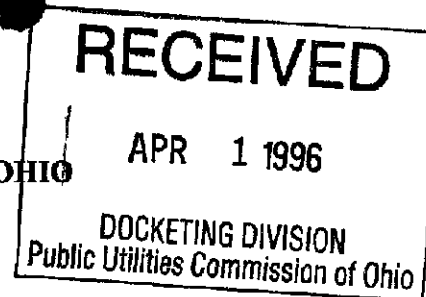


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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO



In the Matter of the Application of The)
Dayton Power and Light Company for)
Approval of an Electric Service)
Arrangement with AGA Gas, Inc.)

Case No. 96- 323 -EL-AEC

APPLICATION AND STATEMENT

Now comes the Applicant, The Dayton Power and Light Company ("DP&L"), and files with the Commission for its approval pursuant to the provisions of §4905.31 of the Ohio Revised Code, an electric service arrangement with a manufacturing facility ("Facility"), located within DP&L's service territory, owned and operated by AGA Gas, Inc. ("Customer").

In support of this Application, DP&L represents to the Commission that:

1. DP&L is an electric utility subject to the jurisdiction of the Commission pursuant to §4905.04 of the Ohio Revised Code.
2. Neither DP&L nor the Customer holds any interest in the other party, or in any other public utility subject to the jurisdiction of the Commission.
3. The Facility, located at 3800 Day-Park Drive Dayton, Ohio 45414, currently receives electric service pursuant to DP&L's General Service Transmission Rate.
4. DP&L has, subject to final approval of the Commission, entered into an Electric Power Supply Agreement ("Agreement") with Customer, which is attached as Appendix A. Under the terms and conditions of this Agreement, DP&L will provide Customer with non-firm electric power service for a period of four (4) years beginning on April 1, 1996. Customer may elect to extend this term for two (2) additional years upon twelve (12) months' notice prior to the end of year four (4) of the Agreement.

5. This Agreement increases the amount of non-firm load on DP&L's system and is consistent with one of the objectives of the Stipulation and Recommendation approved by the Commission's October 5, 1995 Opinion and Order in Case No. EL-95-205-FOR, stating that DP&L will implement programs which "provide industrial customers with the opportunity to contract for non-firm service."

6. This Agreement recognizes that Customer will have significant load growth over the term of the Agreement.

7. This Agreement provides Customer with a reduction in the demand charges for non-firm electric power service determined through consideration of DP&L's avoided cost of capacity, the amount of historical interruptions, expected load growth and generation resource plans, and the specific operating characteristics of Customer, including risk tolerance.

8. To limit Customer's exposure to service interruption, this Agreement delineates the conditions and limitations under which Customer will be required to manage or curtail its load. Customer may, under certain circumstances, choose to purchase replacement power in lieu of managing its load under the options, terms, and conditions specified within the Agreement.

9. DP&L maintains that this Agreement is necessary and in the public interest. Approval and implementation of this Agreement will not, in any way, adversely impact other customers currently served by DP&L or otherwise impair DP&L's ability to provide adequate service to said customers.

10. No alteration, modification, assignment, or premature termination of this Agreement shall be made without specific approval of the Commission.

11. DP&L and Customer request that the Commission approve this Agreement for the full term contemplated herein.

Pursuant to the Motion for a Protective Order filed concurrent with this Application and Statement, DP&L hereby files the requisite number of redacted copies of the Agreement for inclusion in the public case file, and three (3) unredacted copies of the Agreement under seal.

WHEREFORE, The Dayton Power and Light Company prays that the Commission approve the Agreement herein submitted.

Respectfully submitted,

THE DAYTON POWER AND LIGHT COMPANY

By: Richard D. Reid /mr

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THE DAYTON POWER AND LIGHT COMPANY
ELECTRIC POWER SUPPLY AGREEMENT
WITH
AGA GAS, INC.

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**THE DAYTON POWER AND LIGHT COMPANY
ELECTRIC POWER SUPPLY AGREEMENT
WITH
AGA GAS, INC.**

THIS ELECTRIC POWER SUPPLY AGREEMENT ("Agreement") is hereby made and entered into this 1st day of April, 1996 by and between THE DAYTON POWER AND LIGHT COMPANY ("DP&L"), incorporated in the State of Ohio, and AGA GAS, INC. ("Customer"), incorporated in the State of Ohio.

