

FILE

37

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
National Aeronautics and Space )  
Administration at Glenn Research ) Case No. 09-<sup>96</sup>~~31~~-EL-UNC  
Center to establish a Reasonable )  
Arrangement with the Cleveland )  
Electric Illuminating Company and )  
First Energy Corporation for Electrical )  
Service )

RECEIVED-BOOKETING DIV  
2009 FEB 24 PM 1:07  
PUCO

MOTION TO DISMISS OF THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY AND FIRSTENERGY CORPORATION

I. INTRODUCTION

The Application filed by the National Aeronautics and Space Administration at Glenn Research Center ("NASA Glenn") is not limited to a request to establish a reasonable arrangement. NASA Glenn's filing also is a complaint against The Cleveland Electric Illuminating Company ("CEI") and FirstEnergy Corporation ("FirstEnergy") (collectively, the "Companies") seeking two remedies: (1) an order varying the terms of the special contract between NASA Glenn and CEI that terminated on December 31, 2008; and (2) an order compelling CEI and FirstEnergy to negotiate with NASA Glenn to establish a new special contract.<sup>1</sup> See Application at 6. Whether viewed as an application or a complaint, NASA Glenn's filing is flawed on numerous procedural and substantive grounds and should be dismissed.

With respect to FirstEnergy, NASA Glenn has no claim under any theory against the company related either to the expired contract or a future arrangement. FirstEnergy was not a

<sup>1</sup> Because NASA's filing is a complaint against CEI and FirstEnergy, they both are parties pursuant to Rule 4901-1-10.

party to the expired contract, and thus, it cannot be ordered to furnish power under the contract or any extension thereof. Moreover, because FirstEnergy is not a public utility and does not generate or distribute electric power, it cannot be required to negotiate a future arrangement with NASA Glenn and has no ability to enter into a reasonable arrangement with NASA Glenn. Thus, NASA Glenn has failed to state reasonable grounds for complaint against FirstEnergy.

Dismissal is also warranted as to NASA Glenn's complaint against CEI. NASA Glenn has no claim against CEI with respect to the expired contract, and the Commission lacks authority to compel CEI to negotiate a new contract with NASA Glenn. By its express terms, the contract expired on December 31, 2008. The contract specifically provides that, upon termination for any reason, NASA Glenn will receive service under the rates specified in CEI's Tariff No. 13, *"unless otherwise agreed in writing by the Parties."* CEI has continued to provide NASA Glenn electric power pursuant to Tariff No. 13, and it will continue to do so. Neither NASA Glenn nor the Commission has the authority unilaterally to extend the contract rate beyond the life of the contract, and NASA Glenn makes clear in its filing that CEI did not agree to such an extension.

Nor is there any basis upon which NASA Glenn can claim entitlement to a reasonable arrangement under the facts set forth in the Application. NASA Glenn has not satisfied the requirements of R.C. § 4905.31 for obtaining such an arrangement because that statute envisions that a mercantile customer will establish a reasonable arrangement with a utility *before* submitting the arrangement to the Commission for approval. Absent such an agreement, a mercantile customer, must, at a minimum, file an application setting forth the terms of a proposed arrangement, and the Commission must afford the affected utility an opportunity to comment and/or object to the proposal before any action is taken. Neither of these requirements

has been met. Moreover, to the extent they apply, NASA Glenn has not satisfied the provisions of Rule 4901:1-38-05 – NASA Glenn has not provided the Commission with specific terms of a reasonable arrangement for review and has failed to carry its burden of showing that any such arrangement is reasonable. And, contrary to the relief sought in the Application, neither R.C. § 4905.31 nor Rule 4901:1-38-05 authorize the Commission to order a utility to negotiate a reasonable arrangement with one of its customers.

Simply put, this case should be dismissed from the Commission's docket because NASA Glenn has failed to state a claim against either FirstEnergy or CEI. The grounds for this motion are more fully set forth below.

## **II. BACKGROUND**

CEI is an electric distribution utility ("EDU") that purchases wholesale electric power and sells it to retail customers in order to fulfill its statutory obligation under R.C. § 4928.141 and its contractual obligations under existing special contracts. On September 30, 2005, CEI entered into an Electric Service Agreement (the "ESA") with NASA Glenn.<sup>2</sup> CEI and NASA Glenn are the only two parties to the ESA. The contract termination date is clearly set forth in section 1 of the ESA:

### **1. TERM AND EFFECTIVE DATE**

This Agreement shall commence on the Effective Date, (with the pricing terms for electric service under this Agreement becoming effective beginning with the electric bill rendered in the month of November 2005), and shall continue in full force and effect through December 31, 2008, (with the pricing terms terminating with the bill rendered in the month of January 2009) ("*Term*"). . . .

Unless otherwise mutually agreed in writing by the parties, upon termination of this Agreement for any reason, the Government shall receive electric service consistent with the Company's Tariff, as that term is defined in paragraph 2 below.

---

<sup>2</sup> Despite the fact that NASA refers to and relies upon the ESA throughout its Application, it failed to attach a copy to its pleading. A copy of the ESA is attached hereto as Exhibit A.

ESA at 1 (emphasis in original). The cover page added to the ESA by NASA Glenn also clearly and unambiguously states that the term of service under the ESA is “10/1/2005 through 12/31/2008.” The tariff referenced in the ESA is CEI’s Tariff No. 13, entitled “Large General Service Schedule (hereinafter, “Tariff No. 13”). *Id.* at 2. The ESA specifically provides that, *unless modified by mutual agreement in writing*, the terms of Tariff No. 13 will govern in the event the ESA is terminated for any reason. *Id.* at 1.

By its own terms, the ESA terminated on December 31, 2008. NASA Glenn makes no allegation in its filing that CEI has agreed to an extension of the ESA, whether in writing or otherwise. There are no provisions in the ESA allowing NASA Glenn to unilaterally extend the contract rate beyond the life of the agreement. Nor are there any provisions authorizing NASA Glenn to request such an extension or conferring power on the Commission to grant such an extension.

CEI has continued to supply service to NASA Glenn subsequent to the termination of the ESA pursuant to the terms of Tariff No. 13, and it will continue do so. As agreed in the ESA, NASA Glenn is obligated to pay for this service at the rate specified in Tariff No. 13, until such time as the parties mutually agree in writing to another arrangement.

### **III. ARGUMENT**

#### **A. NASA Glenn Has Failed To State A Claim Against FirstEnergy Because The Company Was Not A Party To The ESA And, As A Holding Company, Cannot Negotiate A Reasonable Arrangement.**

As the Commission has noted, FirstEnergy is not a “public utility” as such term is defined in R.C. §§ 4905.02 and 4905.03. *See In re the Matter of the Complaint of S.G. Foods, Inc. v. FirstEnergy Corp.*, PUCO Case No. 04-28-EL-CSS, entry dated March 7, 2006, ¶ 50-51. FirstEnergy does not generate, transmit or distribute electricity. Nor does it own or control any

of the equipment utilized for such purposes. FirstEnergy was not a party to the ESA between NASA Glenn and CEI. The Commission has previously held that jurisdiction is lacking over FirstEnergy in cases, where, as here, the proceeding deals with the services and/or rates charged by an EDU. *See S.G. Foods, supra*, ¶ 57 (“Holding companies such as FirstEnergy . . . are not engaged in the business of supplying electricity to consumers, and, thus are not subject to our jurisdiction for purposes of service-quality complaints.”). In light of these facts, the Commission lacks jurisdiction over NASA Glenn’s complaint against FirstEnergy, and FirstEnergy should be dismissed as a party to this proceeding.

