

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power	)	
Company to Amend Its Supplier Coordination Tariff	)	Case No. 13-729-EL-ATA
and Related Contracts.	)	

**BORDER ENERGY ELECTRIC SERVICES, INC.'S COMMENTS ON  
OHIO POWER COMPANY'S PROPOSED AMENDED SUPPLIER  
COORDINATION TARIFF AND RELATED CONTRACTS**

Border Energy Electric Services, Inc. ("Border") respectfully submits its comments regarding the Ohio Power Company's ("AEP Ohio") application to amend its supplier coordination tariff and related contracts (the "Application") pursuant to the schedule set forth in the Commission's June 5, 2013 Entry in this case ("Entry").

Border's primary concern is with AEP Ohio's proposed changes to the collateralization requirements for CRES providers. Border addresses this issue, as well as other concerns it has with the Application, below.

**AEP Ohio's Proposed Collateralization Requirement**

AEP Ohio proposes the following "calculation of capacity obligation" for CRES providers:

CRES Provider capacity obligations shall be calculated according to the AEP-Ohio CRES Capacity Obligation Calculation Process, which shall be posted on the Company's website.

(Redlined Original Sheet 103-33D, No. 4 (Exhibit B-2 to the Application).) The proposed capacity obligation agreement is attached as Exhibit A. Border has reviewed the document at length and has made several attempts to work with AEP Ohio to resolve its issues regarding collateral requirements.

Specifically, AEP Ohio proposes that “the CRES shall post and maintain throughout the Agreement adequate Performance Assurance in the amount equal to the sum of ninety (90) days of the CRES’s peak Capacity Obligation times the AEP Ohio FRR Capacity Rate.” (*See* Ex. A at 8.) AEP Ohio currently bills capacity through PJM on a monthly basis. To date, AEP Ohio has not had collateral to cover any of this exposure; they have simply ignored it. Therefore, any amount of collateral is an increase for all CRES providers from the current requirement.

Border does not oppose AEP Ohio’s efforts to collateralize its risk. However, AEP Ohio’s proposed requirement is overly burdensome and could be viewed as an artificial barrier to entry. There are much more reasonable ways of accomplishing AEP Ohio’s goal to minimize its risk than requiring ninety-days’ collateral. For example, AEP Ohio can significantly reduce its risk to CRES providers by shortening timeline for capacity collections. Instead of having PJM collect capacity payments from CRES providers on a monthly basis, AEP Ohio could have PJM change the collection process to a weekly process. Border understands that this is the process used by other companies including Duke Energy of Ohio, Dayton Power and Light, and the First Energy Utilities. Shortening the collection cycle would reduce AEP Ohio’s outstanding risk on average from forty-eight days to sixteen days instantly, while also greatly reducing the amount of collateral that CRES providers have to give to AEP Ohio. Given a standard timeline and remediation period, the amount of collateral required would be 20 days.

But even if AEP insists upon a 30-day collection cycle for capacity is required, ninety days of collateral is still too aggressive in light of the risk that AEP Ohio faces. PJM has well-established payment and operating procedures to assure payment is made on a timely

basis. Assuming a 31 day month, the maximum exposure AEP Ohio would face to a defaulting CRES provider is no more than 50 days. This is calculated as follows: 31 days in the month, plus a 9-day billing window (assumes a holiday in the billing window), plus 10 days for collection (assumes the bill would be due the following week since the holiday pushed off the due date and cure period for non-payment), totaling 50 days. Border would even agree to a 60-day collateral requirement to build in a buffer to account for unforeseen circumstances. However, anything more than 60 days is unnecessary.

Finally, AEP Ohio could mitigate its risk without placing such a significant burden on CRES providers by allowing PJM to handle the credit requirements for capacity as it does for Duke and Dayton Power and Light. PJM has well-established protocols and procedures to protect its members. Having PJM handle the credit requirements would also give CRES providers consistency in collateral requirements.

#### **Proposed Ongoing Credit Calculation**

On the Redline Original Sheet 103-38D, under “ongoing credit calculation,” AEP Ohio’s proposed formula is inconsistent with both how AEP Ohio currently calculates this requirement and with a modified calculation that Border and AEP Ohio have mutually worked toward. The proposed formula is also overly burdensome to CRES Providers.

