

# Large Filing Separator Sheet

Case Number: 03-93-EL-ATA  
03-2079-EL-AAM  
03-2080-EL-ATA  
03-2081-EL-AAM  
05-724-EL-UNC  
05-725-EL-UNC  
06-1068-EL-UNC  
06-1069-EL-UNC  
06-1085-EL-UNC

Date Filed: 12/7/2007

Section: 2 of 3

Number of Pages: 150

Description of Document: Redacted Exhibits

- [REDACTED]
- b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.
- c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.
- d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]
- e. Term. The term of the power sale agreement shall be [REDACTED]
- f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.
- g. Adjusted Base Contract Price. [REDACTED]

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement [REDACTED] earlier in accordance with the terms of this Agreement ("Term").

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CONFIDENTIAL PROPRIETARY  
TRADE SECRET4.2 Agreement Termination. [REDACTED]

- 4.3 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V  
BILLING5.1 Payment. [REDACTED]ARTICLE VI  
DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
  - 6.1.2 the failure of the Defaulting Party to materially perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;

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- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]

#### ARTICLE VII DUTY TO MITIGATE

- 7.1 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of Ohio.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the

dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and [REDACTED]. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within ninety (90) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could

materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the [REDACTED] provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.

9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.

9.7 This Agreement supersedes and replaces the agreement between [REDACTED] [REDACTED]. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC





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**Exhibit A:**

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**EXHIBIT B:**

**Customer Group:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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TRADE SECRET

**EXHIBIT B:**

**Customer Group:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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TRADE SECRET

**Exhibit C:**

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]

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OPTION AGREEMENT  
BY AND BETWEEN  
CINERGY RETAIL SALES, LLC  
AND

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

[REDACTED]  
This Option Agreement (the "Agreement") is entered into as of this [REDACTED]  
(the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware  
limited liability company, and [REDACTED]  
[REDACTED]

RECITALS

WHEREAS, [REDACTED] is a member of the [REDACTED]  
and is located within the retail delivery service territory of The Cincinnati Gas & Electric  
Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a  
Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of  
electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,  
the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply  
hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that,  
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under  
common control with, such person. For this purpose, "control" means the direct or indirect  
ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for  
business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing  
time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means Counterparty's [REDACTED]

Cinergy Corporate Records

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Document Code

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"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or [REDACTED]

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

will take electric service from CG&E in accordance with applicable CG&E tariff requirements.

2.2

2.3

2.4

2.5

ARTICLE III  
CRES POWER CONTRACT TERMS

3.1

In the event

a.

Quantity and Type.

b.

Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c.

Contract Price. The Contract Price is set forth in Exhibits A and B.

d.

Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest.

- e. Term. The term of the power sale agreement shall be through

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment.

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;



- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

6.3 Other Termination Events. T

[REDACTED]

ARTICLE VII  
LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form' provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

To Counterparty:

[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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CONFIDENTIAL PROPRIETARY  
TRADE SECRET

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

[REDACTED]

As to clause 9.7:

CINERGY CORP.

[REDACTED]

**Exhibit A:**

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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TRADE SECRET

**EXHIBIT B:**

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**Exhibit C:**

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## OPTION AGREEMENT

BY AND BETWEEN

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

CINERGY RETAIL SALES, LLC

AND

[REDACTED]  
This Option Agreement (the "Agreement") is entered into as of this [REDACTED]  
[REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC  
("CRS") a Delaware limited liability company, and [REDACTED] ("Counterparty").

## RECITALS

WHEREAS, [REDACTED] member of the [REDACTED]  
the purposes of this Agreement consists of [REDACTED]  
[REDACTED] which are located within the retail delivery service territory of The Cincinnati  
Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a  
Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of  
electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,  
the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply  
hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that,  
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under  
common control with, such person. For this purpose, "control" means the direct or indirect  
ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for  
business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing  
time, unless otherwise agreed to by the Parties in writing.

Cinergy Corporate Records

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"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all of Counterparty's accounts as of [REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that [REDACTED]  
[REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or [REDACTED]

## ARTICLE II OPTION

2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric

Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it will take electric service from CG&E in accordance with applicable CG&E tariff requirements.