Additionally, FirstEnergy is not a proper party to this matter because the relief sought by NASA Glenn – an order extending a contract rate and an order requiring contract negotiations – cannot be granted as to FirstEnergy. FirstEnergy cannot be ordered to continue the expired contract because it is not a party to the agreement. Nor can it be ordered to negotiate a new contract with NASA Glenn because it is not public utility, and thus, cannot supply electricity to NASA Glenn. In short, FirstEnergy, given its status as a holding company, is not a proper party to this proceeding and should be dismissed.

**B. NASA Glenn Has Failed To State Reasonable Grounds for Complaint Against CEI.**

**1. NASA Glenn Is Not Entitled To Receive Rates Once Offered In The ESA Because It Has Terminated And Is No Longer Effective.**

The contract between NASA Glenn and CEI terminated on December 31, 2008. Neither the ESA nor Ohio law permits NASA Glenn to unilaterally extend the contract rate beyond the term of the agreement. Although NASA Glenn seeks to rely upon a “six-month unilateral extension” of the ESA (App. at 4), it did not bother to attach this document to its Application. Tellingly, NASA Glenn does not allege that CEI signed or consented in writing to any such extension, which is a necessary predicate to the relief NASA Glenn seeks. Indeed, by referring

to this "extension" as "unilateral," NASA Glenn has made clear that CEI did not consent in writing to this proposed modification of the ESA.

Upon termination of the ESA on December 31, 2008, NASA Glenn became obligated to pay the rate specified in Tariff No. 13. *See* ESA at 1. Therefore, the current contract governing the relationship between CEI and NASA Glenn is Tariff No. 13, and NASA Glenn has failed to state reasonable grounds for the issuance of an order directing CEI to furnish power to NASA Glenn based on a so-called "unilateral extension" of the ESA.

**2. The Commission Lacks Statutory Authority To Order CEI To Furnish Service Under A "Unilateral Contract" Or To Negotiate The Terms Of A New Reasonable Arrangement With NASA Glenn.**

NASA Glenn has failed to identify any statutory basis upon which the Commission could extend the terms and conditions of the ESA over CEI's objection or could compel CEI to negotiate the terms of a new ESA with NASA Glenn. It is well established that the Commission is a creature of statute and has only the authority given to it by the legislature. *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St. 3d 360, 2007-Ohio-53, ¶ 20. The Commission lacks authority to retroactively impose proposed contract terms on CEI or to order CEI to negotiate a special arrangement with NASA Glenn.

NASA Glenn relies upon a "unilateral extension" as fixing the rates it is obligated to pay to CEI for the first six months of 2009. To the extent that NASA Glenn intends that the "unilateral extension" document proposed a reasonable arrangement between it and CEI, any such arrangement is unenforceable and contrary to Ohio law absent pre-approval by the Commission. *See* R.C. § 4905.31 ("No such schedule or arrangement is lawful unless it is filed with and approved by the commission"). Otherwise, the provision of discounts to NASA Glenn would violate, among others, R.C. §§ 4905.32, 4905.33 and 4905.35. Because there is no

evidence that the Commission approved the “unilateral extension” pursuant to R.C. § 4905.31, NASA Glenn has no basis under Ohio law for relying upon this document.<sup>3</sup>

To the extent NASA Glenn is asking the Commission to fix rates for NASA Glenn for services provided in 2009 that are different than those set forth in Tariff No. 13, it is seeking, in part, retroactive rate relief. This, of course, is prohibited by Ohio law. *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St. 3d 486, 494, 2008-Ohio-990, ¶ 34; *Lucas County Com’rs v. Pub. Util. Comm.*, 80 Ohio St. 3d 344, 348 (1997). The Commission’s rate setting authority is prospective only.

Moreover, statutory authority also is lacking for NASA Glenn’s request that the Commission direct CEI to negotiate a new reasonable arrangement with NASA Glenn. Reasonable arrangements are governed by R.C. § 4905.31, which confers jurisdiction on the Commission to review the terms of proposed arrangements, as well as continuing authority to supervise and regulate arrangements which have been approved. While the Commission has authority under R.C. § 4905.31 to review the reasonableness of a proposed special contract once one is submitted to it, the Commission lacks any authority to compel a public utility to negotiate or agree to any such special contract. Thus, NASA Glenn’s request for such an order must be denied.

**C. NASA Glenn Has Not Satisfied The Legal Requirements To Obtain A Reasonable Arrangement.**

NASA Glenn has placed the cart before the horse by requesting Commission approval of a reasonable arrangement that does not yet exist. The plain language of R.C. § 4905.31 establishes as a prerequisite that a proposed arrangement between the utility and its customer

---

<sup>3</sup> Oddly, NASA Glenn does not seek the Commission’s approval of the “unilateral extension” in this proceeding either, as evidenced by its decision not to attach it to the Application. Instead, it seeks Commission approval of a new reasonable arrangement to take effect starting July 1, 2009 on terms that it has yet to disclose.

must be submitted to and reviewed by the Commission before it can be approved. NASA Glenn's Application does not include or reference any form of an arrangement voluntarily entered into between NASA Glenn and CEI. Nor does it specify the terms of a proposed arrangement that NASA Glenn seeks to establish with CEI. In fact, the Application readily concedes that the parties have discussed the terms of a new contract but that the uncertainty surrounding CEI's ESP application has prevented these negotiations from bearing fruit. App. at 4. Not only has NASA Glenn failed to submit a voluntary arrangement, but it has failed to submit an arrangement of any kind. Thus, NASA Glenn's Application falls outside the scope of R.C. § 4905.31.

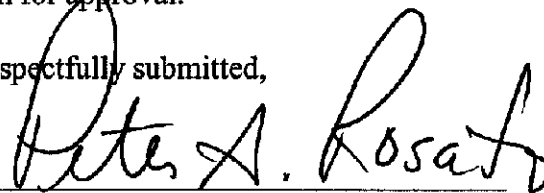
Similarly, proposed Rule 4901:1-38-05(B) provides that, if a mercantile customer applies to the Commission for a unique arrangement, the customer bears the burden of proving that the proposed arrangement is reasonable and does not violate the provisions of R.C. §§ 4905.33 and 4905.35. This rule also requires the customer to submit verifiable information detailing the rationale for the arrangement, which presumably includes details regarding the specific terms and conditions of the arrangement itself. Although NASA Glenn specifically references Rule 4901:1-38-05(B) in its Application (App. at 1), it has not made any effort to satisfy this rule's requirements. No details of an arrangement are provided and, without those details, the Commission has no way of determining whether the proposed arrangement is reasonable. Because NASA Glenn has not provided the Commission with the detail the Commission will require in order to conduct its review, the Application should be dismissed with leave granted to reapply when NASA Glenn actually has a reasonable arrangement prepared for the Commission's review.



#### IV. CONCLUSION

NASA Glenn is not entitled to the relief that it requests. FirstEnergy was not a party to the ESA, and it cannot negotiate a new arrangement with NASA Glenn. With respect to CEI, NASA Glenn has no right under the ESA to extend its terms unilaterally but, instead, is bound by its terms to take service under Tariff No. 13. Although CEI is willing to enter into negotiations for a new arrangement, there is no basis under Ohio law for NASA Glenn's request that CEI be ordered to enter into such an arrangement. NASA Glenn is receiving electric service under Tariff No. 13, and it is obligated to pay the tariff rate until such time as a voluntary arrangement is made and properly put before the Commission for approval.