AEP Ohio currently uses a rolling two-month average to calculate the energy usage component of the credit calculation, which accounts for seasonal fluctuations in the level of exposure, it also will account for the CRES Provider’s increasing or decreasing load and respective exposure. AEP Ohio proposes calculating the collateral requirement by:

multiplying CRES Provider’s actual highest monthly energy usage over a rolling twelve (12) month period times the price set at the next July forward index price, as established by a

generally accepted industry price index for wholesale power deliver to the Company's load zone[.]”

Border believes that calculating the collateral requirement based upon the assumption that all energy usage is at peak hours is an unfair assumption. Border suggests modifying the calculation to allocate energy usage between peak and off-peak hours, applying the respective next July forward index prices to the usage.

Border also requests more transparency in what is deemed “generally accepted industry price index.” Border suggests that AEP Ohio use a mid-market price set by three independent brokers.

#### **Consolidated Billing**

On the Redline Original Sheet 103-49D, under “consolidated billing by the company,” AEP Ohio proposes splitting costs of billing customers with the CRES providers. Border would like to see a break out of the costs and additional clarity as to how AEP Ohio intends to implement such cost splitting. This is a notable change because these are new charges that CRES providers will have to factor into the cost of serving customers. To the extent the costs are significant, they should be phased in over time.

#### **Terminating Consolidated and Rate Ready Billing**

On the Redline Original Sheet 103-54D, AEP Ohio proposes that it be allowed to terminate consolidated and rate ready billing with thirty days’ written notice. The termination provisions is silent as to whether AEP Ohio must give a reason for the termination. While Border does not oppose AEP having the right to terminate consolidated and rate ready billing under certain circumstances, it believes that AEP Ohio should be required to provide verifiable reasons in writing for the termination. CRES providers rely on these services to

support their customers and would need more than thirty days to prepare for such a major change. Border, therefore suggests that, if AEP Ohio intends to abandon these services, it be required to justify its abandonment to the Commission before any change can be made.

#### **Reimbursement For Charges Collected**

On the Redline Original Sheet 103-57D, No. 6, AEP Ohio proposes the following modification to the reimbursement timeline:

The Company shall reimburse the CRES Provider for all charges collected on behalf of the CRES Provider within three (3) business days following receipt of the customer's payment, *when possible, but at least every two weeks.*"

(emphasis added).

Border strongly opposes this change because it impacts the suppliers dramatically with respect to running and funding their businesses. AEP Ohio's proposed reimbursement time-frame represents a major shift from the current requirement that all payments be remitted within three business days. Cash flow is critical to CRES providers. The Application would make such timely reimbursement optional, effectively extending the reimbursement period by eleven days, thereby allowing AEP Ohio to significantly reduce payments to suppliers.

Border would not oppose a provision allowing AEP Ohio to delay payment outside of the normal payment structure in certain situations. However, these delays should be few and far between, and the general rule should be that reimbursements must be made within three business days.

#### **Retaining Customer Payment Where CRES Provider Defaults**

On the redline Original Sheet 103-61D, AEP Ohio has inserted the following provisions regarding defaults by CRES providers:

If the customer's CRES Provider defaults, the Company reserves the right to retain payments collected from the customer and to apply such payments to the Company's charges.

AEP Ohio moved this provision from another section of the original agreement.

Border initially thought that this clause was initially used to securitize AEP Ohio's risk for capacity in the past as it was not captured anywhere else. However, based upon the newly-proposed collateral requirements for both capacity and energy, this clause is unnecessary. For instance, this clause gives AEP Ohio the right to all of the money it collects from the CRES customers in the event of a CRES default. But AEP Ohio is already requiring CRES providers to collateralize their obligations so that it can recoup these same costs in case the CRES defaults. AEP Ohio cannot have it both ways – either it asks for collateral from the CRES providers, or it has the right to the customer payment in the event of a default. Allowing AEP Ohio both mechanisms to collect should a CRES provider default would significantly over collateralize AEP Ohio's risk.

The partial payment priorities of this section also need to be updated to reflect the Commission's Orders involving payment arrangements.

#### **Ability To Declare An Event of Default**

On the redline Original Sheet 103-62D, number seven, AEP Ohio has inserted the following provision allowing it to declare an event of default if:

The CRES Provider misuses the Company Consolidated and Bill-Ready Billing option by incorrectly using the name of the Company or the name of one of the Company's affiliates in a charge description or otherwise using this billing option in a misleading or defamatory manner.

