elsewhere in this RFP and the Letter of Agreement shall become a part of the terms and conditions of any resulting contract. Any deviations therefrom must be specifically defined in the Consultant's proposal which, if successful, shall become part of the Contract, but such deviations must not be in conflict with the basic nature of this offer.
- C. Entire Agreement - The RFP, the Letter of Agreement, and the selected Consultant's proposal, as accepted by the Commission, represent the entire agreement ("the Agreement") among the parties with respect to the subject

matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral, among the parties relating to its subject matter and shall be independent of and have no effect upon any other contracts.

- D. Advertising Award - The Consultant agrees not to refer to award of the Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commission, the Companies, or the Commonwealth of Kentucky.
- E. Notices - After the Contract is awarded, all notices under this contract shall be deemed duly given when: (1) delivered by hand or (2) sent by registered mail, receipt requested. All notices to the Commission are to be delivered to the Staff Project Officer. All notices to the Companies are to be delivered to the respective Company's coordinator.
- F. Titles - Titles of paragraphs are used to facilitate ease of reference only and shall not be construed to express or infer a contractual construction of language.
- G. Contract Term - The Contract established from this RFP shall begin on the date of the Letter of Agreement.
- H. Termination of Contract - The Contract resulting from this RFP shall be subject to the following termination provisions. The Contract may be terminated by the Commission for:
 - a. Default - Any Consultant who is determined in writing by the Commission to be in breach of any of the terms or conditions of a contract with the Commission may, in the discretion of the Commission, be declared in default and such contract may be terminated as a result of such default. A default in performance by a Consultant for which a contract may be terminated shall include, but shall not necessarily be limited to, failure to perform the contract according to its terms, conditions and specifications; failure to make delivery within the time specified or according to a delivery schedule fixed by the contract.
 - b. Consultant Bankruptcy - In the event of the filing of a petition in bankruptcy by or against the Consultant, the Commission shall have the right to terminate the Contract upon the same terms and conditions as a termination for default.
 - c. Unavailability of Funds - In the event that the Commission determines that funds for the Contract become unavailable, the Commission shall

have the right to terminate the Contract without penalty and upon the same terms and conditions as a termination for convenience. Availability of funds will be determined at the sole discretion of the Commission.

- d. Convenience - The Commission shall be authorized to terminate for its own convenience all contracts for the procurement of services when the Commission has determined that such terminations will be in the public interest. When it has been determined that a contract should be terminated for the convenience of the Commission, the Commission shall be authorized to negotiate a settlement with the Consultant according to terms deemed just and equitable by the Commission.

The Consultant shall be paid all monies due for services rendered up to the termination date, as well as all monies due for commitments which cannot be terminated at such termination date or be otherwise mitigated.

Whenever a contract is terminated for the convenience of the Commission, the Consultant shall have the burden of establishing the amount of the compensation due, by submission of complete and accurate cost data as presented in his bid for the contract and evidence of expenses paid or incurred and services performed in connection with the contract from the date of award through the date of termination. Payment of the sum agreed to in settlement of a contract terminated for convenience of the Commission shall be made from the same source of funds or account as the original contract.

- I. Procedure on Termination - Upon delivery by certified mail to the Consultant of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective, the Consultant shall:
 - a. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
 - b. Place no further orders for services except as may be necessary for completion of such portion of the work under the Contract as is not terminated.
 - c. Terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination.

- d. Assign to the Commonwealth in the manner and to the extent directed by the Commission all of the rights, titles, and interests of the Consultant under the orders so terminated. The Commonwealth shall have the right, at its discretion, to settle or cause payment of any or all claims arising out of the termination of such orders with the approval or ratification of the Commission and settle all outstanding liabilities arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of the contract.
- e. Complete performance of that part of the work not terminated by the Notice of Termination.
- f. Take such action as may be necessary, or as the Commission may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Consultant and in which the Commission has or may acquire an interest.