WITNESSETH

WHEREAS, DP&L, a regulated public utility, is engaged in the production, transmission, and distribution of electric power and energy and sale thereof in the State of Ohio; and

WHEREAS, Customer operates a Facility engaged in manufacturing within DP&L's service territory; and

WHEREAS, Customer desires to maintain a long term supply of electric power at competitive and predictable prices; and

WHEREAS, DP&L desires to retain Customer's business and the associated benefits such business provides to the economy of West Central Ohio; and

WHEREAS, Customer desires to continue to receive electric power and energy from DP&L for use in its Facility under the terms and conditions set forth herein; and

WHEREAS, Customer desires to receive Non-Firm Electric Power Service from DP&L.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties hereto agree as follows:

SECTION 1 - DEFINITIONS

1.1 Whenever used herein, the following terms shall have the respective meanings set forth below, unless a different meaning is plainly required by the context.

1.2 "Base Load" shall mean a situation in which Customer's Monthly Billing Demand [REDACTED]

1.3 "Best Efforts" shall mean actions of DP&L that are reasonable, prudent, and consistent with good utility practice.

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- 1.4 "Designated Representative" shall mean the individual(s) (primary and/or backup) designated by Customer as a single point of communication between DP&L and Customer, as identified under Section 9.2.
- 1.5 "Emergency Electrical Procedures" shall mean the approved procedures identified in DP&L's PUCO No. 16 General Service Rate Schedules.
- 1.6 "Expansion Load" shall mean a situation in which Customer's Monthly Billing Demand is [REDACTED] for two consecutive months.
- 1.7 "Facility" shall mean Customer's plant located in DP&L's service territory, identified under Appendix A.
- 1.8 "Firm Billing Demand" shall mean Customer's Firm Demand, identified under Appendix A.
- 1.9 "Firm Demand" shall mean the maximum level of demand that Customer is entitled to receive as Firm Electric Power Service.
- 1.10 "Firm Electric Power Service" shall mean service under the DP&L PUCO No. 16 General Service Rate Schedules applicable to Customer's Facility.
- 1.11 "Intermediate Load" shall mean a situation in which Customer's Monthly Billing Demand is [REDACTED] for two consecutive months.
- 1.12 "Load Management Order" shall mean notice given by DP&L to Customer that it may not exceed its Firm Demand during the clock hours specified by DP&L due to generation-related constraints on the DP&L electric system during which Customer may elect to purchase Replacement Power.
- 1.13 "Monthly Billing Demand" shall mean that demand defined under Section 6.1.
- 1.14 "Non-Coincident Demand" shall mean the Facility's monthly maximum demand.
- 1.15 "Non-Firm Billing Demand" shall mean Monthly Billing Demand less Firm Billing Demand.
- 1.16 "Non-Firm Demand" shall mean the level of demand that Customer is entitled to receive as Non-Firm Electric Power Service.
- 1.17 "Non-Firm Electric Power Service" shall mean service under the terms and conditions set forth herein as they apply to all service other than Firm Electric Power Service.
- 1.18 "Order To Curtail" shall mean notice given by DP&L to Customer that it may not exceed its Firm Demand during the clock hours specified by DP&L due to the system constraints identified under Section 7.1 during which Customer may not purchase Replacement Power under Section 8.

- 1.19 "Party" shall mean Customer or DP&L individually, and "Parties" shall mean Customer and DP&L collectively.
- 1.20 "PUCO" shall mean the Public Utilities Commission of Ohio or its successor.
- 1.21 "PUCO No. 16 General Service Rate Schedules" refers to the DP&L Electric Service Schedule of Rates, Classifications, Rules and Regulations, or successors to said schedules, as approved by and on file with the PUCO, or specific versions of said schedules as set forth herein.
- 1.22 "Replacement Power" shall mean power generated by DP&L or purchased by DP&L from another supplier and delivered to Customer for use at its Facility in any period during which a Load Management Order is in effect. It is understood that the definition of Replacement Power may change during the Term of this Agreement as a result of the administration of Appendix B, Section B8.
- 1.23 "Total Demand" shall mean the maximum level of Non-Coincident Demand, Firm Demand plus Non-Firm Demand, that Customer is entitled to receive as specified under Appendix A.
- 1.24 Terms such as "hereof," "herein," "hereunder," and other similar compounds of the word "here" shall mean and refer to this entire Agreement rather than any particular part.
- 1.25 Certain other definitions, as required, appear in subsequent parts of this Agreement.