2.2

2.3

2.4

2.5

### ARTICLE III CRES POWER CONTRACT TERMS

3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:

a. Energy Quantity and Type.

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

- d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]

- e. Term. The term of the power sale agreement shall be through [REDACTED]

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] through and including [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. [REDACTED]

[insert account information]

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. [REDACTED]

## ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF

ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary,

or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect



its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form' provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]  
[REDACTED]  
[REDACTED]

To Counterparty:

[REDACTED]  
[REDACTED]  
[REDACTED]

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

[REDACTED]  
or  
[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: 

As to clause 9.7:

CINERGY CORP 

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

**Customer Group:**

11

**EXHIBIT B:**

**Customer Group:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

**Exhibit C:**

**Customer Group:** [REDACTED]

This agreement pertains to the [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

508375

OPTION AGREEMENT

BY AND BETWEEN

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

CINERGY RETAIL SALES, LLC

AND

[REDACTED]  
This Option Agreement (the "Agreement") is entered into as of this [REDACTED]  
(the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware  
limited liability company, and [REDACTED]  
[REDACTED] a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [REDACTED]  
[REDACTED] is located within the retail delivery service territory of The Cincinnati Gas  
& Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a  
Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of  
electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,  
the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply  
hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that,  
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under  
common control with, such person. For this purpose, "control" means the direct or indirect  
ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for  
business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing  
time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means C [REDACTED]

Cinergy Corporate Records  
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CONFIDENTIAL PROPRIETARY  
TRADE SECRET

[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B [REDACTED]  
[REDACTED]

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive [REDACTED]  
[REDACTED]

"Full Requirements Energy" means, except as provided herein, that [REDACTED]  
[REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it



will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

### ARTICLE III CRES POWER CONTRACT TERMS

3.1

In the event CRS [REDACTED]

a. Energy Quantity and Type. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest.

- c. Term. The term of the power sale agreement shall be through

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment.

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

6.3 Other Termination Events.

[REDACTED]

ARTICLE VII  
LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form' provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

To Counterparty:

[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

[REDACTED]

COUNTERPARTY

[REDACTED]

As to clause 9.7:

CINERGY CORP.

[REDACTED]



**Exhibit A:**

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Customer Group:**

116

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**Exhibit C:**

Customer Group:

This agreement pertains to the following

## OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

[REDACTED]

This Option Agreement (the "Agreement") is entered into as of this [REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and [REDACTED] ("Counterparty"), a [REDACTED] corporation (each individually a "Party" or collectively the "Parties").

## RECITALS

WHEREAS, [REDACTED] within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means [REDACTED]

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[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the [REDACTED]  
[REDACTED]

"Full Requirements Energy" means, except as provided herein, [REDACTED]  
[REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 In exchange for Counterparty granting CRS this option, [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

### ARTICLE III CRES POWER CONTRACT TERMS

3.1 In the event [REDACTED]

a. Energy Quantity and Type. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest.

- e. Term. The term of the power sale agreement shall be through

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment.

[insert account information]

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:



- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
  - 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
  - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
  - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

6.3 Other Termination Events.

[REDACTED]

**ARTICLE VII  
LIMITATIONS; DUTY TO MITIGATE**

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE

EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in

which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its

knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

To Counterparty:

[REDACTED]  
[REDACTED]  
Or

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- [REDACTED]
- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

As to clause 9.7:

CINERGY CORP

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**Exhibit A:**

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**EXHIBIT B:**

**Customer Group:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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**Exhibit C:**

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]  
[REDACTED]

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**OPTION AGREEMENT**

**BY AND BETWEEN**

**CINERGY RETAIL SALES, LLC**

**AND**

[REDACTED]

This Option Agreement (the "Agreement") is entered into as of this [REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and [REDACTED] (each individually a "Party" or collectively the "Parties").

**RECITALS**

**WHEREAS,** [REDACTED]  
power service from The Cincinnati Gas & Electric Company (CG&E) on metered accounts listed on Exhibit C.

**WHEREAS,** CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

**WHEREAS,** CRS and [REDACTED]

**NOW, THEREFORE,** for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

**ARTICLE I  
DEFINITIONS**

The following definitions and any terms defined in this Agreement shall apply hereunder.

