9/14/06 10:20:21
BK 2,563 PG 534
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

ALEXANDER S. CHOINSKI
MILBANK, TWEED, HADLEY & McCLOY
1850 K STREET, NW, STE. 1100
WASHINGTON, DC 20006

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #
BK2054PG0341 on August 23, 2004 in the County of DeSoto, Mississippi

1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. ☒

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement

3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c, and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.
Also check one of the following three boxes and provide appropriate information in items 6 and/or 7
☐ CHANGE name and/or address. Please refer to the detailed instructions in regards to changing the name/address of a party.
☐ DELETE name: Give record name to be deleted in item 6a or 6b.
☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable).

6. CURRENT RECORD INFORMATION:
6a. ORGANIZATION'S NAME
KGen Southaven LLC
OR
6b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:
7a. ORGANIZATION'S NAME
OR
7b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

7c. MAILING ADDRESS: 1330 Post Oak Blvd., 15th Floor, Four Oaks Place
CITY: Houston
STATE: TX
POSTAL CODE: 77056
COUNTRY: USA

7d. SEE INSTRUCTIONS | ADD'L INFO RE ORGANIZATION DEBTOR | 7e. TYPE OF ORGANIZATION | 7f. JURISDICTION OF ORGANIZATION | 7g. ORGANIZATIONAL ID #, if any ☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box
Describe collateral ☒ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

The released and deleted collateral consists of all the property described in Exhibit A attached hereto and in the schedules attached to Exhibit A.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor check here ☐ and enter name of DEBTOR authorizing this Amendment.
9a. ORGANIZATION'S NAME
Credit Suissee First Boston, acting through its Cayman Islands Branch as Collateral Agent of the 1st Lien Secured Parties
OR
9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

10. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 05/22/02)
DEUCC3PNAT - 12/17/2002 C T System Online

M. Fens

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EXHIBIT A

All of KGen Southaven's right, title and interest in and to the following assets:

(i) the Southaven Facility;

(ii) all fixed and mobile machinery and equipment, as well as similar items of tangible personal property, including turbines, generators, transformers, tractors, trailers and other vehicles, pumps, pipelines, fittings, metering equipment, communications equipment, furniture, keys, furnishings and tools (collectively, "***Equipment***") used in the operation of the Southaven Facility or otherwise owned by KGen Southaven LLC, a Delaware limited liability company ("***KGen Southaven***"), including, without limitation, the Equipment set forth on Schedule 1 to this Exhibit A, and any rights to the warranties and licenses received from manufacturers and sellers of such Equipment;

(iii) all inventories of fuel, chemical and gas inventories, supplies, materials and spare parts (collectively, "***Inventory***") owned by KGen Southaven, and any rights to the warranties received from suppliers with respect to such Inventory;

(iv) the Intellectual Property owned by or licensed to KGen Southaven (the "***Southaven Assigned Intellectual Property***");

(v) all computer software and systems owned by or licensed to KGen Southaven;

(vi) all books, records, data, plans, drawings, instruction manuals and similar items (whether existing in paper or electronic format), including, without limitation, operation and generation records, service and repair records, maintenance schedules, operating documents, specifications, and diagrams, customer lists, historical customer files, reports, accounting and tax records, test results, product specifications, drawings, construction plans and records, training manuals, engineering data, safety and environmental reports and documents, inventory records, business plans, and marketing and all other studies, documents and records (collectively, "***Books and Records***") relating exclusively to the Southaven Facility;

(vii) each of the Contracts that are identified on Schedule 2 to this Exhibit A (collectively, the "***Southaven Assigned Contracts***");

(viii) the real property described on Schedule 3 to this Exhibit A, together with all improvements, structures and fixtures thereon, and all easements, privileges, rights-of-way, riparian and other water rights, lands underlying any adjacent streets or roads, appurtenances, licenses, and other rights pertaining to or accruing to the benefit of such property (collectively referred to as the "***Southaven Real Estate Assets***"); and

(ix) all Permits held by KGen Southaven that relate to the Southaven Facility.

The Released Property shall not include the Excluded Assets or the Southaven Second Closing Assets.

For purposes of this Exhibit A:

"***Contract***" means any contract, lease, license, evidence of indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement or other legally binding arrangement.

"***Excluded Assets***" means all the assets described in Schedule 4 to this Exhibit A.

"***Governmental Authority***" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or any state, county, city or other political subdivision or similar governing entity, and including any governmental, quasi–governmental or non-governmental body administering, regulating or having general oversight over gas, electricity, power or other markets.