Respectfully submitted,



Mark A. Hayden, Counsel of Record  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
(330) 761-7735  
(330) 384-3875 (fax)  
haydenm@firstenergycorp.com

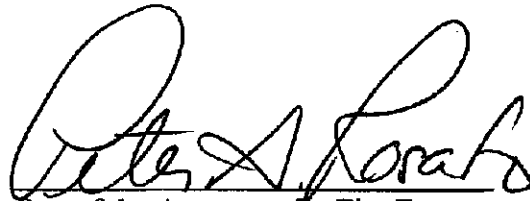
Peter A. Rosato  
Flite Freimann  
CALFEE, HALTER & GRISWOLD LLP  
1100 Fifth Third Center  
21 East State Street  
Columbus, OH 43215-4243  
(614) 621-1500  
(614) 621-0010 (fax)  
prosato@calfee.com  
ffreimann@calfee.com

ATTORNEYS FOR FIRSTENERGY  
CORPORATION AND THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY

## CERTIFICATE OF SERVICE

A copy of the forgoing was served via regular U.S. Mail upon the following this 24<sup>th</sup> day  
of February, 2009:

Jerald J. Kennemuth  
Attorney/Advisor (Contract)  
NASA Glenn Research Center  
21000 Brook Park Road  
M.S. 21-14  
Cleveland, OH 44135-3191

A handwritten signature in black ink, appearing to read "Peter A. Korab". The signature is fluid and cursive, with a large initial "P" and "K".

One of the Attorneys for FirstEnergy  
Corporation and The Cleveland Electric  
Illuminating Company

# EXHIBIT A

EXHIBIT "A"

Contractor's ID NO. \_\_\_\_\_ (Optional)

Ordering Agency's ID NNC06CB28C (Optional)

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY  
AUTHORIZATION FOR ELECTRIC SERVICE, CHANGE IN ELECTRIC SERVICE,  
OR DISCONNECTION OF ELECTRIC SERVICE UNDER  
CONTRACT NO. GS-00P-99-BSD-0105

Ordering Agency: NASA-Glenn Research Center

Address: 21000 Brookpark Road, Cleveland, OH 44135

Pursuant to Contract No. GS-00P-99-BSD-0105 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Articles 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: NASA-Glenn Research Center

SERVICE ADDRESS: 21000 Brookpark Road, Cleveland, OH 44135

NATURE OF SERVICE: ☐ Connect, ☐ Change, ☐ Disconnect, ☒ Continue Service, ☐ DSM Work,  
☐ Line Extension, Alteration, Relocation, or Reinforcement

OTHER TERMS AND CONDITIONS: See Addendum I

Attach any other relevant terms and conditions under which service will be provided.

POINT OF DELIVERY: Termination of incoming lines at Substation A

TERM OF SERVICE: From 10/1/2005 through 12/31/2008

SERVICE HEREUNDER SHALL BE UNDER RATE SCHEDULE NO. \_\_\_\_\_

After amended or modified by the regulatory body having jurisdiction. (see article 5 of this contract.)

ESTIMATED ANNUAL ENERGY USAGE: 205,000,000 KWH, ESTIMATED DEMAND: 21,000 KW

ESTIMATED ANNUAL SERVICE COST: \$ 12,000,000 - 15,000,000

ESTIMATED CONNECTION/SPECIAL FACILITIES CHARGE: \$ N/A (if applicable)\*\*

ACCOUNTING AND APPROPRIATION DATA FOR SERVICE: PR 42000132716 Obligate: \$100,000.00  
FOR CONNECTION/SPECIAL FACILITIES CHARGE: \_\_\_\_\_

BILLS WILL BE RENDERED TO THE ORDERING AGENCY FOR PAYMENT AT THE FOLLOWING ADDRESS:

NASA-Glenn Research Center in 4 copies.

The foregoing shall be effective upon the return of the fully executed original Authorization by the Contractor to the ordering Agency.

Central Control Operations Office Mail Stop 143-1  
ACCEPTED:

NASA-Glenn Research Center  
(Ordering Agency)

By: Ronald L. Matthews  
Authorized Signature

Title: Ronald L. Matthews, Contracting Officer

Date: 10-31-05

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

(Contractor)  
By: [Signature]  
Authorized Signature

Title: [Signature]

Date: 10/31/05

Include a reference to the applicable rate schedule, and attach a copy of such schedule.

necessary, attach and make part hereof supplemental agreements or sheets that cover required connection or extension charges and special facilities or service arrangements. (See Article 5 of this Contract for instructions.)

NOTE:

A fully executed copy of this Authorization shall be transmitted by the ordering Agency to the Public Utilities Division (PNU), General Services Administration, Washington, DC 20405.

**DUPLICATE ORIGINAL**

# EXHIBIT "A"

Contractor's ID NO. \_\_\_\_\_ (Optional)

Ordering Agency's ID NNC05CB47C (Optional)

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY  
AUTHORIZATION FOR ELECTRIC SERVICE, CHANGE IN ELECTRIC SERVICE,  
OR DISCONNECTION OF ELECTRIC SERVICE UNDER  
CONTRACT NO. GS-00P-99-BSD-0105

Ordering Agency: NASA-Glenn Research Center

Address: 21000 Brookpark Road, Cleveland, OH 44135

Pursuant to Contract No. GS-00P-99-BSD-0105 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Articles 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: NASA-Glenn Research Center

SERVICE ADDRESS: 21000 Brookpark Road, Cleveland, OH 44135

NATURE OF SERVICE: ☐ Connect, ☐ Change, ☐ Disconnect, ☒ Continue Service, ☐ DSM Work,  
☐ Line Extension, Alteration, Relocation, or Reinforcement

OTHER TERMS AND CONDITIONS: See Addendum I

Attach any other relevant terms and conditions under which service will be provided.

POINT OF DELIVERY: Termination of incoming lines at Substation A

TERM OF SERVICE: From 10/1/2005 through 12/31/2008

SE<sup>2</sup>VICE HEREUNDER SHALL BE UNDER RATE SCHEDULE NO. \_\_\_\_\_,  
H<sup>2</sup> after amended or modified by the regulatory body having jurisdiction. (see article 5 of this contract.)

ESTIMATED ANNUAL ENERGY USAGE: 205,000,000 KWH, ESTIMATED DEMAND: 21,000 KW

ESTIMATED ANNUAL SERVICE COST: \$ 12,000,000 - 15,000,000

ESTIMATED CONNECTION/SPECIAL FACILITIES CHARGE: \$ N/A (if applicable)\*\*

ACCOUNTING AND APPROPRIATION DATA FOR SERVICE: PR 42000132716 Obligate: \$100,000.00  
FOR CONNECTION/SPECIAL FACILITIES CHARGE: \_\_\_\_\_

BILLS WILL BE RENDERED TO THE ORDERING AGENCY FOR PAYMENT AT THE FOLLOWING ADDRESS:

NASA-Glenn Research Center in 4 copies.

The foregoing shall be effective upon the return of the fully executed original Authorization by the Contractor to the ordering Agency.

Central Control Operations Office Mail Stop 143-1  
ACCEPTED:

NASA-Glenn Research Center  
(Ordering Agency)

By: Ronald L. Matthews

Authorized Signature

Title: Ronald L. Matthews, Contracting Officer

Date: 10-31-05

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY  
(Contractor)

By: [Signature]

Authorized Signature

Title: RES. DEPT.

Date: 10/31/05

\* Include a reference to the applicable rate schedule, and attach a copy of such schedule.

\*\* necessary, attach and make part hereof supplemental agreements or sheets that cover required connection or extension charges and special facilities or service arrangements. (See Article 5 of this Contract for instructions.)

## NOTE:

A fully executed copy of this Authorization shall be transmitted by the ordering Agency to the Public Utilities Division (PNU), General Services Administration, Washington, DC 20405.