**"Affiliate"** means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect

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ownership of ten (10) percent or more.

"Base Contract Price" means the price in \$US as set forth in Exhibit B to be [REDACTED] for the purchase of Generation and Transmission service under this Agreement.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Maximum Demand" means [REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means that the only excuse for the failure to deliver Energy by CRS or the failure to receive [REDACTED]

"Full Requirements Energy" means, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or [REDACTED] point.

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ARTICLE II  
OPTION

- 2.1 [REDACTED] currently purchases its generation electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs or will provide notice by [REDACTED] that it will purchase generation electric service from CG&E starting no later than [REDACTED] in accordance with applicable CG&E tariff requirements.
- [REDACTED]

2.2 [REDACTED]

2.3 [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED] g

ARTICLE III  
CRS POWER CONTRACT TERMS

3.1 [REDACTED]

a. Energy Quantity and Type [REDACTED]

[REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.

c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest.

[REDACTED]

e. Term. The term of the power sale agreement shall be through [REDACTED]

f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.

g. Adjusted Base Contract Price. [REDACTED]

[REDACTED]

#### ARTICLE IV TERM OF AGREEMENT

4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] unless terminated earlier in accordance with the terms of [REDACTED]

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this Agreement ("Term").

4.2 Agreement Termination. [REDACTED]

- 4.3 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V  
BILLING5.1 Payment. [REDACTED]ARTICLE VI  
DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
  - 6.1.2 the failure of the Defaulting Party to materially perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this

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## Agreement;

- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party,
- [REDACTED]

ARTICLE VII  
DUTY TO MITIGATE

- 7.1 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII  
GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of Ohio.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary,



or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall [REDACTED]. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within ninety (90) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being

contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without [REDACTED] provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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TRADE SECRET

[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces the agreement between [REDACTED] [REDACTED]. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

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TRADE SECRET

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

[REDACTED]

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TRADE SECRET

**Exhibit A:**

**Customer Group:**

11

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TRADE SECRET

**EXHIBIT B:**

**Customer Group:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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CONFIDENTIAL PROPRIETARY  
TRADE SECRET

**Exhibit C:**

Customer Group: [REDACTED]  
[REDACTED]

This agreement pertains to the following [REDACTED]  
[REDACTED]  
[REDACTED]

## OPTION AGREEMENT

BY AND BETWEEN

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

CINERGY RETAIL SALES, LLC

AND

[REDACTED]

This Option Agreement (the "Agreement") is entered into as of this [REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and [REDACTED]

## RECITALS

WHEREAS, [REDACTED] is a member of the [REDACTED] within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

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"Counterparty's Maximum Demand" means [REDACTED]  
[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B [REDACTED]  
[REDACTED]

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive [REDACTED]  
[REDACTED]

"Full Requirements Energy" means, [REDACTED]  
[REDACTED]  
[REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or [REDACTED]

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## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 In exchange [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

## ARTICLE III CRES POWER CONTRACT TERMS

3.1 [REDACTED]

a. Energy Quantity and Type. [REDACTED]

- b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.
- c. Contract Price. The Contract Price is set forth in Exhibits A and B.
- d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]
- e. Term. The term of the power sale shall be through [REDACTED] renewable by mutual agreement for successive periods running from [REDACTED]

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. [REDACTED] the [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

ARTICLE VI  
DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
  - 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
  - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
  - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]
- [REDACTED]

6.3 Other Termination Events.

[REDACTED]

ARTICLE VII  
LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.
- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

## ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies: (A) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. (B) If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the Parties (the "Neutral") to act as a mediator. If the Parties are unable to agree on the Neutral within fifteen (15) days, they shall seek assistance in such regard from the CPR Institute for Dispute Resolution, Inc. ("CPR"). The fees of the Neutral and all other common fees and expenses shall be shared equally by the Parties. (C) The mediation may proceed in accordance with CPR's Model Procedure for Mediation of Business Disputes, or the Parties may mutually establish their own procedure. (D) The Parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within forty-five (45) days, then, the parties shall pursue all remedies available to it a law or in equity.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

## ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it;

(d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

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To Counterparty:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.

9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.



- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

As to clause 9.7:

CINERGY CORP.