"***Intellectual Property***" means all of the rights arising from or in respect of the following, whether protected, created or arising under the laws of the United States or any other jurisdiction: (i) patents, including any reexaminations or reissues thereof, and patent applications, (ii) all trademarks, service marks, trade names, logos, service names, brand names, common law trademarks and service marks, Internet addresses, sites and domain names, trademark and service mark registrations and applications therefor and all goodwill associated therewith throughout the world, (iii) all copyrights and registrations and applications therefor, works of authorship and mask work rights and registrations and applications therefor, and (iv) trade secrets, confidential information, and confidential know-how, including but not limited to all confidential discoveries, concepts, ideas, research and development, know-how, designs, formulas, algorithms, ideas, improvements, graphs, drawings, reports, analyses, inventions, manufacturing and production processes and techniques, technical data, procedures, designs, drawings, databases and data collections (including without limitation, historical data), computer programs (whether in source code or object code or human readable form), customer lists, supplier lists, pricing and cost information, and business and marketing plans and proposals.

"***Laws***" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of any Governmental Authority.

"***Permit***" means any approvals, authorizations, consents, registrations, licenses, permits or certificates of a Governmental Authority.

"***Southaven Facility***" means the nominal 640-MW natural gas fired, simple cycle facility located in Southaven, Mississippi.

"***Southaven Second Closing Assets***" means those assets described in Schedule 5 to this Exhibit A.

"***Taxes***" means any income, profits, franchise, withholding, *ad valorem*, personal property (tangible and intangible), employment, payroll, sales and use, social security, disability, occupation, property, severance, excise and other taxes and charges, fees, imposts, levies, duties and assessments of any kind imposed by a Taxing Authority, including any interest, penalty or addition thereto, any payments in lieu thereof, and any liability in respect of the foregoing payable by reason of contract, assumption, transferee or successor liability, operation of Law,

Treasury Regulation 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision of Law) or otherwise.

"***Taxing Authority***" means, with respect to any Tax, the Governmental Authority or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

SCHEDULE 1 to EXHIBIT A

Certain Southaven Equipment

- Eight (8) General Electric, nominal 80 MW, 7121 Frame 7EA gas turbine generator packages containing the following major components:
  - Eight (8) gas turbines with serial numbers 297631, 297632, 297633, 297634, 297635, 297636, 297637 and 297638
  - Dry, low-NOx combustion system
  - Common lubricating and hydraulic control oil system
  - Fuel gas system
  - Turbine and Generator Inlet air system
  - Exhaust plenum/duct/expansion joint, support structure
  - CO_2 fire protection system (one skid for every two CTGs)
  - Brush 86.5 MW generator
  - Exhaust stack

SCHEDULE 2 to EXHIBIT A

Southaven Assigned Contracts

1. Agreement to Make Payments in Lieu of Taxes among Duke Energy Southaven, LLC; the Mississippi Department of Economic and Community Development; DeSoto County, Mississippi; the City of Southaven, Mississippi; and the DeSoto County Tax Assessor, dated July 1, 2000

2. Development Agreement between Duke Energy Southaven, LLC and the City of Southaven, Mississippi, dated July 18, 2000

3. Alternate Water Supply Agreement between Duke Energy Southaven, LLC and the City of Southaven, Mississippi, dated October 17, 2000

4. Facility Letter Agreement between Duke Energy Southaven, LLC and Texas Gas Transmission Corporation, dated July 6, 2001

5. Letter Agreement between Duke Energy Southaven, LLC, Duke Energy Marshall County, LLC, Duke Energy Fuels, LLC and Texas Gas Transmission Corporation, dated April 19, 2002

6. Agreement for Service between Duke Energy Southaven, LLC and Cinergy Solutions O&M, LLC (currently named DEGS O&M LLC), as agent for KGen Southaven LLC, dated October __, 2004

7. Operation and Maintenance Agreement between KGen Southaven LLC and Cinergy Solutions O&M LLC, dated September 13, 2004

8. Agreement of Representation between KGen Southaven LLC and Cinergy Solutions O&M LLC, dated October 26, 2004

SCHEDULE 3 to EXHIBIT A

Southaven Real Estate Assets

Tract 1:

A tract of land situated in the Southwest Quarter of Section 22, Township 1 South, Range 8 West, Desoto County, Mississippi and being more particularly described as follows:

Commencing at a found nail at the Northwest Corner of said Southwest Quarter of Section 22, Township 1 South, Range 8 West, said point of commencement being in the intersection of the physical centerline of Stanton Road South, also known as Patti Road (public, paved road - 35 feet to centerline per Plat Book 13 - page 21) and the physical centerline of Tulane Road (public, paved road - 80 feet wide); thence North 89 degrees 18 minutes 35 seconds East along said centerline of Stanton Road South - 73.84 feet; thence South 00 degrees 41 minutes 25 seconds East (perpendicular to said centerline) - 35.00 feet to a set iron pin at the true point of beginning, said point of beginning lying in the present Southerly right of way line of said Stanton Road South; thence North 89 degrees 18 minutes 35 seconds East along said present Southerly right of way line and along the right of way of Stanton Road South (35 feet to centerline), as shown on said final plan, Tulane-Stanton Industrial Subdivision (recorded in Plat Book 73 - page 47) - 1916.31 feet to a set iron pin in the Westerly line of the Mrs. Clara Roberson Property (Book 116 - page 005); thence South 00 degrees 10 minutes 50 seconds West along said Westerly line of Roberson Property - 2551.31 feet to a found 2 inch pipe in the Northerly line of the City of Horn Lake, Mississippi Property (Book 241 - page 448), said Northerly line being the South line of Section 22; thence South 89 degrees 16 minutes 30 seconds West along the South line of said Section 22 and along the Northerly line of said City of Horn Lake Property - 1954.44 feet to a set iron pin in the Easterly right-of-way line of Tulane Road, said right of way as shown on said final plan, Tulane-Stanton Industrial Subdivision (recorded in Plat Book 73 - page 47); thence North 00 degrees 15 minutes 50 seconds East along said Easterly right of way line - 2518.12 feet to a set iron pin at a point of curve to the right having a radius of 35.00 feet; thence Northeastwardly along said curve an arc distance of 54.39 feet (central angle of 89 degrees 02 minutes 45 seconds - chord of North 44 degrees 47 minutes 12 seconds East - 49.08 feet) to the point of beginning. Containing 4,981,973 square feet or 114.370 acres, more or less. Bearings are relative to Mississippi State Plane Grid North (NAD27 - West Zone).

SCHEDULE 4 to EXHIBIT A

Excluded Assets

(a) Any cash, cash equivalent items, accounts receivable and deposits, including checking accounts, bank accounts, certificates of deposit and securities of KGen Southaven;

(b) The rights, properties and assets of the contractor under that certain Operation and Maintenance Agreement between KGen New Albany LLC and Cinergy Solutions O&M LLC, dated September 13, 2004 in and to certain computers, equipment and other materials that are located at the Southaven Facility for use in connection with the performance of its obligations under the Operating and Maintenance Agreement and certain other materials and equipment owned by other third parties located at the Southaven Facility (the aggregate value of all such computers, equipment and other materials does not exceed $100,000);

(c) Tax refunds and credits of KGen Southaven to the extent relating to time periods prior to the date of the closing of the purchase and sale of the Released Property, and prior to the date of the closing of the purchase and sale of the Southaven Second Closing Assets;

(d) Intellectual Property of KGen Southaven other than the Southaven Assigned Intellectual Property; and

(e) Any and all Contracts of KGen Southaven other than the Southaven Assigned Contracts.

SCHEDULE 5 to EXHIBIT A

Southaven Second Closing Assets

The following real estate assets, tangible personal property and agreements:

(a) Real Estate Assets

Tract 2:

That certain Transmission Facilities Easement from the City of Southaven, Mississippi in favor of Duke Energy Southaven, LLC, dated July 17, 2001, and recorded in Book 397 at Page 209, over across and under the following described property:

Being an ALTA/ASCM Land Title Survey of a 200 foot wide utility easement as recorded in Book 397 - page 209 across part of the City of Southaven Property, said City of Southaven Property being Lot 1, Tulane-Stanton Industrial Subdivision recorded per deed of record at Book 114 - page 264 at the Office of the Chancery Clerk of Desoto County, Mississippi, said Easement to be known for the purposes of this description as Subject Easement "Three". Said Subject Easement "Three" being described as:

A tract of land situated in the Southeast Quarter of the Southeast Quarter of Section 21, Township 1 South, Range 8 West, Desoto County, Mississippi and being more particularly described as follows:

Commencing at a found nail at the Northeast corner of said Southeast Quarter of Section 21, Township 1 South, Range 8 West, said point of commencement being in the intersection of the centerline of Stanton Road South, also known as Patti Road (public, paved road - 35 feet to centerline) and the centerline of Tulane Road (public, paved road - 80 feet wide, as dedicated in said Plat Book 73 - Page 47); thence South 00 degrees 15 minutes 50 seconds West along the centerline of Tulane Road - 1894. 95 feet; thence North 89 degrees 44 minutes 10 seconds West (leaving and perpendicular to said centerline) - 40.00 feet to the true point of beginning of this description, said point lying in the Westerly right of way line of said Tulane Road; Thence South 00 degrees 15 minutes 50 seconds West along said Westerly right of way line 247.47 feet; thence South 54 degrees 10 minutes 53 seconds west (leaving said Westerly right of way line) - 618.86 feet to the Northerly line of the City of Horn Lake, Mississippi Property (Book 241 - Page 448), said Northerly line being the South line of Section 21; thence South 89 degrees 16 minutes 30 seconds West along the said South line of Section 21 and along the Northerly line of said City of Horn Lake Property 119.98 feet to the Southeast Corner of the Johnny Mitchell Property (Book 271 - page 688); thence North 00 degrees 15 minutes 50 seconds East along the Easterly deed line of said Mitchell Property - 257.83 feet; thence South 50 degrees 36 minutes 14 seconds East (leaving said Easterly deed line) - 80.00 feet to an angle point; thence North 54 degrees 10 minutes 53 seconds East - 690.51 feet to the point of beginning. Containing 151,309 square feet or 3.474 acres, more or less. All bearings shown and described in these easements are relative to Mississippi State Plane Grid North (NAD27 - West Zone).

Tract 3:

That certain Transmission Facilities Option and Easement from R. H. Rasco, JR. and W. D. Rasco in favor of Duke Energy Southaven, LLC, dated April 26, 2000, and recorded in Book 393 at Page 436, over across and under the following described property:

Being an ALTA/ASCM Land Title Survey of a 200 foot wide utility easement as recorded in Book 393 - Page 436 across part of the R. H. Rasco, Jr. and W. D. Rasco Property per Deed of Record at Book 246 - page 236 at the Office of the Chancery Clerk of Desoto County, Mississippi, said easement to be known for the purposes of this description as Subject Easement "Two". Said Subject Easement "Two" being described as:

A tract of land situated in the Northeast Quarter of the Southwest Quarter, and in the Southeast Quarter of the Northwest Quarter, and in the Northeast Quarter of the Northwest Quarter of said Section 21, Township 1 South, Range 8 West, Desoto County, Mississippi and being more particularly described as follows:

Commencing at a found spike at the Northeast Corner of said Section 21, Township 1 South, Range 8 West, said point of commencement being in the intersection of the physical centerline Stateline Road (public, paved road - width varies) and the physical centerline of Tulane Road (public, paved road - 80 feet wide); thence North 89 degrees 56 minutes 01 seconds West along the North line of said Section 21 a distance of 2345.31 feet to the true point of beginning of this description, said point lying in the physical centerline of said Stateline Road; thence South 42 degrees 34 minutes 54 seconds West (leaving said centerline of road) - 413.04 feet to an angle point; thence South 21 degrees 51 minutes 56 seconds West - 692. 39 feet to an angle point; thence South 22 degrees 01 minutes 32 seconds West - 845.73 feet to an angle point; thence South 08 degrees 23 minutes 45 seconds West - 652.97 feet to an angle point; thence South 08 degrees 25 minutes 18 seconds West - 419.79 feet to an angle point; thence South 50 degrees 36 minutes 14 seconds East - 971.94 feet to the Westerly deed line of the Johnny Mitchell Property (Deed Book 271 - Page 688), said deed line as evidenced by a wire fence; thence South 00 degrees 29 minutes 54 seconds East along said Westerly deed line - 260.68 feet; thence North 50 degrees 36 minutes 14 seconds West (leaving said Westerly deed line) - 1252.35 feet to the Easterly right of way line of an existing Tennessee Valley Authority Easement (Book 202 - Page 775); thence along said Easterly line of said existing easement the following bearings and distances: thence North 08 degrees 25 minutes 18 seconds East - 532.96 feet to an angle point; thence North 08 degrees 23 minutes 45 seconds East - 676.83 feet to an angle point; thence North 22 degrees 01 minutes 32 seconds East - 869.35 feet to an angle point; thence North 21 degrees 51 minutes 56 seconds East - 777.73 feet to the Southerly line of and existing Mississippi Power and Light Company (Entergy) Easement (Book 223 - Page 477); thence North 89 degrees 20 minutes 04 seconds East along said Southerly line - 65.31 feet to an angle point; thence North 50 degrees 51 minutes 23 seconds East (continuing along said Southerly line and its Northeastwardly projection) - 231.24 feet to the said physical centerline of Stateline Road; thence North 88 degrees 57 minutes 04 seconds East along said centerline - 188.59 feet to the point of beginning. Containing 822, 805 square feet or 18.889 acres, more or less, subject to existing and future right of way in public roads.

