

ORDINANCE NO. 01-01, SERIES 2001

AN ORDINANCE OF THE COUNTY OF MARSHALL, KENTUCKY, AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$400,000,000 PRINCIPAL AMOUNT OF COUNTY OF MARSHALL, KENTUCKY, INDUSTRIAL BUILDING REVENUE BONDS, (DUKE ENERGY MARSHALL COUNTY, LLC PROJECT) AND THE AUTHORIZATION OF THE IMMEDIATE SALE AND ISSUANCE OF THE INITIAL SERIES OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN THE COUNTY OF MARSHALL, KENTUCKY, AND DUKE ENERGY MARSHALL COUNTY, LLC; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE AND MORTGAGE DEED OF TRUST SECURING SAID BONDS; CONFIRMING AND APPROVING THE SALE OF SAID BONDS TO THE PURCHASER THEREOF; APPROVING A BOND PURCHASE AGREEMENT IN RESPECT OF SAID BONDS, AND TAKING OTHER RELATED ACTIONS.

WHEREAS, Duke Energy Marshall County, LLC, a Delaware Limited Liability Company (the "Company"), proposes to acquire, construct, equip and install 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, in this connection it has been determined that the County may assist the Company by causing the acquisition, construction, equipping and installation of the Project and by entering into a lease agreement with reference thereto pursuant to authority of Sections 103.200 to 103.286, inclusive, of the Kentucky Revised Statutes (collectively the "Act"), all in furtherance of the purposes of the Act and for the public benefit of the residents and inhabitants of the County, such lease agreement to be upon such terms and conditions as the Act may authorize and the County and the Company may deem advisable; and

WHEREAS, the acquisition, construction, equipping and installation of the Project by the Company will implement economic expansion and growth of business in the County and is expected to create certain employment opportunities, with the result that the acquisition, construction, equipping and installation of the Project by the Company will 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, (i) the County is further authorized by the Act to issue its industrial building revenue bonds (the "Bonds") for the purpose of defraying the costs of acquiring, constructing, equipping and installing the Project; (ii) prior to land and other acquisition, construction, equipping

and installation of initial elements of the Project, discussions occurred between the Company and responsible officials of the County incident to the issuance of industrial building revenue bonds by the County, which arrangements were later formally ratified by adoption of a Resolution/Municipal Order by the County on February 20, 2001, which is hereby ratified, determined to have been effective at all times and is continued in full force and effect; (iii) the County has agreed with the Company to issue such Bonds upon compliance by the Company with certain conditions, requirements and obligations, and subject to the approval by the County of the terms of all agreements, ordinances and other documents required incident to said Bond issue or Bond issues; and (iv) the County has authorized the Company to proceed with the acquisition, construction, equipping and installation of the Project, in phases, as required by the business requirements of the Company, subject to reimbursement of the costs of the Project from the proceeds of such bonds, when, as and if issued; and

WHEREAS, based upon an estimate of the costs of the Project, at the request of the Company, the County proposes 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

WHEREAS, the County, pursuant to the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the "Act"), is authorized to issue its industrial building revenue bonds and to apply the proceeds from the sale thereof to the Company for the acquisition, construction, equipping and installation of the Project and to lease the Project to the Company at rentals sufficient to pay and discharge the Bonds in full,, for the purpose of providing for the increase of industry and to alleviate and prevent conditions of unemployment in Kentucky (the "Project"); and

WHEREAS, the County has agreed and is willing, pursuant to the Act, to now authorize and issue its industrial building revenue bonds for purposes of financing the costs of the Project and paying costs of issuance of the bonds, upon terms which are set forth in the Lease Agreement hereinafter identified and approved; and

WHEREAS, pursuant to the provisions of Section 103.230 of the Act, the Company has made a request in writing, addressed to the County, that the sale of the bonds hereinafter identified and authorized (the "Bonds"), bearing interest as set out in the Trust Indenture hereinafter identified and approved, shall be made upon a negotiated basis; and

WHEREAS, it is necessary and proper in the interests of the economic and general welfare of the citizens, residents and inhabitants of the County and its environs that the County, at the request of the Company, (a) authorize the issuance of the Bonds, to be issued from time to time in series, in principal amount not exceeding \$400,000,000 in order (i) to finance for the benefit of the Company, the acquisition, construction, equipping and installation of the Project, and (ii) to pay certain costs

of issuance of the Bonds, (b) authorize the execution of a Lease Agreement between the County and the Company, (c) authorize the execution of a Trust Indenture to First Union National Bank, as Trustee for the holders of the Bonds, and the execution of related documents, (d) authorize and approve the leasing of the Project to the Company, at rentals sufficient to pay and discharge the Bonds in full, and to provide for operating, maintaining and insuring the Project, and (e) authorize and approve the sale of the first Series of the Bonds and approve 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 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 authorization, 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, and the immediate issuance of the initial Series of such Bonds, 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 shall be issued 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 and approved herein.