This is too broad a power to give to AEP Ohio without Commission oversight. Border does not contest that AEP Ohio should be given recourse to declare an event of default should a CRES provider misuse the consolidated and bill ready option, including using it in a misleading or defamatory manner. However, given the serious implications of an event of default, and the inherently subjective nature of determining what qualifies as misleading or defamatory, Border requests that AEP Ohio submit the issue to the Commission for ruling before it can declare an event of default.

\* \* \*

Border appreciates the opportunity to comment on Application and respectfully urges the Commission to adopt Border's suggested revisions thereto or ask AEP Ohio to address Border's concerns in a revised Application.

Dated: July 8, 2013

**BORDER ENERGY ELECTRIC SERVICES,  
INC.**

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# EXHIBIT A



## CAPACITY PAYMENT AGREEMENT

**THIS CAPACITY PAYMENT AGREEMENT** (the "Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date") by and between Ohio Power Company, an Ohio corporation ("AEP Ohio"), and \_\_\_\_\_, a \_\_\_\_\_ ("CRES"). AEP Ohio and the CRES are hereinafter referred to as a "Party," and collectively as the "Parties."

### WITNESSETH:

**WHEREAS**, subject to and in reliance on the terms hereof, AEP Ohio, as a Fixed Resource Requirement ("FRR") Entity under PJM's Reliability Assurance Agreement ("RAA"), will procure and manage the Capacity in its retail service territory in Ohio necessary during the Delivery Period to satisfy the CRES's Capacity Obligation; and

**WHEREAS**, as a CRES providing competitive retail electric service in AEP Ohio's retail service territory within Ohio, the CRES will pay AEP Ohio the applicable rate for Capacity established pursuant to Schedule 8.1, Section D.8, of the PJM RAA for alternative retail LSEs in AEP Ohio's retail service territory in Ohio; and

**WHEREAS**, AEP Ohio and the CRES desire to enter into this Agreement setting forth their respective obligations; and

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

### ARTICLE 1 DEFINITIONS

Capitalized or abbreviated terms not defined in this Article 1 or elsewhere in this Agreement will have the definitions set forth in the PJM Agreements. To the extent the definitions in the PJM Agreements conflict, the order of priority for definitions to be used herein shall be from 1) the PJM RAA, 2) the PJM Operating Agreement, and 3) the PJM OATT. Reference to an agreement, contract or documents includes any subsequent amendments to such agreement, contract or documents unless otherwise stated herein.

**AEP Ohio** has the meaning set forth in the preamble.

**AEP Ohio FRR Capacity Rate** means the applicable rate for Capacity established pursuant to Schedule 8.1, Section D.8, of the PJM RAA, including all adjustments for scaling factoring, Forecast Pool Requirements and applicable losses for alternative retail LSEs in AEP Ohio's retail service territory in Ohio.

**AEP Ohio FRR Reliability Charge** means an amount equal to such CRES's Capacity Obligation (expressed in Megawatts) multiplied by the AEP Ohio FRR Capacity Rate; or such other price as FERC may approve.

**AEP Ohio Transmission Zone** means the set of electrical locations that are provided transmission service by AEP Ohio.

**Affiliate** means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

**Billing Period** means the period of days for which a PJM invoice is issued. For monthly billing periods, such Billing Period includes the first day of the calendar month through the last day of the calendar month. For weekly billing periods, such Billing Period includes the first day of the calendar month through the Wednesday prior to the date the invoice is issued.

**Business Day** means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. prevailing Eastern Time.

**Capacity** means, in the case of a Generation Capacity Resource, "Unforced Capacity" or "UCAP" as defined in Section 1.86 of the PJM RAA or, in the case of a Demand Resource or an Energy Efficiency Resource, the "Unforced Capacity" or "UCAP" value attributable to any Megawatts of load reduction capability associated with such Demand Resource or Energy Efficiency Resource as such value is determined by PJM in accordance with the PJM Agreements.

**Capacity Obligation** means, with respect to the CRES, the daily unforced Capacity obligation, including all the adjustments (ie. gross ups) for reserves and losses, based upon the peak sum of the Capacity tickets for each customer being served by the CRES in any day during the Delivery Period in the AEP Ohio Transmission Zone, including any AEP Ohio adjustments or true ups invoiced by AEP Ohio.