Tract 4:

That certain Transmission Facilities Option and Easement from Johnny J. Mitchell and wife, Lori Ann Mitchell in favor of Duke Energy, Southaven, LLC, dated May 2, 2000, and recorded in Book 393 at Page 444, over across and under the following described property:

Being an ALTA/ASCM Land Title Survey of a 200 foot wide utility easement as recorded in Book 393 - Page 444 across part of the Johnny J. Mitchell Property recorded per Deed of Record at Book 271 - page 688 at the Office of the Chancery Clerk of Desoto County, Mississippi, said easement to be known for the purposes of this description as Subject Easement "One". Said Subject Easement "One" being described as:

A tract of land situated in the Southeast Quarter of the Southeast Quarter and in the Southwest Quarter of the Southeast Quarter and in the Northwest Quarter of the Southeast Quarter of Section 21, Township 1 South, Range 8 West, Desoto County, Mississippi and being more particularly described as follows:

Commencing at a found nail at the Northeast corner of said Southeast Quarter of Section 21, Township 1 South, Range 8 West, said point of commencement being in the intersection of the physical centerline of Stanton Road South, also known as Patti Road (public, paved road - width varies) and the physical centerline of Tulane Road (public, paved road- 80 feet wide); thence South 00 degrees 15 minutes 50 seconds West along the East line of said Section 21 a distance of 2587.57 feet to the Southeast Corner of said Section 21, said corner lying in the Northerly line of the City of Horn Lake, Mississippi Property (Book 241 - Page 448). Said Northerly line being the South line of said Section 21; thence South 89 degrees 16 minutes 30 seconds West along the said South line of Section 21 and along the Northerly line of said City of Horn Lake Property - 660.20 feet to the Southeast Corner of said Johnny Mitchell Property and the true point of beginning of this description; thence North 50 degrees 36 minutes 14 seconds West (leaving said South line of Section 21) - 2525.32 feet to the Easterly deed line of the R. H. Rasco, Jr. and W. D. Rasco property (Deed Book 246 - Page 236). Said Easterly deed line as evidenced by a wire fence; thence North 00 degrees 29 minutes 54 seconds West along said Easterly deed line - 260.68 feet; thence South 50 degrees 36 minutes 14 seconds East (leaving said Easterly deed line) - 2529.79 feet to the Easterly deed line of said Mitchell Property; thence South 00 degrees 15 minutes 50 seconds West along said Easterly deed line of Mitchell Property - 257.83 feet to the point of beginning. Containing 505,511 square feet or 11.605 acres, more or less.

(b) Tangible Personal Property

All of the Southaven GSUs (as defined below), lines, poles, wires, switches and other tangible personal property used for the transmission of electric power located on the GSU side of the firewalls and all other tangible personal property owned by KGen Southaven related to the transmission of electric power from the GSUs.

"Southaven GSU's" means the four (4) 230 kV Feranti Packard Generator Step-up Power Transformers and related equipment located at the KGen Southaven Facility consisting of the following: four (4) 13.8kV-13.8kV-230kV, three phase, three-winding, delta-delta-wye connected main step-up transformers.

(c) Agreements

1. Amended and Restated Interconnection and Operating Agreement between Duke Energy Southaven, LLC and Entergy Services, Inc. (as Agent for Entergy Mississippi, Inc.), dated July 31, 2001

2. Generator Imbalance Agreement between Duke Energy Southaven, LLC and Entergy Mississippi, Inc., effective August 1, 2001

3. Clarification Letter Regarding Tax Indemnity and Security Provisions between Entergy Services, Inc. and Duke Energy Southaven, LLC (executed on December 8, 2003 by Entergy Services, Inc. and on October 10, 2003 by Duke Energy Southaven, LLC)

4. Transmission Line Easement Agreement between Entergy Mississippi, Inc. and Duke Energy Southaven, LLC, dated March 11, 2002

5. FERC Market-Based Schedule: FERC Electric Tariff, Original Volume No. 1, issued in Docket No. ER04-1186-000