The Consultant shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

- J. Termination Claims - After receipt of a Notice of Termination, the Consultant shall submit to the Commission any termination claim in the form prescribed by the Commission no later than two (2) months from the effective date of termination.

If the Consultant fails to submit the termination claim within the time allowed, the Commission may, subject to any review required by the Commonwealth procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to it, the amount, if any, due to the Consultant by reason of the termination and shall direct that payment of that amount be made.

In the event the Consultant and the Commission fail to agree in whole or in part on the costs to be paid to the Consultant in connection with the total or partial termination of work, the Commission shall determine on the basis of information available the amount, if any, due to the Consultant and shall direct that payment of that amount be made.

The Consultant shall have the right of appeal, as stated under Disputes, from any such determination made by the Commission.

- K. Consultant Personnel - Personnel commitments identified in the Consultant's proposal shall be considered mandatory to the work to be performed under this RFP. Personnel assignments in the proposal shall not

be changed without prior written consent of the Staff Project Officer. Replacement of such personnel, if approved, shall be with personnel of equal or superior ability and qualifications. The Commission may, at any time, require the Consultant to reassign or otherwise remove any employee found not qualified or otherwise unacceptable to the Commission.

- L. Changes in Scope - The Commission may, at any time and in writing, change the general scope of the Contract upon prior notice to and input from the Companies. If any approved change affects the cost of, or the time required for, the performance of any part of the work, an adjustment shall be made in the contract which shall be modified in writing accordingly.
- M. Force Majeure - Consultant shall not be liable for any damages for any inability to perform, or for any delays or interruptions beyond Consultant's reasonable control in performing any of Consultant's obligations under this Contract, including but not limited to, those arising from acts of God, fires, floods, riots, quarantines, strikes by consultant's employees or embargoes. Consultant shall advise the Commission and the Companies immediately of any failure, delay, or interruption upon occurrence thereof. Any such inability, delay or interruption, even though existing on the date of the Contract or on the date of the start of the work, shall require Consultant to submit a recovery plan detailing the manner in which the delay shall be remedied, the revised schedule and any added expenses. Consultant shall use reasonable diligence to proceed with the work notwithstanding the occurrence thereof. Force Majeure shall apply only to the part of the Work directly affected by the particular failure, delay or interruption, and shall not apply to the work as a whole or any other unaffected part thereof.
- N. Disputes - Prior to the initiation of any action in a court by any party to this Contract concerning any contract, claim, or controversy, the Commission may, subject to any limitations or conditions imposed by regulations, settle, compromise, direct payment to be made or otherwise adjust the claim by or against, or controversy with, the Consultant relating to the Contract, including, but not limited to, a claim or controversy based on breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- O. Disclosure of Proposal Contents - The contents of any proposal in response to this RFP shall be confidential and shall not be disclosed to anyone other than the Commission and its staff, and the Companies and their agents until a contract selection is made. Upon selection of a proposal by the Commission, the proposal of the consultant selected to perform the service and the proposals of all unsuccessful consultants shall be made available for public inspection.

- P. Confidentiality of Contract Terms - The Consultant, the Companies, and the Commission agree that all information communicated among them before the effective date of the Agreement shall be received in strict confidence and shall not be disclosed by the receiving party, its agents, or employees without prior written consent of the other parties. Such material will be kept confidential to the extent allowed by law until the effective date of the Agreement, at which time the Agreement shall be made available for public disclosure.
- Q. Consultant Responsibility - Any contract that may result from the RFP shall specify that the Consultant is solely responsible for fulfillment of the Contract with the Commission. Any subcontractors shall be identified in the proposal.
- R. Consultant Affiliation - If any affiliate of the Consultant takes any action which, if done by the Consultant, would constitute a breach of the contract, the same shall be deemed a breach by the Consultant. "Affiliate" shall mean a parent, subsidiary or other company controlling, controlled by or under common control with the Consultant.
- S. Assignment - The Consultant shall not assign the Contract in whole or in part or any payment arising therefrom without the prior written consent of the Commission. Any assignment without the written consent of the Commission shall be void.
- T. Hold Harmless - The Consultant agrees to indemnify, defend, and hold harmless the Commonwealth, the Commission, and the Companies, their officers, agents, and employees from:
- a. Any claims by or losses to any person or firm alleging injury or damage resulting from the intentional or negligent acts of the Consultant, its officers or employees in the performance of the Contract.
 - b. Any failure of the Consultant, its officers or employees to observe the laws of the Commonwealth of Kentucky, including but not limited to labor and minimum wage laws.
- U. Permits, Licenses, Taxes and Registration - The Consultant shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of all federal, state and local governments in which work under this Contract is performed.