**Charge** means AEP Ohio FRR Reliability Charge, Schedule 9-5 Charges, and Schedule 9-6 Charges, and any other charges applicable to CRES customers in the future.

**Confessed Amount** means the amount in dollars listed in Appendix B.

**Confession of Judgment Event** means the CRES fails to pay AEP Ohio any amount due under Sections 2.2 and 9.1 and Article 6.

**CRES** is the Ohio competitive retail electric supplier identified in the preamble.

**Delivery Period** means the Effective Date at 12:00:01 a.m. prevailing Eastern Time through and including May 31, 2014, provided that, in the event this Agreement is renewed for an additional year, it means June 1, 2014 through May 31, 2015.

**Disputes** has the meaning set forth in Section 7.1.

**Effective Date** has the meaning set forth in the preamble.

**Governmental Authority** means any federal, state, local, municipal or other governmental entity, authority or agency, department, board, court, tribunal, regulatory commission, or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party to this Agreement.

**Interest Index** means the average Federal Funds Effective Rate, defined below, for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website <http://www.federalreserve.gov/releases/h15/update/>.

**Load Serving Entity** or LSE has the meaning set forth at Section 1.44 of the PJM RAA.

**Letter of Credit** means a standby irrevocable letter of credit acceptable to AEP Ohio issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating (or, if unavailable, corporate issuer rating) from S&P or a minimum "A2" senior unsecured debt rating (or, if unavailable, corporate issuer rating) from Moody's, in substantially similar form as set forth in Appendix C and including all of the requirements specifically set forth in Section 5.2(b).

**Moody's** means Moody's Investors Service, Inc.

**Party** has the meaning set forth in the preamble to this Agreement, and includes such Party's successors and permitted assigns.

**Person** means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, any Governmental Authority, or any other entity.

**Performance Assurance** means cash, a Letter of Credit or a qualifying Guaranty (see Exhibit D) provided by the CRES (or a parent company to such CRES) to AEP Ohio pursuant to this Agreement to secure its obligations under this Agreement.

**PJM** means PJM Interconnection, LLC.

**PJM Agreements** means the PJM OATT, the PJM Operating Agreement, and the PJM RAA.

**PJM Balancing Authority** means the collection of generation, transmission, and loads within the metered boundaries of the PJM footprint and for which PJM maintains load resource balance.

**PJM Manual** means a PJM Manual as defined in the PJM Agreements, as such manual may be amended, superseded or replaced from time to time.

**PJM OATT** means the Open Access Transmission Tariff of PJM, as such tariff may be amended, superseded or replaced from time to time.

**PJM Operating Agreement** means the Amended and Restated Operating Agreement of PJM, as such agreement may be amended, superseded or replaced from time to time.

**PJM RAA** means the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, as such agreement may be amended, superseded or replaced from time to time.

**S&P** means Standard and Poor's Rating Services.

**Statement** has the meaning set forth in Section 6.2.

**Taxes** have the meaning set forth in Section 10.8.

**Term** has the meaning set forth in Section 4.1.

**UCC** means the Uniform Commercial Code.

**Warrant of Attorney to Confess** means Section 2323.13 of Title 23 of the Ohio Revised Code.

## **ARTICLE 2**

### **GENERAL TERMS AND CONDITIONS**

#### **2.1 AEP Ohio's Obligations Regarding Capacity**

AEP Ohio shall exercise good utility practice in the procurement and management of Capacity necessary to satisfy for the Delivery Period the CRES's Capacity Obligation.

#### **2.2 CRES's Payment Obligations**

(a) The CRES's Capacity Obligation will be fulfilled by AEP Ohio, and the CRES will pay or be paid for the Capacity Obligation per this Agreement. During the Delivery Period, the CRES shall pay the AEP Ohio FRR Reliability Charge necessary to satisfy the CRES's Capacity Obligation for the Delivery Period, whether billed directly by PJM or through billings issued by AEP Ohio.

(b) The CRES shall pay to PJM all Charges for which PJM bills the CRES in each Billing Period in accordance with Section 6.1 by the payment deadline stated on the PJM invoice and all Charges billed by AEP Ohio by the payment deadline stated on the AEP Ohio invoice.

**2.3 PJM Membership; PJM Protocols and Requirements**

(a) At all times during the Delivery Period, the CRES shall be a member in good standing of PJM and qualified by PJM as a "Market Buyer" pursuant to the PJM Agreements.