**Electric Service Agreement  
Between The Cleveland Electric Illuminating Company  
and NASA Glenn Research Center**

THIS ELECTRIC SERVICE AGREEMENT ("*Agreement*"), is made and entered into as of the 30<sup>th</sup> day of September 2005, by and between The Cleveland Electric Illuminating Company, hereinafter called the "*Company*," and NASA Glenn Research Center, hereinafter called the "*Government*," (together, the "*Parties*"), and is effective as of October 1, 2005 ("*Effective Date*").

**WITNESSETH**

WHEREAS, the Government currently is receiving electric service from the Company under an existing Electric Service Agreement dated August 31, 2005 between the Parties ("*Existing Agreement*"), with such service provided to the facilities located at 21000 Brookpark Road, Cleveland Ohio, (individually and collectively, "*Facilities*"); and

WHEREAS, the Company desires to continue providing electric service to Government's Facilities during the Term defined herein, consistent with the terms and conditions set forth in this Agreement; and

WHEREAS, the Government desires to enter into this Agreement so as to maintain such service to Government's Facilities during the Term defined herein; and

WHEREAS, the Government is authorized to obtain electric service from the Company pursuant to an Areawide Public Utility Contract, Contract No. GS-00P-99-BSD-0105 ("*GSA Contract*") between the Company and the General Services Administration ("*GSA*").

NOW THEREFORE, in consideration of the mutual promises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. TERM AND EFFECTIVE DATE.**

This Agreement shall commence on the Effective Date, (with the pricing terms for electric service under this Agreement becoming effective beginning with the electric bill rendered in the month of November 2005), and shall continue in full force and effect through December 31, 2008, (with the pricing terms terminating with the bill rendered in the month of January 2009) ("*Term*"). Notwithstanding the foregoing, all payment provisions, as well as any other provisions intended to survive the termination of this Agreement shall remain in full force and effect as necessary.

Unless otherwise mutually agreed in writing by the Parties, upon termination of this Agreement for any reason, the Government shall receive electric service consistent with the Company's Tariff, as that term is defined in Paragraph 2 below.

## **2. ELECTRIC SERVICE/CONFLICT.**

The Company shall provide any and all electric service needed at the Facilities consistent with this Agreement and the provisions of the Standard Rules and Regulations, rates, riders and other terms and conditions set forth in the Company's then current Tariff, PUCO No. 13, Electric Service, as may be amended or superseded from time to time with the approval of the Public Utilities Commission of Ohio ("*Commission*") (collectively, "*Company's Tariff*").

If any conflict exists between the terms and conditions set forth in the Company's Tariff and those set forth herein, the latter shall prevail.

Company and Government agree that the GSA Contract shall be binding upon the parties. In the event of conflicts between the terms and intent of this Agreement and the GSA Contract, the provisions of the GSA Contract shall prevail.

## **3. PRICE OF ELECTRIC SERVICE/PAYMENT TERMS.**

The Government agrees to pay for the electric service at prices set forth in attached Addendum I, consistent with the payment terms set forth in Company's Tariff.

All invoices shall be due upon receipt, if not paid within 30 days of receipt, the Government agrees to pay late payment charges in accordance with the tariffs, rules, regulations, riders, practices, or terms and conditions consistent with Company's Tariff.

## **4. ASSIGNMENT.**

The Government agrees that this Agreement may be assigned or otherwise transferred to another, including a successor owner or occupant of any of the Facilities, only with the prior written consent of the Company. The benefits and obligations of the Company may be assigned by the Company to any successor in interest with notice provided to the Government but without need for the Government's approval.

## **5. NOTICES.**

Any written notice required to be given hereunder or desired by either party to be given shall be deemed effective upon actual receipt. If mailed, such notice shall be mailed first-class, postage prepaid, and sent to:

Government, at:  
Contracting Officer  
NASA Glenn Research Center  
21000 Brookpark Road  
Cleveland, Ohio 44135

and, if to the Company, at:

Regional President  
The Cleveland Electric Illuminating Company  
6896 Miller Road  
Brecksville, Ohio 44141

**6. SOLE ELECTRIC POWER REQUIREMENT.**

Subject to Addendum I, Article XIII(F) contained herein, the Government agrees to have the Company as the sole supplier of all electric power required at the Facilities, and the Company agrees to supply all such requirements.

**7. REBILLING PROVISION/OTHER REMEDIES.**

Notwithstanding any provision herein to the contrary, in the event that Government breaches this Agreement and selects another provider of electric service for any of the Facilities during the Term of this Agreement without the Company's consent, the Government shall pay, in addition to any other charges then currently due, the difference between the price paid under the terms set forth in attached Addendum I, and the price that would have been paid under the Company's Tariff, absent this Agreement, plus interest at the maximum rate allowed by law.

Notwithstanding the foregoing, this cancellation and rebilling provision is a remedy optional to the Company for the Government's breach and not the exclusive remedy available to the Company. The Company may elect to forego its cancellation and rebilling remedy in favor of pursuing any and all other legal and equitable remedies available to it for the Government's breach, including, without limitation, specific performance, and consequential and incidental damages.

**8. CONFIDENTIALITY OF INFORMATION.**

All information provided in, or in connection with, this Agreement, whether printed, written or oral (together, "*Confidential Information*"), shall be held in confidence and used only for the business purpose for which it was provided, except to the extent the Confidential Information, in the Government's judgement, is required to be disclosed pursuant to (a) a public records request pursuant to O.R.C. 149.43; (b) subpoena or order of a regulatory agency or court of law; or (c) the Open Meetings Act, O.R.C. 121.22. The Government will notify the Company in writing of any request for release of Confidential Information at least three business days prior to releasing such information so that Company may take any steps necessary to protect its confidential information or trade secrets.

Either Party may disclose Confidential Information to its attorney, financial advisor, or other third party on a need to know basis, provided that such third party is aware of the provisions set forth in this Paragraph, and agrees to be bound by them.



## **9. FORCE MAJEURE.**

If because of Force Majeure, either party shall be unable to carry out any of its obligations under this Agreement or fully to deliver or utilize the electric service of the Company contemplated herein, then the obligations of that party shall be suspended to the extent made necessary by Force Majeure. The party affected by Force Majeure shall give notice to the other party as promptly as practical of the nature and probable duration of such Force Majeure. "Force Majeure" shall mean acts of God, riots, strikes, labor disputes, labor or material shortages, fires, explosions, floods, breakdowns of or damage to plants, equipment or facilities, or other causes of similar nature which are beyond the reasonable control of the party and which wholly or partially prevent the supplying of electricity by the Company or the receiving or utilization of such electricity by the Government, provided that the effect of such Force Majeure shall be eliminated insofar as possible with all reasonable dispatch; provided further, that performance by the Parties hereunder shall be excused only to the extent made necessary by the Force Majeure condition; provided further, that neither party shall be required to settle a labor dispute on terms unacceptable to the party affected; and provided further, that neither party shall be required to rebuild all or a major portion of its facilities which are destroyed or substantially impaired by a Force Majeure condition.

## **10. ENTIRE AGREEMENT/INTERPRETATION/MODIFICATIONS.**

This Agreement, together with Addendum I hereto, contains the entire agreement between the parties. **THE PARTIES EXPRESSLY ACKNOWLEDGE THAT NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, HAVE BEEN MADE BY EITHER PARTY TO THE OTHER.**

The validity, construction and performance of this Agreement shall be determined in accordance with the laws of the State of Ohio, without regard to any conflict of law provisions. The terms and conditions set forth herein have been freely negotiated by the Parties, with both having the opportunity to have their respective counsel review and modify this Agreement. Accordingly no inference shall be drawn in favor of or against either party based on drafting responsibilities.