SECTION 2 - APPLICABILITY

- 2.1 **Facility** - This Agreement shall apply to the Facility, located within DP&L's service territory, identified under Appendix A.
- 2.2 **Operational Relationships** - Customer represents that it owns or operates, under a lease arrangement, the Facility identified under Appendix A. Customer will notify DP&L of any change in ownership or in the operational relationship that exists between Customer and the Facility served under this Agreement. Under such circumstances, Customer shall have the right to assign this Agreement subject to DP&L's consent. Such consent shall not be unreasonably withheld.
- 2.3 **Limitation** - This Agreement applies only to the Facility identified under Appendix A. DP&L represents that this Agreement relates to a unique situation and is not applicable to any other customer that receives or wishes to receive electric service in the DP&L service territory.

SECTION 3 - TERM

- 3.1 **Term** - "Term" shall mean the total period of time that this Agreement shall remain in effect, as set forth herein. This Agreement shall commence on April 1, 1996 and shall remain in effect for a "Primary Term" of four (4) years. Customer may elect to extend this Agreement

for an "Extension Period" of two (2) years upon twelve (12) months' written notice prior to the expiration of this Primary Term. Customer may, at its option, continue to receive Non-Firm Electric Power Service at the expiration of this Term at prices and terms and conditions to be negotiated prior to said expiration.

- 3.2 Consequences of Termination During the Primary Term - If, for any reason, Customer terminates this Agreement before its Primary Term is complete, Customer shall, prior to termination, remit to DP&L the greater of:
- a) The entire amount of savings earned on the Base Load plus fifty percent (50%) of the savings earned on the Intermediate and Expansion Load while this Agreement was in effect. For the purposes of determining the amount of savings earned, all service rendered by DP&L hereunder shall be priced as Firm Electric Power Service by applying the rates and charges in effect under the DP&L PUCO No. 16 General Service Rate Schedules, that apply to Customer. Said rates and charges shall be those that appear on file with the PUCO in each month of this Agreement prior to termination. Customer shall remit to DP&L a single payment equal to the difference between this amount and the amount actually paid by Customer while this Agreement was in effect, plus carrying costs calculated based upon a rate of ten percent (10%) per annum; or
 - b) All customer and demand charges owed DP&L pursuant to the administration of Sections 6.1, 6.2.a, 6.2.b, and 6.2.c had the contract not been terminated.
- 3.3 Consequences of Termination During the Extension Period - If, for any reason, Customer terminates this Agreement during the Extension Period, Customer shall, prior to termination, remit to DP&L all customer and demand charges owed DP&L pursuant to the administration of Sections 6.1, 6.2.a, 6.2.b, and 6.2.c had the contract not been terminated.
- 3.4 Limitation - DP&L shall neither seek nor collect any rate, charges, or fees from Customer other than those identified in Sections 3.2 and 3.3 as a result of Customer's election to terminate this Agreement hereunder in order to satisfy its electricity requirements through other available alternatives.

SECTION 4 - ELECTRIC POWER REQUIREMENTS

- 4.1 Electric Power Required - Subject to the terms and conditions set forth herein, DP&L agrees to provide to Customer, during the Term of this Agreement, and Customer agrees to accept and pay for, all of the electric power required by the Facility identified under Appendix A.

SECTION 5 - POWER SERVICES

- 5.1 Total Demand - DP&L shall provide Customer with the Non-Coincident Demand specified under Appendix A.