(b) At all times during the Delivery Period, the CRES shall be bound by the PJM Agreements, PJM Manuals, the AEP Ohio FRR Load Settlements and any other operating instructions, policies and procedures set forth by AEP Ohio and/or PJM as may be necessary to implement this Agreement.

**2.4 Notice of Non-Compliance**

(a) The CRES shall promptly, but in any event within three (3) Business Days, notify AEP Ohio (in accordance with the notice provisions at Section 10.1) of its failure to timely perform any obligation under this Agreement, including but not limited to (i) its obligation to pay the Charges pursuant to this Article 2 and (ii) its obligations to provide and maintain adequate Performance Assurance pursuant to Article 5.

(b) The CRES shall promptly, but in any event within three (3) Business Days following the date on which it gains actual knowledge of any such event or circumstance, notify AEP Ohio (in accordance with the notice provisions at Section 10.1) of any event or circumstance which such CRES reasonably believes could adversely impact its ability to timely perform any obligation under this Agreement.

(c) If the CRES becomes aware that any of the representations or warranties in Article 3 are no longer true and correct at any time during the Term, or of any event that may reasonably be expected to cause any of such representations or warranties to become no longer true and correct in the future, such CRES shall immediately (but in any event within three (3) Business Days following the date on which it gains actual knowledge thereof) notify AEP Ohio in accordance with the notice provisions at Section 10.1.

**2.5 Regulatory Authorizations**

(a) The CRES shall obtain and maintain throughout the Delivery Period all regulatory authorizations necessary to perform its obligations under this Agreement.

(b) The CRES shall cooperate in good faith with AEP Ohio in any regulatory compliance efforts as may be required to maintain the ongoing legitimacy and enforceability

of the terms of this Agreement and to fulfill any regulatory reporting requirement in connection with this Agreement before FERC or any other Governmental Authority.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES

The CRES hereby represents and warrants to AEP Ohio as follows:

(a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly registered and authorized to do business and is in good standing in all states in which it does business;

(b) it has all requisite power and authority to execute and deliver this Agreement, to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;

(c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or decree of any Governmental Authority;

(d) this Agreement is the legal, valid and binding obligation of the CRES, enforceable in accordance with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally;

(e) as of the commencement of the Delivery Period, it has duly obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement;

(f) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority that could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

(g) it is not relying upon the advice or recommendations of any other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and no other Party is acting as a fiduciary for or advisor to it in respect of this Agreement;



(h) it is not in violation of any law, rules, regulations, ordinances or judgments of any Governmental Authority which could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

(i) as of the commencement of the Delivery Period, it is (i) a member in good standing of PJM and (ii) qualified as a "Market Buyer" pursuant to the PJM Agreements; and

(j) it is knowledgeable and will adhere to all PJM-related protocols necessary to conduct its business.

#### **ARTICLE 4**

##### **TERM; SURVIVAL OF OBLIGATIONS**

###### **4.1 Term**

The term of this Agreement will commence upon the Effective Date and continue through the end of the Delivery Period (the "Term"). Upon expiration of the Term, this Agreement shall be automatically renewed for one additional year, unless AEP Ohio provides notice of non-renewal no later than thirty (30) days prior to the expiration of the Term. If at any time during the Term, including any renewal thereof, if AEP Ohio reasonably determines that its rights and/or interests under this Agreement are materially affected by the Federal Energy Regulatory Commission, the Public Utilities Commission of Ohio or a court of competent jurisdiction, AEP Ohio may terminate this Agreement upon thirty (30) days prior written notice.

###### **4.2 Survival of Obligations**

Termination of this Agreement for any reason shall not relieve the CRES of any obligation accruing on or prior to such termination. All provisions of this Agreement which must, in order to give full force and effect to the rights and obligations of the Parties, survive the termination or expiration of this Agreement shall so survive, including, without limitation, all provisions of Articles 5, 7, 8, 9, and 10 and Sections 4.2 and 6.2(g), in accordance with the terms thereof.