If any clause or provision of this Agreement is deemed to be illegal or unenforceable by a court or administrative agency of competent jurisdiction, that clause or provision shall be severed from this Agreement, and the remaining terms and conditions shall remain in full force and effect.

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they pertain.

This Agreement cannot be changed except by written instrument executed by a duly authorized representative of the Parties.

**11. RELEASE.**

The Government acknowledges that Company is a regulated utility subject to the jurisdiction of the Commission, and further acknowledges that Company must adhere to any Order directed at Company by the Commission. Accordingly, the Government agrees to release and forever hold harmless Company from any and all liability, costs, damages, causes of action or any other claim as a result of regulatory or judicial actions that may adversely affect Company's ability to perform under this Agreement.

**12. APPLICABLE RIDERS AND ORDERS.**

During the Term of this Agreement, all riders included in the Company's Tariff shall apply, unless otherwise expressly stated herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

NASA GLENN  
RESEARCH CENTER

By: Ronell L. Matthews  
Title: CONTRACTING OFFICER

THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY

By: [Signature]  
Title: General

## ADDENDUM I

1. This Addendum I covers supplemental terms and conditions designated as Contract NNC05CB47C for electric service between the Company and the Government.
2. The Government is authorized to obtain electric service from the Company pursuant to an Areawide Public Utility Contract, Contract No. GS-00P-99-BSD-0105 (the GSA Contract") between the Company and the General Services Administration (GSA).
3. The Company and Government agree that the GSA Contract, including the clauses incorporated therein by reference, shall be binding upon the parties.
4. Supplemental Terms and Conditions

### SCHEDULE

### PAGE

Article 1 – Scope	7
Article 2 – Period of Performance	7
Article 3 – Estimated Value	7
Article 4 – Definition of Terms	7
Article 5 – Firm Contract Demand	9
Article 6 – Arrangements for Excess Demand	9
Article 7 – Priority Power Requirements	10
Article 8 – Maximum Demand Limitation	10
Article 9 – Reduction of Use of Electric Power	10
Article 10 – Determination of Charges and Terms of Payment	11
Article 11 – Availability of Funds	12
Article 12 – Continuity of Service	12
Article 13 – General Service Provisions	12

### APPENDICES

- Appendix A – Large General Schedule, Negotiated Rates and Riders
- Appendix B – Electric Service Specifications

## ARTICLE I – SCOPE

Company shall furnish and deliver at the main substation of the National Aeronautics and Space Administration at Glenn Research Center, overhead electric service for the Glenn Research Center at Lewis Field (the Government) for 30-minute demands not to exceed either 360,000 kW or 370,000 kVA. The service shall be 60 Hz, 3 phase, alternating current of approximately 138,000 volts for which energy is furnished either as FIRM DEMAND, EXCESS DEMAND or OFF-PEAK DEMAND. The Company shall furnish and deliver an underground alternate electric service to the Glenn Research Center at Lewis Field for 30 minute demands not to exceed 25,000 kVA. The service shall be 60 hertz, 3 phase, alternating current of approximately 34,500 volts, capable of meeting the Government's FIRM DEMAND LOAD.

## ARTICLE II – PERIOD OF PERFORMANCE

See paragraph 1, Term and Effective Date of the Electric Service Agreement.

## ARTICLE III – ESTIMATED VALUE

The estimated value of this Agreement is \$12,000,000 to \$15,000,000 annually depending upon electricity usage pattern.

## ARTICLE IV – DEFINITION OF TERMS

### A. ON-PEAK PERIODS

The periods between the hours of 8:00 a.m. and 8:00 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays except:

1. New Year's Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day After Thanksgiving, Christmas Eve Day, Christmas Day, December 26-31-up to 5 days. December 26-31 would be considered off-peak so long as CEI's Interruptible and/or Peak-Shaving Customers have not been interrupted, curtailed, or are purchasing Economic Dispatch Power to avoid interruptions.
2. Other days and time periods may be considered exceptions at the option of the Company.

### B. OFF-PEAK PERIODS

Those periods not defined as ON-PEAK PERIODS.

C. EXCESS DEMAND

The excess over FIRM CONTRACT DEMAND of any 30-minute kW demand registered.

D. QUALIFIED EXCESS DEMAND

EXCESS DEMAND for which the required advance arrangements have been properly made, as set forth in ARTICLE VI below.

E. FIRM DEMAND

Any measured kilowatt demand registered during ON-PEAK PERIODS except such periods when QUALIFIED EXCESS DEMAND is being taken.

F. OFF-PEAK DEMAND

The measured kilowatt demand registered during any OFF-PEAK PERIODS, except the demands of any power for which the Company has accepted an order as QUALIFIED EXCESS DEMAND.

G. ON-PEAK EXCESS KWH

KWH registered during any ON-PEAK PERIOD when QUALIFIED EXCESS DEMAND is taken, less the product of the maximum 30-minute FIRM DEMAND for the month and the number of hours during the month in which ON-PEAK QUALIFIED EXCESS DEMAND is being taken.

H. OFF-PEAK EXCESS KWH

KWH registered during any OFF-PEAK PERIOD when QUALIFIED EXCESS DEMAND is taken, less the product of the maximum 30-minute FIRM DEMAND for the month and the number of hours during the month in which OFF-PEAK QUALIFIED EXCESS DEMAND is being taken.

I. SUMMER EXCESS PERIOD

The Summer excess on-peak period for the months of June through August shall be defined as 8:00 a.m. to 12:00 p.m. for shoulder hours and 12:00 p.m. to 8:00 p.m. for all other on-peak Summer excess hours.

J. WINTER EXCESS PERIOD

The Winter excess on-peak period for the months of September through May shall be defined as 8:00 a.m. to 12:00 p.m. for shoulder hours and 12:00 p.m. to 8:00 p.m. for all other on-peak Winter excess hours.

#### ARTICLE V – FIRM CONTRACT DEMAND

The FIRM DEMAND shall be 21,000 kW.

#### ARTICLE VI – ARRANGEMENTS FOR EXCESS DEMAND

- A. The Government agrees to limit its use of power to not more than FIRM CONTRACT DEMAND, except when advance arrangements for EXCESS DEMAND shall have been made as specified below.
- B. Arrangements for EXCESS DEMAND of less than or equal to 20,000 kW shall be made by the Government with the Company and the Government shall use its best effort to give the Company at least one (1) hour notice prior to the time of intended use of such power. Arrangements for EXCESS DEMAND of greater than 20,000 kW shall be made by the Government with the Company and the Government shall use its best effort to give the Company at least two (2) hours' notice prior to the intended use of such power. Such orders shall specify the amount of power to be used and the duration for which it is to be used. The Company shall furnish a minimum of 100 MW ON-PEAK EXCESS DEMAND each weekday with the exclusion of one weekday during the winter months and two weekdays during the summer months. The Company shall furnish such EXCESS DEMAND only at its sole discretion, except as defined in ARTICLE VII below. The Government agrees to use its best effort to maintain the power factor of any EXCESS DEMANDS at not less than 90%.
- C. During ON-PEAK PERIODS when an ordered EXCESS DEMAND has been accepted and is being supplied, actual EXCESS DEMANDS up to but not exceeding 10,000 kW above accepted orders for EXCESS DEMANDS of 50,000 kW or less, and up to but not exceeding 20,000 kW above accepted orders for EXCESS DEMANDS greater than 50,000 kW shall be considered as QUALIFIED EXCESS DEMAND. The portion of any such EXCESS DEMAND during ON-PEAK PERIODS in excess of these limits and any EXCESS DEMAND registered during ON-PEAK periods at times other than those for which orders have been made and accepted shall be treated as FIRM DEMAND in the determination of the maximum 30-minute FIRM DEMAND as provided in ARTICLE X, Section A.2., hereof and the corresponding kWh shall be billed at Firm Kilowatt hour charges as specified in the Large General Service Schedule or any changes thereto hereafter issued by the Public Utilities Commission of the State of Ohio.
- D. The Company shall not be liable for failure to deliver EXCESS DEMAND during any period under this Agreement, and the Company shall make the sole determination to furnish EXCESS DEMAND when, as, and if ordered by the Government.
- E. The Government shall use its best efforts to advise the Company promptly and in advance of any contemplated change in load of 15,000 kW or more, whenever EXCESS DEMAND is being taken.