The Consultant shall pay any sales, use or personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other

taxes levied upon this contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Consultant.

- V. Employment Practices - The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliations, or handicap. The Consultant must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliations, or handicap. Such action shall include, but is not limited to, the following: employment, promotion, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this clause.

The Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or handicap, except where it relates to a bona fide occupational qualification.

The Consultant shall comply with the nondiscrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with 41 CFR Chapter 60. The Consultant shall comply with related laws and regulations of the Commonwealth of Kentucky.

The Consultant shall comply with regulations issued by the Secretary of Labor of the United States in 20 CFR Part 741, pursuant to the provisions of Executive Order 11758 and the Federal Rehabilitation Act of 1973.

The Consultant shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Vocational Rehabilitation Act of 1973 as amended, and the Kentucky Civil Rights Act.

- W. Rights and Remedies - The rights and remedies of the Commission provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

- X. Contract Severability - If any provision of the Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then the Commission, the Consultant, and the Companies shall be relieved of all obligations arising under such provision. If the remainder of the Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.
- Y. Waiver - No covenant, condition, duty, obligation, or undertaking contained in or made a part of the Contract will be waived except by written agreement of the parties, and forbearance or indulgence in any other form or manner by any party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, any other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- Any consent by any party to or waiver of a failure by the other, whether express or implied, shall not constitute a consent of, waiver of, or excuse for any other different or subsequent failure.
- Z. Insurance - The Consultant will provide public liability, property damage and worker's compensation insurance, insuring as they may appear, the interests of all parties to this Contract against any and all claims which may arise out of the Consultant's actions under the terms of this Contract. In the event any carrier of such insurance exercises cancellation, notice will be made immediately to the Commission of such cancellation.
- AA. Accounting Requirements - The Consultant shall establish and maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP). The accounting system shall maintain records pertaining to the tasks defined herein and any other costs and expenditures made under the contract.
- BB. Audit Requirements - The Consultant shall maintain books, documents, and other evidence pertaining to the administrative costs and expenses of the Contract to the extent necessary and in such detail as shall properly reflect all costs, direct and apportioned, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Contract. Accounting records related to the provision of service under this Contract shall be open to the Commission at any time from the commencement date through 12 months subsequent to the audit's conclusion.

- CC. Contract Records Retention - The Consultant shall preserve and make available to the Commission and the Companies all books, documents, papers, and records related to the Contract for a period of one year from the date of expiration or termination of the Contract.

Records involving matters in litigation shall be kept for one year following the termination of litigation and associated appeals.

Authorized representatives of the Commission may examine and copy the items listed above during the contract period and during the periods described above. The Companies may also examine and copy the items listed above during the contract period and during the periods described above after the audit has been completed.

- DD. Legal Fees - In the event that the Commission or the Companies prevail in a legal action to enforce any provision of the Contract, the Consultant agrees to pay all expenses of such action, including reasonable attorney's fees and costs at all stages of litigation as set by the court or hearing officer.

- EE. Independent Price Determination - By submission of a proposal the Consultant certifies the following:

- a. Prices in the proposal have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other consultant or with any competitor.
- b. Unless otherwise required by law, the prices that have been quoted in the proposal have not been knowingly and will not knowingly be disclosed by the Consultant prior to award directly or indirectly to any other consultant or to any competitor.
- c. No attempt has been or will be made by the Consultant to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.