- 5.2 Firm Demand and Firm Electric Power Service - DP&L shall provide Customer with Firm Electric Power Service based on the Firm Demand stated in kilowatts specified under Appendix A. Firm Electric Power Service entitles Customer to the same rights and service priority as other DP&L customers that receive firm service under any of DP&L's PUCO No. 16 General Service Rate Schedules.
- 5.3 Non-Firm Demand and Non-Firm Electric Power Service - DP&L shall provide Customer with Non-Firm Electric Power Service for all load in excess of the Firm Demand identified herein, up to Customer's Total Demand. Non-Firm Electric Power Service entitles Customer to service on DP&L's electric system in all periods other than those periods during which load curtailment or management is required under Section 7.
- 5.4 Additional Demand - DP&L may increase Customer's Total Demand under the following circumstances:
- a) If, based upon a review on each anniversary of this Agreement's signing, Customer's Non-Coincident Demand during the prior twelve (12) months exceeds Customer's Total Demand, DP&L shall increase said Total Demand for the remaining Term of this Agreement. Such increase shall be equal to the difference between Customer's highest Non-Coincident Demand and the Total Demand in effect during the twelve (12) month period under review and shall be added to Customer's Firm Demand. Said addition shall be made in accordance with Section 14.9, as an amendment to and incorporated under Appendix A.
 - b) If Customer fails to comply with an Order To Curtail, increases in Firm Demand shall be administered pursuant to Section 7.2.
- 5.5 Return to Firm Service - DP&L shall accommodate a return to Firm Electric Power Service for all or a portion of Customer's demand previously supplied as Non-Firm Electric Power Service at the rates, terms and conditions set forth in its then-effective PUCO No. 16 General Service Rate Schedules upon three (3) years' written notice of Customer's intent to return. DP&L may accommodate a return to Firm Electric Power Service at said rates with less than three (3) years' notice provided the cycle time for meeting Customer's requirement facilitates such shorter notice. In cases where Customer provides less than three (3) years' notice of its intent to return to Firm Electric Power Service and DP&L must incur costs higher than system average, DP&L shall endeavor to use its Best Efforts to accommodate the return provided that Customer agrees to pay for all incremental costs incurred by DP&L. A return of all or a portion of Customer's load to Firm Electric Power Service prior to the end of the Term of this Agreement shall not be considered a termination hereunder and Section 3.2 shall not apply.
- 5.6 New Service Offerings - If, at any time during the Term of this Agreement, DP&L establishes and offers any new service under its PUCO No. 16 General Service Rate Schedules that was not available to Customer at the time this Agreement was executed, Customer may request service under said rate schedule. The Parties shall negotiate the necessary terms and conditions associated with Customer electing to convert to such a new service. Receiving

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any new service shall not relieve Customer from fulfilling any or all of its obligations under this Agreement.

SECTION 6 - BILLING DETERMINANTS, RATES & CHARGES

- 6.1 **Monthly Billing Demand** - The Facility's "Monthly Billing Demand" shall be the greatest thirty (30) minute integrated demand, ascertained in kilowatts by instruments suitable for the purpose. Such Monthly Billing Demand shall be the greatest of the following:
- a) Seventy-five percent (75%) of the greatest off-peak demand occurring during the billing month, either within the period between 8:00 p.m. of one day and 8:00 a.m. of the following day, or on any Saturday or Sunday, or on the following observed legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day; or
 - b) One hundred percent (100%) of the greatest on-peak demand occurring during the billing month at any time not within the period and not on the legal holidays indicated in Section 6.1a above; or
 - c) Seventy-five percent (75%) of the greatest of such off-peak or on-peak demand as used for billing in the months of June, July, August, December, January, and February during the past eleven (11) month period prior to the current billing month.
- 6.2 **Rates and Charges** - Customer shall pay DP&L the following rates and charges for all service provided hereunder:
- a) **Customer Charges** - Customer shall pay a monthly customer charge equal to \$270.
 - b) **Demand Charges for Firm Electric Power Service** - Customer shall pay monthly demand charges for Firm Electric Power Service equal to [REDACTED] Monthly demand charges for Firm Electric Power Service shall be applied to Customer's Firm Billing Demand.
 - c) **Demand Charges for Non-Firm Electric Power Service** - Customer shall pay monthly demand charges for Non-Firm Electric Power Service according the following rate schedule:

Charge (\$/kW)	Applied To:
[REDACTED]	All Non-Firm Billing Demand when Customer is in a Base Load situation
[REDACTED]	All Non-Firm Billing Demand when Customer is in an Intermediate Load situation
[REDACTED]	All Non-Firm Billing Demand when Customer is in an Expansion Load situation

- d) Reactive Demand Charges - Customer shall pay monthly reactive demand charges on all kilovars registered during the billing month at a rate of \$0.30 per kilovar.
- e) Energy Charges - Customer shall pay monthly energy charges on all kilowatt-hours consumed during the billing month at a rate equal to \$0.00702 per kilowatt-hour.
- f) Electric Fuel Component ("EFC") - Customer shall pay DP&L's prevailing EFC rate on all kilowatt-hours consumed during the billing month except on those kilowatt-hours consumed as Replacement Power during a Load Management Order.
- g) Percentage of Income Payment Plan ("PIPP") - Customer shall pay DP&L's prevailing PIPP rate on all kilowatt-hours consumed during the billing month.
- h) "Emissions Fee Recovery Rider" - Customer shall pay DP&L's prevailing Emissions Fee Recovery Rider on file with the PUCO as such rider may exist within the Term of this Agreement. Customer will be refunded every six (6) months any emissions fee paid on any energy charges paid for kilowatt-hours associated with Replacement Power.