- F. All requests and notices by either party to the other may be oral or written, and if oral, shall be confirmed in writing within three (3) days. Any notice to the Government shall be given to the Contracting Officer or his duly authorized representative at the Glenn Research Center at Lewis Field.

#### ARTICLE VII – PRIORITY POWER REQUIREMENTS

In the event the Government, through the use of the Defense Materials System or other exercise of its sovereign power, requires the Company to deliver EXCESS DEMAND on a firm basis, the rate of payment for such excess power shall be the rates specified for FIRM DEMAND if during ON-PEAK PERIODS or, if during OFF-PEAK PERIODS, at the rates specified in Appendix A – Negotiated Rates.

#### ARTICLE VIII – MAXIMUM DEMAND LIMITATION

- A. The maximum measured demand for the term of this Agreement shall not exceed 360,000 kW or 370,000 kVA. Upon the specific request of the Government for power in excess of these limits, the Company shall analyze its existing equipment and the nature of the load to determine the adequacy of such equipment to serve the request, and shall cooperate with the Government in the conduct of joint engineering studies to determine the adequacy of equipment of the Government to serve the request.
- B. If it is determined after such analysis and study that additional equipment of the Company and/or the Government is necessary to serve the request, the specification, timing, construction and ownership of such equipment, and the allocation of payment therefore, shall be the subject of a separate agreement between the parties.

#### ARTICLE IX – REDUCTION OF USE OF ELECTRIC POWER

- A. Notwithstanding the right of the Government to arrange for loads in excess of the FIRM CONTRACT DEMAND as prescribed in ARTICLE VI, the Company shall at all times have the right to require the Government to reduce the use of EXCESS DEMAND supplied by the Company for the operation of the Glenn Research Center at Lewis Field by any amount specified by the Company, provided, however, that the Government shall not be required to reduce the level of its load below the FIRM CONTRACT DEMAND.
- B. The Company, through a properly authorized person, shall, at times when the capacity of the Company is reduced by accident or emergency conditions, have the right to require the Government to reduce the use of OFF-PEAK DEMAND supplied by the Company for the operation of the Glenn Research Center at Lewis Field by the amount specified by the Company, but the Government shall not be required to reduce the level of its load below the FIRM CONTRACT DEMAND.

- C. The Company shall give the Government a minimum of thirty (30) minutes advance notice and shall specify the time at which any such reduction of load is required, the amount thereof, or the level to which load is to be reduced. The Company shall use its best effort to advise the Government of the probable duration of such reduction and of the time at which the use of greater amounts of demand may be resumed.
- D. The Government agrees to reduce its loads in the amounts and within the time specified by the Company, as provided in Subparagraphs A., B., and C. of this article.

#### ARTICLE X – DETERMINATION OF CHARGES AND TERMS OF PAYMENT

##### A. DETERMINATION OF DEMAND

1. The MAXIMUM 30-MINUTE KW DEMANDS registered, respectively, within ON-PEAK PERIODS and within OFF-PEAK PERIODS for each month shall be determined from the registrations of the demand meters installed by the Company.
2. The FIRM BILLING DEMAND shall be determined monthly as follows:
  - a. The MAXIMUM 30-MINUTE KW DEMAND registered within the ON-PEAK PERIODS of each month, other than those periods in which QUALIFIED EXCESS DEMAND is taken plus Paragraph b. below.
  - b. The maximum amount of kilowatts by which, during ON-PEAK PERIODS, the EXCESS 30-MINUTE DEMAND exceeds the portion of that demand which meets the requirements of QUALIFIED EXCESS DEMAND.
  - c. In months when either QUALIFIED EXCESS DEMAND or OFF-PEAK DEMAND is taken the FIRM BILLING DEMAND shall not be less than the FIRM CONTRACT DEMAND.

##### 3. OFF-PEAK BILLING DEMAND

The OFF-PEAK BILLING DEMAND shall be determined monthly, and shall be the MAXIMUM 30-MINUTE KILOWATT DEMAND registered in any OFF-PEAK PERIOD during the month, other than the demands of any power which the Company has designated to be QUALIFIED EXCESS DEMAND.

##### B. SPECIAL DISCOUNT

According to §5727.33(B)(2) of The Ohio Revised Code, gross receipts derived from business with the Federal Government are excluded from taxable gross receipts. As a



result, a special discount of 4.75% of the gross amount of the bill will apply to usage through the term of this Agreement.

C. MINIMUM CHARGE

The monthly minimum charge for service shall be \$100,000. If in any month the Company is unable to supply FIRM DEMAND (or OFF-PEAK DEMAND) pursuant to the conditions of this Agreement for an aggregate of six (6) hours or more, the minimum charge shall not apply for that month and the Government will be charged for the actual usage at the rates set forth in Appendix A – Large General Service or any changes thereto hereafter issued by the Public Utilities Commission of the State of Ohio.

ARTICLE XI – AVAILABILITY OF FUNDS

In accordance with FAR clause 52.232-18 Availability of Funds (APR 1984) funds in the amount of \$100,000.00 are fully available for payment under this Agreement.

ARTICLE XII – CONTINUITY OF SERVICE

- A. The Company undertakes to use due diligence in maintaining the electric service herein contracted for and in restoring the same if for any cause it shall be interrupted.
- B. Upon written notice from the Government and proof of any service interruption for more than one (1) hour in any one month, due to the failure of the Company to supply all or any portion of the FIRM CONTRACT DEMAND by reason of its negligence, the Government shall receive a credit on the bill for the month in which such interruption occurred in the amount of a portion of the firm demand charge for that month, calculated by proration on the basis of the length of time of such interruption and the number of hours in the billing month in which such interruption occurred.
- C. Save and except such prorate credit on the firm demand charge and any waiver of the minimum charge as provided for in ARTICLE X, Section C., hereof, the Company shall not be responsible or liable for any loss or damage on account of failure to supply the electric service herein contracted for.
- D. Should the Company desire to interrupt service for maintenance or repair purposes, arrangement therefore shall be made with the proper officials in order that such interruption will least interfere with the service for the Government, but it is agreed that such arranged for non-delivery of power shall not entitle the Government to a reduction in any charge specified herein.