**Exhibit A:**

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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TRADE SECRET

**EXHIBIT B:**

**Customer Group:**

12

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**Exhibit C:**

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]

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## OPTION AGREEMENT

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

[REDACTED]

This Option Agreement (the "Agreement") is entered into as of this [REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and [REDACTED] each individually a "Party" or collectively the "Parties").

## RECITALS

WHEREAS, [REDACTED] and purchases electric power service from The Cincinnati Gas & Electric Company (CG&E) on metered accounts listed on Exhibit C.

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and [REDACTED] sh terms and conditions for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or

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indirect ownership of ten (10) percent or more.

"Base Contract Price" means the price in \$US as set forth in Exhibit B to be paid [REDACTED] CRS for the purchase of Generation and Transmission service under this Agreement.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Maximum Demand" means [REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means that the only excuse for the failure to deliver Energy by CRS or the failure to [REDACTED]

"Full Requirements Energy" means, except as provided herein, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or [REDACTED]

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CONFIDENTIAL PROPRIETARY  
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OPTION**

2.1

[REDACTED]  
Electric Company ("CG&E") pursuant to the applicable tariffs or will provide [REDACTED]  
[REDACTED] will purchase generation electric service from CG&E starting  
no later than [REDACTED] in accordance with applicable CG&E tariff  
requirements. [REDACTED]  
[REDACTED]  
[REDACTED]

2.2

2.3

2.4

2.5

**ARTICLE III  
CRS POWER CONTRACT TERMS**

3.1

a. Energy Quantity and Type. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.

c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]

e. Term. The term of the power sale agreement shall be through [REDACTED]

f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.

g. Adjusted Base Contract Price. [REDACTED]

#### ARTICLE IV TERM OF AGREEMENT

4.1 Agreement Term and Effective Date. This Agreement shall become effective upon



execution by the Parties. This Agreement shall extend from [REDACTED]  
[REDACTED] unless terminated earlier in accordance with the terms of  
this Agreement ("Term").

4.2 Agreement Termination. [REDACTED]

- 4.3 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V  
BILLING

5.1 Payment. [REDACTED]

ARTICLE VI  
DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
  - 6.1.2 the failure of the Defaulting Party to materially perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after

written notice thereof to the Defaulting Party;

- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]

#### ARTICLE VII DUTY TO MITIGATE

- 7.1 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of Ohio.

- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS [REDACTED]. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within ninety (90) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this

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Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS [REDACTED] provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces the agreement between CRS and [REDACTED]. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or

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their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC



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**Exhibit A:**

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**EXHIBIT B:**

**Customer Group:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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**EXHIBIT B:**

**Customer Group:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**EXHIBIT B:**

**Customer Group:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**EXHIBIT B:**

**Customer Group:**

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## Exhibit C:

**Customer Group:**

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**OPTION AGREEMENT**

**BY AND BETWEEN**

**CINERGY RETAIL SALES, LLC**

**AND**

[REDACTED]

This Option Agreement (this "Agreement") is entered into as of this [REDACTED]  
(the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited  
liability company, and [REDACTED]  
[REDACTED] each individually a "Party" or collectively the "Parties").

**RECITALS**

**WHEREAS,** [REDACTED] power service from The Cincinnati Gas & Electric Company  
("CG&E") on metered accounts listed on Exhibit C.

**WHEREAS,** CRS has been certified by the Public Utilities Commission of Ohio as a Certified  
Retail Electric Supplier and has the authority to engage in the sale of electrical power at retail.

**WHEREAS,** CRS and [REDACTED] to establish terms and conditions for this option.

**NOW, THEREFORE,** for and in consideration of the mutual covenants contained herein, the  
Parties agree as follows:

**ARTICLE I  
DEFINITIONS**

The following definitions and any terms defined in this Agreement shall apply  
hereunder.

**"Affiliate"** means, with respect to any person, any other person (other than an individual) that,  
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is  
under common control with, such person. For this purpose, "control" means the direct or  
indirect ownership of ten (10) percent or more.

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"Base Contract Price" means the price in \$US as set forth in Exhibit B to be [REDACTED] the purchase of Generation and Transmission service under this Agreement.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means that [REDACTED] the affected Party) or the other Party's failure to perform.