6.3

[REDACTED]

SECTION 7 - LOAD CURTAILMENT & MANAGEMENT

- 7.1 Order To Curtail - Upon issuance of an Order To Curtail, Customer will curtail its electric demand to the Firm Demand set forth in Appendix A consistent with DP&L's existing order of curtailment. An Order To Curtail may be issued when:
 - a) DP&L's transmission system reaches the limit of its import capability; or
 - b) DP&L's transmission system reaches the limit of its transfer capability; or
 - c) Replacement Power is unavailable; or
 - d) In DP&L's sole discretion, system reliability is threatened; or
 - e) DP&L's Emergency Electrical Procedures are in effect.
- 7.2 Failure to Comply - Failure to comply with an Order To Curtail may result in the following actions by DP&L:
 - a) DP&L may, for the billing month in which said failure occurs, bill Customer's Non-Firm Demand at the demand charges for Firm Electric Power Service set forth in Section 6.2b.

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- b) DP&L may require Customer to refund the amount of savings earned during the prior eleven (11) billing months that this Agreement was in effect on only the portion of load that exceed Firm Demand during the Order To Curtail. Customer shall remit payment on the due date of the current bill.
- c) DP&L may increase Customer's Firm Demand by the difference between Customer's maximum demand on DP&L's electric system during the Order To Curtail and the Firm Demand specified under Appendix A. Said adjustment shall remain in effect for the remaining Term of this Agreement. Said increase shall be made in accordance with Section 14.9, as an amendment to and incorporated under Appendix A.
- d) DP&L may require Customer to pay, on all kilowatt-hours consumed during the Order To Curtail above Customer's Firm Demand, charges at a rate equal to the highest incremental cost of power generated or purchased by DP&L during the Order To Curtail, plus twenty-five percent (25%) of this highest incremental cost.
- e) DP&L may, at its sole discretion, choose to terminate this Agreement if Customer fails to comply with DP&L's Order To Curtail more than two (2) times. In this event, Customer shall receive its total energy requirements as firm under DP&L's then-effective PUCO No. 16 General Service Rate Schedules.
- f) In addition to these remedies, DP&L shall be entitled to any appropriate remedy for adverse impacts caused to its system as a result of Customer's failure to comply with an Order to Curtail.

At such time that DP&L notifies Customer of an Order To Curtail, DP&L shall specify the above action(s) that it may elect to take in the event Customer fails to comply. In no event shall DP&L implement or seek to implement any action hereunder that was not disclosed upon notification of an Order To Curtail.

- 7.3 Load Management Orders - Load Management Orders may be issued for the clock hours during which DP&L's scheduled coal-fired steam generating capacity available is not sufficient to meet the total power requirements on said generating units, including necessary operating reserve margins. Upon issuance of a Load Management Order, Customer must curtail its electric demand to the Firm Demand set forth under Appendix A or purchase Replacement Power under Section 8.
- 7.4 Notice - DP&L shall notify Customer's Designated Representative prior to an Order to Curtail as specified herein. Except during period of system emergency, DP&L shall endeavor to provide up to [REDACTED]'s notice prior to an Order to Curtail, but not less than ten (10) minutes. Notice shall be made verbally, with written confirmation to follow via facsimile or other mutually acceptable means. Notice as it relates to Load Management Order shall be handled in accordance with Appendix B. DP&L shall not be held liable for any loss or damage caused by or resulting from its inability to provide the amount of notice set forth herein.

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- 7.5 Conditions for Load Management Orders - Orders To Curtail and Load Management Orders shall not exceed [REDACTED] hours per year for each year that this Agreement is in effect.
- 7.6 Interruption of Service - In the event that an interruption of service occurs as a result of a system emergency, DP&L will return service as soon as system integrity is restored. Interruptions caused by system emergencies shall not be bound by limits on duration or the maximum hours of interruption set forth in Section 7.5. DP&L shall not be held liable for any loss or damage resulting from any interruption of service that may occur during the Term of this Agreement.
- 7.7 Verification Requests - Upon reasonable request, DP&L shall provide Customer with access to information, records, and other data related to the administration of Orders To Curtail and Load Management Orders.