### ARTICLE XIII – GENERAL SERVICE PROVISIONS

- A. The electric energy to be supplied under this Agreement shall be used for the requirements of said Glenn Research Center at Lewis Field only and shall not be resold or redistributed except to:
1. Construction Contractors engaged in the construction or enlargement of said Center.
  2. Federal Aviation Agency for the operation of the instrument landing system on the runways of the municipal airport of the City of Cleveland, Ohio.
  3. Other Federal Governmental Agencies located within the boundaries of the Government reservation known as the Glenn Research Center at Lewis Field.
- B. It is understood and agreed that the motor current inrush must be satisfactory to the Company and the specifications for all major facilities to be used by the Government on the Government's service shall be submitted to the Company before purchase. The maximum rate of load increase and decrease and other operating conditions affecting the Company shall be regulated and maintained to the satisfaction of the Company.
- C. The Government shall furnish and be responsible for the operation and maintenance of all facilities required to utilize the service on the Government's Reservation beyond the Company's delivery point. It is agreed that the settings of all of the Government relay equipment which would directly affect the operation of the Company's electrical system will be made mutually satisfactory to the Company and the Government, and the Company may witness such settings. It is also understood and agreed that the Company's required relay equipment, owned by the Government, located at Glenn Research Center's Substation A which directly affects the operation of Glenn Research Center's electrical system will receive regularly scheduled, as determined by the Company, and documented maintenance and calibration and that the settings of those relays will be made mutually satisfactory to Glenn Research Center and the Company and that the Glenn Research Center may witness such settings and maintenance/calibration.
- D. The Company's representative shall have free access at any time to its equipment upon the Government's Reservation and may remove its meters and equipment for any purpose which does not affect the supply of the service contracted for. The Company's representative agrees to abide by all required security measures imposed by the Government.
- E. The electric energy to be supplied under this Agreement shall not be used in parallel with another source of power, except Facility test equipment and Renewable/Green Power, Section XIII (F) contained herein. In the event that electric energy is supplied by Facility test equipment in parallel with that provided by Company, the load created by such equipment shall not, under any circumstances, exceed 20,000 kW. It is understood and agreed that if Facility test equipment creates a load that exceeds 20,000 kW which results

in damage of any type to the Company's facilities and/or equipment, the Government shall be responsible for the costs associated with such damage.

F. Renewable/Green Power

1. The Government may self-generate up to 2.5% of its annual electrical power using renewable/green power including wind, solar, fuel cells, micro turbines, geothermal and bio-mass. The amount of self-generated renewable/green power will be dictated by federal regulation in Executive Order 13123 and The Energy Policy Act of 2005 §203(b) or any revisions mandated by Presidential Order.
2. As an alternative, the Government may purchase renewable/green power or renewable credits from the Company. The additional cost of providing renewable/green power or credits will be passed on to the Government at the prevailing market price.
3. The costs associated with protecting the Company's system from the Government's self-generation, including but not limited to necessary equipment and/or relays, shall be assumed by the Government. The Government shall be responsible for any damage to the Company's system attributed to the Government's self-generation.

## APPENDIX A

### FIRM DEMAND CHARGES

The Government's FIRM DEMAND shall be served under the then current rates, terms and conditions of the Large General Service Rate Schedule, Original Sheet No. 35 contained in Company's Tariff, PUCO No. 13 Electric Service as may be amended or superceded from time to time with the approval of the Public Utilities Commission of Ohio.

### EXCESS DEMAND CHARGES/NEGOTIATED RATES

#### MONTHLY DEMAND CHARGES

##### 1. OFF-PEAK DEMAND

- a. For the first 210,000 KW of OFF-PEAK BILLING DEMAND for the month. No Charge
- b. For each KW of OFF-PEAK BILLING DEMAND for the month in excess of 210,000 KW. \$.15

##### 2. DAILY QUALIFIED EXCESS DEMAND DEFICIENCY

- a. For each KW, if any, by which the EXCESS DEMAND ordered during ON-PEAK PERIODS exceeds the amount used by more than the greater of 20% of the EXCESS DEMAND ordered or 10,000 KW. The EXCESS DEMAND DEFICIENCY shall be the largest such amount occurring each day. \$.15

#### MONTHLY KILOWATTHOUR CHARGES

##### 1. ON-PEAK EXCESS KWH

Summer (June through August)		Winter (September through May)	
Shoulder	Other	Shoulder	Other
Hours Ending 9 - 12	Hours Ending 13 - 20	Hours Ending 9 - 12	Hours Ending 13 - 20
7.845¢	10.00¢	4.246¢	4.246¢

##### 2. OFF-PEAK EXCESS KWH

Summer	3.00¢ (June through August)
Winter	2.34¢ (September through May)

## APPENDIX B

### ELECTRIC SERVICES SPECIFICATIONS

1. PREMISES TO BE SERVED: Glenn Research Center at Lewis Field
2. ESTIMATED SERVICE REQUIREMENTS:  
Estimated maximum demand: 360,000 (in schedule) KW.  
Estimated annual consumption: 175,000,000 KWH.  
(The Government is in no way obligated to use nor is it restricted to the above estimated requirements).
3. POINT OF DELIVERY  
The point of delivery of service shall be the termination of the incoming lines including the strain insulators at Substation A, Glenn Research Center at Lewis Field, Cleveland, Ohio.
4. DESCRIPTION OF ELECTRIC SERVICE  
Company will supply 4 circuits of 3 phase 3 wire, 60 cycle, alternating current at 138K volts. The voltage of Company's high-tension line is 138KV. Substation transformers: normal capacity 420,000 KVA; delta or Wye connected; high side Delta low side Wye. Lightning arrestors: type n/a. Switching apparatus: high side, fused disconnects or OCB interrupting capacity 6,000,000 KVA; low side, OCB 6,000,000, interrupting capacity n/a KVA.
5. METERING AND BILLING  
Service will be measured at 138 K volts by 4 watt hour meter(s) and 4 demand meter(s).
6. ESTIMATED ALTERNATE SERVICE REQUIREMENTS:  
Estimated maximum demand: 25,000 KVA
7. POINT OF DELIVERY.  
The point of delivery of service shall be the termination of the incoming line at Substation G, Breaker RG4J Glenn Research Center at Lewis Field, Cleveland, Ohio.
8. DESCRIPTION OF ELECTRIC SERVICE  
Company will supply 1 circuit, 3 phase, 3 wire, 60 cycle, alternating current at 34,500 Volts.
9. METERING AND BILLING  
Service will be measured at 34,500 Volts by 1 watt hour meter and 1 demand meter.
10. ALTERATIONS AND ADDITIONS

### LARGE GENERAL SERVICE SCHEDULE

Applicable to any Customer having a demand of more than 650 kW.

#### RATES:

Monthly charges per customer for all customers served under this schedule shall include ~~Reactive Demand Charges~~, Distribution Charges, Transmission Charges, Ancillary Service Charges (except as provided below), Generation Transition Charges, Regulatory Transition Charges, and Generation Charges, as shown below. ~~Customers served under this schedule who receive Generation Services from a Certified Supplier will qualify for a Shopping Credit as shown below to reduce the sum of other applicable charges.~~

#### Reactive Demand Charge:

For Each kVA of Reactive Billing Demand, per kVA \$0.480

#### Distribution Charge

Customer Charge \$238.13

#### Demand Charge

First 500 kW, per kW \$4.602

Next 500 kW, per kW \$4.259

All excess kW, per kW \$3.575

#### Transmission Charge

#### Demand Charge

First 500 kW, per kW \$0.975

Next 500 kW, per kW \$0.903

All excess kW, per kW \$0.757

#### Ancillary Services Charge

#### Scheduling, System Control and Dispatch Service

For all kW, per kW 5.10¢

#### Reactive Supply Voltage Control from Generation Source

For all kW, per kW 9.20¢

#### Regulation and Frequency Response Service \*

For all kW, per kW 5.90¢

#### Operating Reserve - Spinning Reserve Service \*

For all kW, per kW 8.90¢

#### Operating Reserve - Supplemental Reserve Service \*

For all kW, per kW 4.40¢

~~\* This service may be supplied by the Company or may be competitively supplied. This charge will not apply if the customer has demonstrated to the Company's satisfaction that the service is supplied by a Certified Supplier.~~

**LARGE GENERAL SERVICE SCHEDULE**

**Generation Transition Charge:**

For the first 150 kWh per kWd	2.560¢
For the next 150 kWh per kWd	1.923¢
For the next 150 kWh per kWd	1.124¢
For all excess kWh, per kWh	0.188¢

