

## **Appendix D**

# **Mutual Confidentiality Agreement**

Email to:        pisimmons@aep.com  
                  Attn: Peggy Simmons  
                  American Electric Power Service Corporation  
                  155 West Nationwide Boulevard  
                  Suite 500  
                  Columbus, OH 43215  
                  Fax: (614) 583-1611

Due:             5:00 p.m. EPT

This Mutual Confidentiality Agreement (“Agreement”) dated as of \_\_\_\_\_, 2008 (“Effective Date”) is made and entered into by and between American Electric Power Service Corporation (“AEPSC”) a New York Corporation as agent for Appalachian Power, Columbus Southern Power Company, Indiana Michigan Power, Kentucky Power, Ohio Power Company, Public Service Company of Oklahoma and Southwestern Electric Power Company and \_\_\_\_\_, a(n) \_\_\_\_\_ (“Bidder”).

### **Recitals:**

**I.** Bidder is or is considering submitting a proposal (the “Proposal”) in response to a Request for Proposals (the “RFP”) issued by AEPSC for renewable energy as described in the RFP. If submitted, the Proposal will become the property of AEPSC and shall be held confidential under terms of the RFP.

**II.** It may become desirable that AEPSC and Bidder exchange other confidential information pursuant to questions, responses or other communications that are not contained in the Proposal and which the parties desire to protect as confidential.

**III.** In addition, if the Proposal, if submitted, is selected by AEPSC, then Bidder and AEPSC will negotiate about a proposed agreement between AEPSC and

American Electric Power  
1,100 MW Renewable Resources Solicitation

Bidder to implement the Proposal (the “Proposed Agreement”). Bidder and AEPSC want to keep all negotiations concerning the Proposed Agreement, including the Proposed Agreement itself and all drafts of the Proposed Agreement, confidential.

**IV.** The parties are willing to exchange such confidential information pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**Section 1. Definitions.**

- 1.1** (a) “Confidential Information” means any information that is disclosed by the Disclosing Party to the Receiving Party or its Representatives in connection with the RFP or any Proposed Agreement (collectively, the “Transaction”), whether before or after the date hereof and irrespective of the format in which the information is provided. For avoidance of doubt, “Confidential Information” includes:
- (i) Written information or machine-readable data, including questions, responses or communications in connection with AEPSC’s RFP or any Proposed Agreement, notes, reports, assessments, specifications, drawings, financial statements and projections, software and databases, customer information, sales and marketing strategies, and any other written information or machine-readable data;
  - (ii) Orally conveyed information, including but not limited to demonstrations that are directly related to written or other tangible Confidential Information;
  - (iii) Any hardware, including but not limited to samples, devices and any other physical embodiments delivered to the Receiving Party;
  - (iv) Any Evaluation Material; or
  - (v) The existence of this Agreement, the terms of this Agreement and any Proposed Agreement, including all drafts of the Proposed Agreement and all negotiations concerning the Proposed Agreement, that may arise stemming from the Bidder’s Proposal.

- (b) “Confidential Information” does not include information which:
- (i) is, or subsequent to disclosure becomes, part of the public domain through no fault of the Receiving Party;
  - (ii) is lawfully disclosed to the Receiving Party by a third party which, to the knowledge of the Receiving Party, does not have a confidentiality obligation to the Disclosing Party;
  - (iii) was lawfully in the possession of the Receiving Party prior to disclosure by the Disclosing Party; or
  - (iv) is lawfully and independently developed by the Receiving Party without use of the Confidential Information disclosed by the Disclosing Party.

**1.2** “Disclosing Party” means the party disclosing Confidential Information.

**1.3** “Evaluation Material” means notes, reports or other documents which reflect, interpret, evaluate, include or are derived from the Confidential Information.

**1.4** “Receiving Party” means the party receiving Confidential Information.

**1.5** “Representatives” means a party’s employees, officers, directors, attorneys, accountants, consultants, advisors and agents (including potential lenders, equity partners, underwriters, or other parties involved in the Transaction for the party), and the party’s affiliates and the employees, officers, directors, attorneys, accountants, consultants, advisors and agents thereof.

**Section 2. Confidentiality.** Except as provided in Section 5, the parties hereby agree that the Confidential Information will be kept confidential during the term of this Agreement. The parties also agree that without the prior written consent of the Disclosing Party, the Confidential Information will not be disclosed by the Receiving Party, in whole or in part, to any other person except as provided herein. Each party shall use the same care in protecting the other’s Confidential Information as it uses to protect its own

confidential information, provided that neither party shall use less than reasonable efforts to protect the other's Confidential Information. Notwithstanding the foregoing, the Receiving Party may (a) disclose Confidential Information to its Representatives whose access is necessary to conduct the evaluations and negotiations in connection with the Transaction, or for supervisory, regulatory or similar purposes, and who have been informed of and have agreed to abide by the confidentiality restrictions contained in this Agreement and (b) make a limited number of copies of the Confidential Information in order for the Receiving Party to adequately use the Confidential Information subject to the terms and conditions of this Agreement. Each party agrees to be responsible for the actions, uses and disclosures of any of its Representatives in accordance with the terms and restrictions of this Agreement.