SECTION 8 - REPLACEMENT POWER

- 8.1 Availability - Customer may purchase Replacement Power for any period during which a Load Management Order is in effect.
- 8.2 Service Option - Replacement Power shall be administered hereunder in accordance with the service options identified under Appendix B.
- 8.3 [REDACTED]
- 8.4 Service Obligation - If, during such period when Customer is purchasing Replacement Power, for any reason expressed herein, DP&L notifies Customer that Replacement Power is no longer available, the terms of Section 8 and Appendix B shall cease to apply and Customer must reduce its load to the Firm Demand as specified under this Agreement. DP&L shall not be held liable for any loss or damage caused by its inability to provide Replacement Power service hereunder.
- 8.5 Verification Requests - Upon reasonable request, DP&L shall provide Customer with access to information, records, and other data including, but not limited to, an itemization of individual rates and charges related to the administration of Replacement Power hereunder.

SECTION 9 - NOTICES

- 9.1 Notices - Unless otherwise provided under this Agreement, all notices and communication shall be deemed given to a Party if made by registered or certified mail.
- 9.2 Designated Representative - For purposes of administering this Agreement, Customer's Designated Representative shall be:

Primary

<u>Joe D'Agostino</u>	<i>(Name)</i>
<u>V.P. Operations & Engineering</u>	<i>(Title)</i>
<u>6225 Oaktree, Independence, OH</u>	<i>(Address)</i>
<u>216/642-6695</u>	<i>(Telephone)</i>
<u>216/642-6697</u>	<i>(Facsimile)</i>

Backup

<u>Dru Darnall</u>	<i>(Name)</i>
<u>Mgr. of Operations Admin.</u>	<i>(Title)</i>
<u>6225 Oaktree, Independence, OH</u>	<i>(Address)</i>
<u>216/642-6724</u>	<i>(Telephone)</i>
<u>216/642-6697</u>	<i>(Facsimile)</i>

- 9.3 Billing - Billing under this Agreement shall be forwarded to:

<u>Accounts Payable</u>	<i>(Name)</i>
<u></u>	<i>(Title)</i>
<u>6225 Oaktree, Independence, OH</u>	<i>(Address)</i>
<u>216/642-6600</u>	<i>(Telephone)</i>
<u>216/447-8921</u>	<i>(Facsimile)</i>

- 9.4 DP&L - All correspondence from Customer to DP&L shall be made to:

Account Manager - AGA Gas, Inc.

P.O. Box 8825

Dayton, Ohio 45401

Telephone: 513-643-5037

Facsimile: 513-643-5080

- 9.5 Changes - Either Party may change the persons to receive notice under Sections 9.2, 9.3, and 9.4 by providing thirty (30) days written notice to the other Party.

SECTION 10 - RULES & REGULATIONS

- 10.1 Unless otherwise provided herein, Customer agrees to abide by the rules and regulations and all terms and conditions of the applicable tariff under which it receives or would receive service and all provisions approved by the PUCO and set forth in DP&L's PUCO No. 16 General Service Rate Schedules.

SECTION 11 - BILLING & PAYMENT

- 11.1 Billing - DP&L shall render one (1) bill each month for the Customer Facility served under this Agreement. DP&L shall provide sufficient data to Customer that it may verify the accuracy of charges contained on the bill.
- 11.2 Payment - Payment of the total amount due to DP&L must be received by DP&L or an authorized agent by the date shown on Customer's bill.
- 11.3 Delayed Payment Charge - Failure by Customer to remit payment by the due date will result in an additional charge calculated in accordance with the Delayed Payment Charge specified in DP&L's then-effective PUCO No. 16 General Service Rate Schedules.
- 11.4 Returned Check Charge - A charge shall be added to Customer's bill each time a check is returned by a financial institution. The charge shall be equal to the Returned Check Charge specified in DP&L's then-effective PUCO No. 16 General Service Rate Schedules.
- 11.5 Termination of Billing Rights and Obligations - All rights and obligations accruing to either Party as a result of a dispute or adjustment to a bill calculated under this Agreement shall be extinguished one (1) year from the issue date of said bill. This termination, though, shall not extinguish a right to an adjustment if such dispute or requested adjustment was initiated within this one (1) year period.