"Full Requirements Energy" [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"Maximum Demand" [REDACTED]

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or [REDACTED] Delivery Point.

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OPTION**

2.1

2.2

2.3

a. Commencing on the date that

b.

2.4

2.5



ARTICLE III  
CRS POWER CONTRACT TERMS

3.1

a. Energy Quantity and Type.

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.

c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over this Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over this Agreement, the Parties agree that the Base Contract Price specified above is just and reasonable and consistent with the public interest.

e. Term. The term of the power sale agreement shall be through

f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.

g. Adjusted Base Contract Price. If

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. Payments under this Agreement shall cover the period from [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 Agreement Termination. [REDACTED]
- 4.3 After Termination. The applicable payment and billing provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. [REDACTED]

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

- 6.1.2 the failure of the Defaulting Party to materially perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
  - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or
  - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the
- [REDACTED]

#### ARTICLE VII DUTY TO MITIGATE

- 7.1 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's default hereunder.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. This Agreement and the rights and duties of the Parties

hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of Ohio.

- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be [REDACTED]. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within ninety (90) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its

business in such jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS [REDACTED] consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces the agreement between CRS and [REDACTED]. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-

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ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC



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**Exhibit A.2:**

Customer Group:

[REDACTED]

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**EXHIBIT B:**

**Customer Group:**

[REDACTED]

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**EXHIBIT B:**

**Customer Group:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**Exhibit C:**

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]  
[REDACTED]

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**OPTION AGREEMENT**

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**BY AND BETWEEN**

**CINERGY RETAIL SALES, LLC**

**AND**

[REDACTED]  
This Option Agreement (the "Agreement") is entered into as of this [REDACTED] day of [REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS"), a Delaware limited liability company, and [REDACTED] ("Counterparty"), a [REDACTED] corporation (each individually a "Party" or collectively the "Parties").

**RECITALS**

**WHEREAS,** [REDACTED]  
located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

**WHEREAS,** CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

**WHEREAS,** CRS and Counterparty desire to establish terms and condition for this option.

**NOW, THEREFORE,** for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

**ARTICLE I  
DEFINITIONS**

The following definitions and any terms defined in this Agreement shall apply hereunder.

**"Affiliate"** means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

**"Business Day"** means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

**"Counterparty's Maximum Demand"** means [REDACTED]

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of Counterparty's accounts as of [REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

### ARTICLE III CRES POWER CONTRACT TERMS

3.1 [REDACTED]

a. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]

c. Term. The term of the power sale agreement shall be through [REDACTED]

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. [REDACTED]
- [REDACTED]
- [REDACTED]

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:



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- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party, or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party,

- 6.3 Other Termination Events.

## ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.
- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration

Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it;

(d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

[REDACTED]

To Counterparty:

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

[REDACTED]

As to clause 9.7:

CINERGY CORP.

[REDACTED]

**Exhibit A:**  
**Customer Group:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**EXHIBIT B:**

**Customer Group:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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**Exhibit C:**  
**Customer Group:** [REDACTED]

This agreement pertains to the following [REDACTED]  
[REDACTED]

508371

OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

[REDACTED] This Option Agreement (the "Agreement") is entered into as of this [REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and [REDACTED] ("Counterparty"), a [REDACTED] corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [REDACTED] located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means [REDACTED]

Cinergy Corporate Records  
04016264



Document Code

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[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 In exchange [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

### ARTICLE III CRES POWER CONTRACT TERMS

3.1 [REDACTED]

a. Energy Quantity and Type. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]

- c. Term. The term of the power sale agreement shall be through [REDACTED]

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. [REDACTED]

[insert account information]

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]
- 6.3 Other Termination Events. [REDACTED]

## ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

## ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to



this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

[REDACTED]

To Counterparty:

[REDACTED]

[REDACTED]

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty d [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [REDACTED]

Title: [REDACTED]

Date: [REDACTED]

Title: [REDACTED]

Date: [REDACTED]

As to clause 9.7:

CINERGY CORP.

Title: [REDACTED]

Date: [REDACTED]

Exhibit A:

Customer Group: [REDACTED]

Customer Group: [REDACTED]

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**EXHIBIT B:**

**Customer Group:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]