**Regulatory Transition Charge:**

For the first 150 kWh per kWd	3.969¢
For the next 150 kWh per kWd	2.981¢
For the next 150 kWh per kWd	1.744¢
For all excess kWh per kWh	0.292¢

**Generation Charge:**

First 500 kW, per kW	\$8.468
Next 500 kW, per kW	\$7.813
All excess kW, per kW	\$6.503
For the first 150 kWh per kWd	0.611¢
For the next 150 kWh per kWd	0.805¢
For the next 150 kWh per kWd	1.049¢
For all excess kWh per kWh	1.335¢

**Shopping Credit**

~~The Shopping Credit values are subject to periodic review and will be determined by the provisions of the Stipulation and Recommendation approved by the Commission in Case No. 99-1212-EL-ETP. This credit applies only to customers who receive Generation services from a Certified Supplier. As also approved by the Commission in Case No. 03-1461-EL-UNC, in no event shall the Shopping Credit values exceed the full unbundled generation rate, which is defined in the Commission's Entry in Case No. 03-1461-EL-UNC as the sum of the current generation rate, plus the generation transition charge, plus the regulatory transition charge.~~

First 500 kW, per kW	\$8.164
Next 500 kW, per kW	\$7.556
All excess kW, per kW	\$6.341
For the first 150 kWh per kWd	3.385¢
For the next 150 kWh per kWd	2.541¢
For the next 150 kWh per kWd	1.487¢
For all excess kWh, per kWh	0.249¢

## LARGE GENERAL SERVICE SCHEDULE

### TERMS OF PAYMENT:

All bills for service shall be payable on or before the due date shown on the bill. The due date for non-residential bills shall not be less than twenty one days after the mailing of the bill. Interest, at the rate of 1.5 percent (1.5%) per month, shall be charged on any unpaid balance existing at the next billing date for all Customers.

### APPLICABLE RIDERS:

The Rates and charges specified above shall be modified in accordance with the provisions of the following applicable Riders:

ELECTRIC FUEL COMPONENT	Rider No. 1	Sheet No. 79
PRIMARY METERING DISCOUNT	Rider No. 2	Sheet No. 80
SUPPLY VOLTAGE DISCOUNT	Rider No. 3	Sheet No. 81
CUSTOMERS SUBSTATION DISCOUNT	Rider No. 4	Sheet No. 82
DIRECT CURRENT SERVICE	Rider No. 6	Sheet No. 84
OFF PEAK DEMAND FORGIVENESS	Rider No. 7	Sheet No. 85
UNIVERSAL SERVICE	Rider No. 14	Sheet No. 90
TEMPORARY RIDER FOR EEF	Rider No. 15	Sheet No. 91
NET ENERGY METERING	Rider No. 17	Sheet No. 93

### SPECIAL RULES:

#### 1. SUBMETERING OR REDISTRIBUTION PROHIBITED

This schedule is applicable only where all of the electricity supplied is used solely by the Consumer for his own individual use, except as provided by Special Rule 5.

#### 2. SCHEDULE TRANSFERS

- a. If in each month the kilowatt use is less than 650 kW for a period of twelve consecutive months, subsequent service and billing shall be under the terms of the Medium General Service Schedule as long as such schedule is applicable.

#### 3. REACTIVE BILLING DEMAND

- a. The Company shall each month determine the net leading or lagging reactive kilovolt ampere demand registered during the same 30 minute period as the maximum Kilowatt Demand.
- b. If the rkVA demand so determined is lagging, the reactive billing demand shall be the rkVA which are in excess of 10 percent of the Kilowatt Demand billed.
- c. If the rkVA demand so determined is leading, the reactive billing demand shall be the rkVA which are in excess of 40 percent of the Kilowatt Demand billed.



### LARGE GENERAL SERVICE SCHEDULE

#### ~~4. SERVICE INTERRUPTION~~

~~Upon written notice and proof within ten days of any service interruption continuing longer than twenty-four hours, the Company will make a pro-rata reduction in the Kilo-watt Demand rate. Otherwise the Company will not be responsible for service interruptions.~~

#### ~~5. BUILDINGS USED PRIMARILY FOR OFFICE PURPOSES~~

~~Either submetering or redistribution, as defined by the definitions of Section IX of the General Rules and Regulations, shall be permitted for buildings used primarily for office purposes upon the Customer executing a written application agreeing that service hereunder (1) shall be for five years, and for successive periods of two years each, unless written notice of termination is given one year before expiration of the five-year period, or any two-year renewal period; (2) shall be supplied solely by the Company during the initial and renewal periods; and (3) shall not be submetered to its tenants at charges greater than that which the tenant would pay to the Company on the otherwise applicable rate schedules.~~

~~Noncompliance with the terms and conditions of Special Rule 5 will result in the Customer not being eligible to receive service under the Large General Service Schedule.~~

#### ~~6. TERMS OF SERVICE AND CONTRACT~~

~~Electric service hereunder will be furnished in accordance with a written contract which by its term shall be in full force and effect for a minimum period of one year and shall continue in force thereafter from year to year unless either party shall give to the other not less than 60 days notice in writing prior to the expiration date of any said yearly periods that the contract shall be terminated at the expiration date of said yearly period.~~

~~The customer shall contract for capacity equal to the estimated maximum demand of his load. The Company will supply capacity in excess of that contracted for when such capacity is available, but reserves the right to refuse to supply such additional capacity when in the judgment of the Company to do so would jeopardize the quality or continuity of service to other customers.~~

**Rider No. 3--SUPPLY VOLTAGE DISCOUNT**

A discount on the monthly Kilowatt Demand charges in each of the Company's electric schedules in which this Rider is applicable will be allowed when the supply is entirely from 132 kV Overhead Circuits or 33 kV Overhead Circuits (for the purpose of this Rider 33 kV Overhead shall include 13.8 kV Overhead transmission circuits fed directly from a power plant bus):

<u>Class of Supply</u>	<u>Discount per kW of Demand Billed per Month</u>
132 kV Overhead	\$1.80
33 kV Overhead	\$0.10

**Rider No. 4 - CONSUMER'S SUBSTATION DISCOUNT**

If the Consumer elects to furnish and maintain or lease or otherwise contract for all transforming, switching and other equipment required on the Consumer's Premises, a discount of 30 cents per kW of demand billed will be allowed on the monthly Kilowatt Demand charges in each of the Company's electric schedules in which this Rider is applicable.

**RIDER NO. 14**  
**UNIVERSAL SERVICE RIDER**

A Universal Service charge of 0.07267¢ per kWh for the first 833,000 kWh and 0.05680¢ per kWh for the kWh above 833,000 kWh shall be added to the energy charge of all applicable rate schedules for the exclusive purposes of providing funding for the low-income customer assistance programs and for the Consumer Education Program authorized under Section 4928.56 of the Ohio Revised Code, and for paying the administrative costs of the low-income customer assistance programs and the Consumer Education Program.

This Universal Service Rider replaces the Interim Emergency and Temporary Recovery Method for Percentage of Income Payment Plan Arrearages. Any service subject to Interim Emergency and Temporary Recovery Method for Percentage of Income Payment Plan Arrearages shall be subject to this Universal Service Rider instead.

**RIDER NO. 15**  
**TEMPORARY ENERGY EFFICIENCY RIDER**

An Energy Efficiency charge of 0.010758¢/kWh shall be added to the energy charge of all applicable rate schedules and special contracts pursuant to Ohio Revised Code 4905.31 for the exclusive purposes of funding the Energy Efficiency Revolving Loan Program created under Section 4928.62 of the Ohio Revised Code and for paying the program's administrative costs.

All services shall be subject to this Temporary Energy Efficiency Rider regardless of underlying tariff or special arrangement.