(C) Authorization 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 County Judge/Executive is hereby authorized, empowered and directed to execute, acknowledge and deliver on behalf of the County, with the attestation of the Fiscal Court Clerk, a certain Lease Agreement between the County and the Company (the "Lease Agreement"), which Lease Agreement is hereby approved, authorized and adopted in substantially the form submitted herewith and designated Exhibit A, with such changes therein as the officers executing the same may require or approve on behalf of the County, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. In order to provide for the authorization and security of the Bonds, including the 2001 Series A Bonds, and to prescribe the terms and conditions upon which the Bonds, including the 2001 Series A Bonds, are to be issued and outstanding, secured, executed, authenticated, accepted and held, the County Judge/Executive is hereby authorized, empowered and directed to execute and acknowledge on behalf of the County, with the attestation of the Fiscal Court Clerk, a certain Indenture and Mortgage Deed of Trust (the "Trust Indenture"), and said officials are hereby

authorized, empowered and directed to cause the Trust Indenture to be accepted, executed and acknowledged by First Union National Bank, Charlotte, North Carolina as Trustee (the "Trustee"), hereby so appointed. The Trust Indenture is hereby approved, authorized and adopted in substantially the form submitted herewith and designated Exhibit B, with such changes as the officers executing the same may require or approve on behalf of the County, such approval to be conclusively evidenced by the execution and delivery thereof. The 2001 Series A Bonds will mature as to principal and bear interest as set forth in the Trust Indenture, reference to which is hereby made.

Section 4. With respect to the sale of the 2001 Series A Bonds, and upon the request and recommendation of the Company, the County further approves, and the County Judge/Executive is authorized and directed to execute and deliver on behalf of the County, a certain Bond Purchase Agreement among the County, the Company and the Purchaser of the Bonds, as designated therein, or assigns, as approved and endorsed by the Company (the "Bond Purchase Agreement"), such document being in substantially the form submitted herewith and designated Exhibit C, with such changes as the officer executing the same may require or approve on behalf of the County, such approval to be conclusively evidenced by the execution and delivery thereof. The sale of the 2001 Series A Bonds pursuant to the terms of the Bond Purchase Agreement is hereby authorized, approved and directed. Future issues of the Bonds shall and must be separately authorized and issued by the County.

Section 5. The County Judge/Executive, County Attorney, Fiscal Court Clerk and other County officials, and each of them, for and on behalf of the County, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution and delivery of the Trust Indenture, the Lease Agreement, the Bond Purchase Agreement and related documents, the performance of all obligations and the preservation of all rights of the County thereunder, the execution and delivery of the Bonds and the performance of all other actions of whatever nature necessary to carry out the authority conferred or contemplated by and the purposes of this Ordinance, the Trust Indenture, the Lease Agreement, the Bond Purchase Agreement and related documents, and further to approve and to execute all papers, documents, certificates or other instruments that may be required for the carrying out and effectuation of the authority conferred by and the purposes of this Ordinance, the Trust Indenture, the Lease Agreement, the Bond Purchase Agreement and related documents, or to evidence said authority and purposes.

Section 6. The County shall never be required to pay from its own funds any obligations deriving from the issuance of the Bonds, and the Bonds are declared 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, as provided in the documents herein approved.

Section 7. The provisions of this Ordinance may be supplemented from time to time by resolution or municipal order of the Fiscal Court.

Section 8. 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.

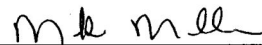
Section 9. In the event of any conflict or conflicts between the provisions of this Ordinance and of any prior ordinances, resolutions, municipal orders or parts thereof, the provisions of this Ordinance shall prevail.

Section 10. 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 3rd day of March, 2001.

GIVEN SECOND READING AND ADOPTED at a duly convened meeting of the Fiscal Court of the County of Marshall, Kentucky, held on the 17th day of March, 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 March 17th, 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 17th day of March, 2001.

(SEAL)



DAN DUKE
Fiscal Court Clerk