SECTION 12 - METERING

- 12.1 **Voltage Level** - DP&L will meter Customer's load at the voltage level at which Customer receives service for purposes of administering and billing this Agreement. The terms and conditions contained herein are premised upon Customer receiving service at the voltage level at which it currently receives service. Any changes in service type or voltage level at the Facility served shall be handled in accordance with Section 14.9.
- 12.2 **Metering and Accuracy** - DP&L shall be responsible for all metering of electricity supplied to Customer at the point of delivery to Customer's Facility. Metering and metering accuracy shall be in accordance with DP&L's then-effective PUCO No. 16 General Service Rate Schedules.
- 12.3 **Metering Changes** - If special metering equipment is required under this Agreement, and the cost of that equipment is not included in the rates and charges set forth in Section 6, Customer shall pay DP&L for the cost of purchasing and installing any special equipment so required. DP&L will provide sufficient documentation to support the cost of such equipment. Nothing provided herein shall preclude the Parties from making separate arrangements for special metering equipment.
- 12.4 **Metering Information** - DP&L shall provide Customer's Designated Representative with such metering information and data, including real-time information and data, needed to determine electricity operating conditions, demand, and other factors affecting the electricity cost, usage, and requirements of Customer's Facility. Such metering information and data shall be provided using DP&L's Energy Link system. All costs of providing information and data not provided by DP&L's Energy Link system shall be borne by Customer.

SECTION 13 - FORCE MAJEURE

- 13.1 **Definition** - The term "Force Majeure" shall mean the occurrence or non-occurrence of any act or event that is not reasonably within the control of the claiming Party and which, by the exercise of due diligence, such Party could not have prevented or overcome. Nothing herein shall be construed to require a Party to settle a lockout, work stoppage, or other industrial disturbance in which it may be involved.
- 13.2 **Action Required** - The Party experiencing a Force Majeure event shall: a) promptly notify the other in writing as to the nature of the Force Majeure situation, and b) use all reasonable diligence, dispatch, and expense to remedy such situation.
- 13.3 **Suspension of Obligations** - All rights and obligations of the Parties shall be suspended during the term of the Force Majeure event.

SECTION 14 - MISCELLANEOUS

- 14.1 **Laws and Regulations** - This Agreement is made and subject to all present and future local, state and federal laws and to the regulations or orders of any state or federal authority having jurisdiction over the matters set forth herein. Performance under this Agreement is conditioned upon its approval by the PUCO and any other such authority that may have jurisdiction over this Agreement. The Parties shall strive to secure and retain such approval.
- 14.2 **Indemnity** - Each Party shall indemnify, hold harmless, and defend the other Party against all claims, liability, costs, or expense for loss, damage, or injury to persons or property in any manner directly or indirectly connected with or growing out of the generation, transmission, or distribution of Firm or Non-Firm Electric Power Service on each Party's side of the point of delivery hereunder.
- 14.3 **Binding Nature** - The terms, conditions, and covenants of this Agreement shall be binding upon and shall inure to the benefit of each of the Parties hereto, their successors, and assigns.
- 14.4 **Assignment** - Either Party may assign this Agreement upon written consent of the other Party, of which consent shall not be unreasonably withheld. Assignment will in no way operate to enlarge, alter, or change the obligations of either Party hereto, their successors, or assigns.
- 14.5 **Waiver** - Failure of either Party to enforce, at any time or for any period of time, any provision of this Agreement shall not be construed as a waiver of any provision or the right of either Party to enforce each and every provision of this Agreement.
- 14.6 **Resignation** - Customer agrees to waive its rights to initiate a decrease, or change in the design, of DP&L's rates through an application under Section 4905.26 of the Ohio Revised Code or any successor provision during the entire Term of this Agreement.
- 14.7 **Severability** - The Parties understand and agree that the terms and conditions set forth herein constitute an overall rate and service package that may not be acceptable if any individual term or condition of this Agreement is eliminated or modified. In the event that any term or condition of this Agreement is deemed to be illegal, void, unreasonable, or unenforceable, either Party may choose to terminate this Agreement without further obligation hereunder, provided that the Parties agree to work in good faith to first amend this Agreement to the extent necessary to accommodate its continued effectiveness. Where conflicting provisions of any applicable law or regulation may be waived, they are hereby waived by the Parties hereto to the fullest extent possible such that this Agreement shall be enforced as written.
- 14.8 **Headings** - The headings and subheadings used in this Agreement are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.
- 14.9 **Amendments** - Nothing contained herein shall preclude the Parties from amending the terms and conditions of this Agreement. Amendments shall be made in writing and signed by both

Parties to this Agreement. Amendments shall be subject to all appropriate regulatory approvals under Section 14.1.

