

ORDINANCE NO. 01-01

AN ORDINANCE OF THE COUNTY OF MARSHALL, KENTUCKY, CONFIRMING, RATIFYING, REAPPROVING AND READOPTING AB INITIO ORDINANCE NO. 01-01 OF THE COUNTY IN RESPECT OF THE ISSUANCE OF NOT TO EXCEED \$400,000,000 PRINCIPAL AMOUNT OF THE COUNTY'S INDUSTRIAL BUILDING REVENUE BONDS (DUKE ENERGY MARSHALL COUNTY LLC PROJECT); AND CONFIRMING, RATIFYING, REAPPROVING AND READOPTING ALL ACTIONS TAKEN IN RESPECT THERETO.

WHEREAS, Duke Energy Marshall County, LLC, a Delaware Limited Liability Company (the "Company"), is presently acquiring, constructing, equipping and installing industrial building facilities in the County of Marshall, Kentucky (the "County"), for use by the Company as a natural gas-fired, steam electric generating facility, constituting a manufacturing facility, consisting of the site of the facility, together with related buildings, generating turbines, equipment and functionally-related facilities, such described facilities to be situated in the County of Marshall, Kentucky (the "Project") and

WHEREAS, pursuant to Sections 103.200 to 103.286, inclusive, of the Kentucky Revised Statutes (collectively the "Act"), the County, by and through its Fiscal Court, has duly enacted Ordinance No. 01-01, on April 18, 2001, which Ordinance No. 01-01 is in full force and effect, to assist the Company in the financing of the Project, the acquisition, construction, equipping and installation of which by the Company is expected to assist in preventing and relieving unemployment in the County and encourage the retention and expansion of industry in accordance with the public policy of the Commonwealth, as stated in the Act; and

WHEREAS, pursuant to Ordinance No. 01-01, the County agreed to issue its industrial building revenue bonds in one or more Series from time to time in total amount not to exceed \$400,000,000 or such amount as may be hereafter further agreed to by the parties hereto (the "Bonds"), such Bonds to be payable solely and only from the proceeds of lease payments to be made by the Company and to not be payable from any County funds or assets whatsoever and to not constitute a debt or general obligation of the County, such Bonds, in one or more Series, to be sold and delivered by the County to purchasers arranged by the Company to pay the costs of the Project, together with costs incident to the authorization, sale and issuance of the Bonds, but with such contributions from the Company as may be necessary and the first series of the Bonds has been duly issued and the Project is under construction.

WHEREAS, all actions and things necessary and appropriate to the financing and implementation of the Project having been carried out, it is appropriate that the County confirm, ratify, reapprove and readopt Ordinance No. 01-01 and all actions taken and to be connection with respect thereto and in that regard to (a) reauthorize, confirm and ratify the execution of the Lease Agreement between the County and the Company, (b) reauthorize, confirm and ratify the execution of the Trust Indenture to First Union National Bank, as Trustee for the holders of the Bonds, and the execution of related documents, (c) reauthorize, confirm and ratify the leasing of the Project to the Company, at rentals sufficient to pay and discharge the Bonds in full, and to reauthorize provisions for operating, maintaining and insuring the Project, and (d) reauthorize, reapprove, confirm and ratify the sale of the Bonds, including the first Series thereof, and reapprove, confirm and ratify other necessary or related documents and actions;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY OF MARSHALL, KENTUCKY, ACTING BY AND THROUGH ITS FISCAL COURT, AS FOLLOWS:

Section 1. For the purposes set forth in the preamble, there is hereby ordained, authorized and directed the following:

(A) The incorporation by reference of the preambles of this Ordinance as integral parts of this Ordinance, to the same extent as if repeated herein verbatim, it being declared that the statements of fact set forth in such preambles are true and accurate in all respects.

(B) The readoption, reauthorization, confirmation, ratification and affirmation of Ordinance No. 01-01, ab initio, and all documents approved, adopted and delivered thereunder, and all actions taken pursuant thereto, effective as of April 18, 2001, the date of adoption of Ordinance No. 01-01.