**Section 3. Ownership and Use of Confidential Information.** All Confidential Information (except Evaluation Material) shall remain the property of the Disclosing Party. No license or other rights under any patents, trademarks, copyrights or other proprietary rights is granted or implied by the disclosure of the Confidential Information. Neither party shall use the Confidential Information for any purpose other than for evaluation of and negotiations relating to the Transaction.

**Section 4. Disposition of Confidential Information.** The Receiving Party, upon written request from the Disclosing Party, shall promptly return or destroy all Confidential Information in its possession; provided, however, with respect to Evaluation Materials, the Receiving Party may at its discretion destroy such Evaluation Material. If requested by the Disclosing Party, the Receiving Party shall provide the Disclosing Party with a certification that all Confidential Information and Evaluation Material has either been returned or destroyed, as appropriate. Notwithstanding the foregoing, the Receiving Party may retain one copy of the Confidential Information solely for archival purposes and for the purpose of demonstrating compliance with this Agreement. The return or destruction of the Confidential Information shall not extinguish any rights or obligations under this Agreement with respect to the Confidential Information.

**Section 5. Legally Required Disclosures.** If the Receiving Party or its Representatives become subject to a bona fide requirement or request by any regulatory, governmental, judicial or supervisory authority (by subpoena, oral deposition, interrogatories, request for production of documents, civil investigative demand,

administrative order or otherwise), to disclose any of the Confidential Information, or if such disclosure is necessary in order to obtain or maintain regulatory or governmental approvals, applications or exemptions, the Receiving Party will provide the Disclosing Party with as much advance notice as and to the extent as permitted and practicable to afford the opportunity to seek an appropriate protective order or other appropriate remedy to prevent the disclosure. The Receiving Party or any of its Representatives being compelled to disclose such Confidential Information shall reasonably cooperate with the Disclosing Party, at its expense, to enable the Disclosing Party to obtain a protective order or other reliable assurance that confidential treatment will be accorded the same. If such protective order or other appropriate remedy is not obtained, the Receiving Party or any of its Representatives being compelled to disclose such Confidential Information may disclose the information without liability hereunder provided that the party may only furnish that portion of the Confidential Information which is legally required or necessary.

**Section 6. Term.** If the Bidder's Proposal and/or related negotiations do not result in a final agreement, then this Agreement is effective for three (3) years from the Effective Date stated above. If the negotiations result in a final agreement, then this Agreement is effective until three (3) years after the termination of the final agreement.

**Section 7. No Warranties.** The Disclosing Party makes no representations or warranties as to the reliability, accuracy or completeness of the Confidential Information. The Disclosing Party shall not be subject to any liability to the Receiving Party based on the Receiving Party's use of the Confidential Information.

**Section 8. Remedies.** The parties acknowledge that improper or unauthorized use or disclosure of Confidential Information could cause irreparable harm to the Disclosing Party and that monetary damages would not be an adequate remedy for a breach of this Agreement. In the event of any breach or threatened breach of this Agreement, the non-breaching party shall be entitled to pursue injunctive and other equitable relief, and the breaching party agrees to waive any requirement for the posting of a bond in connection with such remedy. Such injunctive and equitable relief shall not be deemed to be the exclusive remedy for a breach of this Agreement, but shall be in addition to all other available remedies. In no event shall either party be liable to the other for any incidental,

indirect, special, punitive or consequential damages (including without limitation damages for lost profits).

**Section 9. Relationship of Parties.** Neither party shall have any obligation to commence or continue discussions or negotiations, to exchange any Confidential Information, to reach or execute any agreement with the other party, to refrain from engaging at any time in any business whatsoever, or to refrain from entering into or continuing any discussions, negotiations or agreements at any time with any third party, until each party executes a definitive agreement. Until such definitive agreement is executed, neither party shall have any liability to the other party with respect to the Transaction except as set forth in this Agreement. Neither party shall have any liability to the other party in the event that, for any reason whatsoever, no such definitive agreement is executed.

**Section 10. General.**

**10.1 Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York without giving effect to principles of conflicts of law thereof.

**10.2 Entire Agreement.** This Agreement constitutes the entire Agreement between the parties, supersedes any prior understandings or representations relating to the confidential treatment of the Confidential Information, and shall not be modified except by a written agreement signed by both parties.

**10.3 Assignability.** This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that AEPSC may assign this Agreement to one or more of its affiliated companies.

**10.4 Severability.** All provisions of this Agreement are severable, and the unenforceability of any of the provisions of this Agreement shall not affect

the validity or enforceability of the remaining provisions of this Agreement.

**10.5 No Waiver.** Failure of either party to insist upon strict performance of any of the terms and conditions shall not be deemed to be a waiver of those terms and conditions.

**10.6 Counterparts and Faxed Signatures.** This Agreement may be executed in counterparts, and in the absence of an original signature, faxed signatures will be considered the equivalent of an original signature.

**10.7 Notices.** Notices shall be in writing and shall be sent to the addresses listed below, either by personal delivery, by the U.S. Mail, overnight mail, fax or other similar means. All notices shall be effective upon receipt.

The parties have signed this Agreement effective as of the later signature date set forth below.

**American Electric Power Service Corporation as agent  
for Appalachian Power, Columbus Southern Power Company,  
Indiana Michigan Power, Kentucky Power,  
Ohio Power Company, Public Service Company of Oklahoma  
and Southwestern Electric Power Company**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BIDDER: insert full legal name**

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Bidder Address::

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_