- 14.10 Confidentiality - DP&L believes that portions of this Agreement are proprietary and include confidential information and trade secrets. DP&L shall make the appropriate filings with the PUCO to assert the confidential nature of portions of this Agreement. The Parties shall protect the confidentiality of such portions of this Agreement to the extent that the PUCO orders nondisclosure. When required, the Parties may submit this Agreement, including any information deemed to be confidential, to consultants and contractors performing work on or related to the subject matter of this Agreement, who must agree in writing to protect the confidentiality of such information in the same manner provided herein.
- 14.11 Entire Agreement - This Agreement constitutes the entire Agreement between the Parties with respect to the matters set forth herein. This Agreement supersedes any previous agreement between the Parties, whether written or oral.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers, duly authorized on that behalf, as of the date and year first written above.

WITNESS:

For: THE DAYTON POWER AND LIGHT COMPANY

Monica L. Grilliot
Monica L. Grilliot (name)

By: Judy W. Lansaw
Judy W. Lansaw (name)
Its: Group Vice President (title)

WITNESS:

For: AGA GAS, INC.

Alyce M. Koracin
Alyce M. Koracin (name)

By: Joseph M. D'Agostino
Joseph M. D'Agostino (name)
Its: V.P. Operations & Engineering (title)

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APPENDIX A

Facility Name and Address	[REDACTED] [REDACTED]	Voltage Level
AGA Gas, Inc. 3800 Day-Park Drive Dayton, OH 45414	[REDACTED]	Transmission

Total Demand	[REDACTED]
Firm Demand	[REDACTED]

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APPENDIX B

- B1. Upon signing this Agreement, Customer shall designate the option under which it shall receive Replacement Power. Customer's Designated Representative may change the option under which it receives Replacement Power each quarter, by providing DP&L with written confirmation thirty (30) days prior to the beginning of any calendar quarter. If Customer does not notify DP&L within the time frame stated hereunder, DP&L shall continue to provide Customer with Replacement Power under the previously established option.

Option 1

- B2. Strike Price Structure - To facilitate the scheduling and delivery of Replacement Power during a Load Management Order, Customer shall establish a "Strike Price Structure." Said Strike Price Structure shall be capture the maximum prices at which Customer agrees to purchase Replacement Power during a Load Management Order under various circumstances. Upon signing this Agreement, Customer shall notify DP&L of its Strike Price Structure. Changes to the Strike Price Structure may be made verbally by Customer's Designated Representative with written confirmation to follow via facsimile or other mutually acceptable means.
- B3. Notice - If, during a Load Management Order, the cost of Replacement Power is expected to exceed any level of the Customer's Strike Price Structure, DP&L shall verbally notify Customer's Designated Representative. To help mitigate Customer's risk, DP&L shall endeavor to provide up to [REDACTED] notice prior to the hour during which the price is expected to exceed any level of the Customer's Strike Price Structure, but not less than ten (10) minutes. Customer must request Replacement Power no later than one (1) hour after DP&L provides notice, or such shorter time agreed to by both Parties as conditions warrant. Requests for Replacement power shall be made verbally by Customer's Designated Representative, with written confirmation to follow via facsimile or other mutually acceptable means.
- B4. Price - The price per kilowatt-hour of Replacement Power shall be the average hourly highest incremental cost of all power purchased or generated by DP&L during each hour a Load Management Order is in effect, plus a [REDACTED], plus applicable excise taxes.
- B5. Best Efforts - DP&L shall use its Best Efforts to obtain the lowest cost Replacement Power to meet Customer's non-firm load requirements but does not guarantee the availability or delivery of Replacement Power.

Option 2

- B6. Price Quote - Prior to the beginning of each calendar quarter, DP&L shall quote a price for Replacement Power to Customer based on anticipated market conditions. Customer may, by written correspondence, chose to pre-schedule Replacement Power at this quoted price for

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all periods during which a Load Management Order is in effect for the coming quarter without notice prior to said Load Management Order.

- B7. Price - The price of Replacement Power shall be the quarterly price quoted by DP&L on a per kilowatt-hour basis, plus a [REDACTED], plus applicable excise taxes.

Option 3

- B8. If and when circumstances arise that cause DP&L to make additional Replacement Power options available to customers, whether under individual service arrangements or DP&L's PUCO No. 16 General Service Rate Schedules, DP&L shall make such options available to Customer. The Parties shall specify the terms and conditions of Replacement Power service by amending Appendix B in accordance with Section 14.10 of this Agreement. Customer's decision to purchase service utilizing any Replacement Power option not available upon signing this Agreement shall not affect Customer's rates and charges under Section 6.