(C) The reauthorization, confirmation and ratification of the execution, sale, delivery and issuance of up to \$400,000,000 principal amount of County of Marshall, Kentucky, Industrial Building Revenue Bonds, such Bonds to be issued, as requested by the Company and approved by the County, including the issuance of the initial Series of such Bonds of \$2,100,086.75, designated as County of Marshall, Kentucky, Industrial Building Revenue Bonds, 2001 Series A (Duke Energy Marshall County, LLC Project) (the "2001 Series A Bonds"), which were issued under date of May 25, 2001 in the form and subject to the terms and specifications set forth in the Indenture and Mortgage Deed of Trust and in the Bond Purchase Agreement identified herein.

(D) The reauthorization, confirmation and ratification of the use of the proceeds of the Bonds, including the 2001 Series A Bonds, as provided in said Indenture and Mortgage Deed of Trust and in the Lease Agreement hereinafter identified and approved, for application to the costs of acquisition, construction, equipping and installation of the Project and (ii) to pay certain costs of issuance of the Bonds.

Section 2. The reauthorization, confirmation and ratification of the execution, acknowledgment and delivery on behalf of the County, with the attestation of the Fiscal Court Clerk, the Lease Agreement between the County and the Company (the "Lease Agreement"), which Lease Agreement is hereby reapproved, reauthorized, confirm and ratified as set forth of record in Miscellaneous Book 80, Page 565 in the Marshall County Clerk's office, and the reauthorization, confirmation and ratification of the execution, acknowledgment and delivery by the County Judge/Executive, with the attestation of the Fiscal Court Clerk, of the Indenture and Mortgage Deed of Trust (the "Trust Indenture") between the County and First Union National Bank, Charlotte, North Carolina as Trustee (the "Trustee"), as set forth of record in Mortgage Book 375, Page 338, in the office of the Marshall County Clerk.

Section 3. The reauthorization, confirmation and ratification of the Bond Purchase Agreement among the County, the Company and the Purchaser of the Bonds, as authorized in Ordinance No. 01-01.

Section 4. As provided in Ordinance No. 01-01 and hereby confirmed, ratified and readopted, the County shall never be required to pay from its own funds any financial obligations deriving from the issuance of the Bonds, and the Bonds are redeclared to be special and limited obligations payable solely and only from the receipts derived under the Lease Agreement and any receipts derived under the trust estate created under the Trust Indenture, and the Guaranty Agreement, as provided in the documents herein approved.

Section 5. The provisions of this Ordinance may be supplemented from time to time by ordinance, resolution or municipal order of the Fiscal Court.

Section 6. The provisions of this Ordinance are hereby declared to be severable and, if any section or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

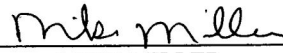
Section 7. In the event of any conflict or conflicts between the provisions of this Ordinance and of any prior ordinances, resolutions, municipal orders or parts thereof, the provisions of this Ordinance shall prevail.

Section 8. This Ordinance shall be in full force and effect from and after its adoption as provided by law.

GIVEN FIRST READING APPROVAL at a duly convened meeting of the Fiscal Court of the County of Marshall, Kentucky, held on the 17th day of July, 2001.

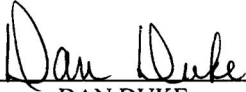
GIVEN SECOND READING AND ADOPTED at a duly convened meeting of the Fiscal Court of the County of Marshall, Kentucky, held on the 18th day of July, 2001, on the same occasion signed in open session by the County Judge/Executive as evidence of his approval, attested by the Fiscal Court Clerk, and ordered to be enrolled.

(SEAL)



MIKE MILLER
County Judge/Executive

ATTEST:



DAN DUKE
Fiscal Court Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Fiscal Court Clerk of the Fiscal Court of Marshall County, Kentucky, and as such official, I further certify that the foregoing is a true, correct and complete copy of an Ordinance duly adopted on second reading by said Fiscal Court at a meeting held on July 18th, 2001, on the same occasion signed by the County Judge/Executive and now in full force and effect, all as appears from the official records of said Fiscal Court in my possession and under my control.

WITNESS my hand and the seal of said Court, this 18th day of July, 2001.

(SEAL)



DAN DUKE
Fiscal Court Clerk