**ARTICLE 5**  
**PERFORMANCE ASSURANCE; CREDIT REQUIREMENTS**

**5.1 Credit Requirements; Performance Assurance**

To meet the credit requirements ("Credit Requirements") for unsecured credit under this Agreement the CRES must (1) be rated by at least one of the following rating agencies: Moody's, or S&P and (2) have a minimum senior unsecured debt rating (or if unavailable, corporate issuer rating) of at least BBB- by S&P, or Baa3 by Moody's. If the CRES is rated by both S&P and Moody's, and the ratings are split, the lower rating will be used. If the CRES does not meet the Credit Requirements, the CRES shall post and maintain throughout this Agreement adequate Performance Assurance in the amount equal to the sum of ninety (90) days of the CRES's peak Capacity Obligation times the AEP Ohio FRR Capacity Rate and agrees to replenish and restore any such Performance Assurance in the event AEP Ohio exercises any rights against Performance Assurance posted hereunder. For a CRES that has no retail customers within AEP Ohio's retail service territory, such CRES's Performance Assurance will be initially calculated with a Capacity Obligation of 100MW. To the extent that a CRES's peak Capacity Obligation increases in any month due to an increase in retail customers, upon notice by AEP Ohio, the CRES will post additional Performance Assurance to AEP Ohio using the formula set forth above within three (3) Business Days of the date of AEP Ohio's notice. AEP Ohio will hold the Performance Assurance through the end of the Delivery Period and shall return such Performance Assurance, less any amount offset against such Performance Assurance for claims, along with, in the case of cash, any interest thereon calculated in accordance with Section 5.4, to the CRES within thirty (30) Business Days of the expiration of the Delivery Period.

**5.2 Acceptable Forms of Security**

At the CRES's choice, the following are deemed to be acceptable for posting Performance Assurance:

- (a) cash credited to a deposit account of AEP Ohio;
- (b) an absolute, unconditional, and irrevocable guarantee issued to AEP Ohio by a parent company or other corporate entity acceptable to AEP Ohio that meets the Credit Requirements. The guaranty shall be drafted in the form attached as Exhibit D and otherwise acceptable to AEP Ohio, shall secure all of the CRES's obligations under the



Agreement and shall remain in full force and effect until the earlier of the occurrence of any of the following: (i) all of CRES's obligations under the Agreement have been satisfied in full and the Agreement has been terminated, (ii) the guaranty is replaced with substitute Performance Assurance meeting the requirements in the Agreement or (iii) the CRES meets the Credit Requirements; and

(c) a Letter of Credit, which shall state that such Letter of Credit will renew automatically for successive one-year periods, until terminated upon at least ninety (90) days' prior written notice from the issuing financial institution. If AEP Ohio receives notice from the issuing financial institution that the Letter of Credit is being cancelled, the CRES will be required to provide a substitute Letter of Credit from an alternative bank satisfying the minimum credit rating set forth in the definition of "Letter of Credit". The receipt of the substitute Letter of Credit must be effective as of the cancellation date and delivered to AEP Ohio thirty (30) days before the cancellation date of the original Letter of Credit. If the CRES fails to supply a substitute Letter of Credit as required, then AEP Ohio will have the right to draw on the existing Letter of Credit and to hold the amount as Performance Assurance.

If the credit rating of a bank or other financial institution from which a CRES has obtained a Letter of Credit falls below the levels set forth in the definition of "Letter of Credit", the CRES will immediately notify AEP Ohio and, within one (1) Business Day of the failure of the financial institution to meet the required credit rating, obtain a suitable Letter of Credit from another bank or other financial institution that meets those standards, unless such period is extended in writing by AEP Ohio. If the CRES fails to supply a substitute Letter of Credit as required, then AEP Ohio will have the right to draw on the existing Letter of Credit and to hold the amount as Performance Assurance.

The CRES shall also inform AEP Ohio immediately of any changes in its own credit rating or financial condition or the credit rating of its guarantor which, in the case of a CRES, would cause it not to meet the Credit Requirements. Upon the written request of AEP Ohio, the CRES shall affirmatively demonstrate in a manner reasonably satisfactory to AEP Ohio the CRES's compliance with the creditworthiness standards set forth in this Agreement. Notwithstanding anything in this Agreement to the contrary, AEP Ohio may exercise any rights or claims to any Performance Assurance posted, delivered or pledged to them under

this Agreement, before, after, concurrently with, or to the exclusion of, any other Performance Assurance posted, delivered or pledged to AEP Ohio.

**5.3 Grant of Security Interest; Remedies**

To secure its obligations under this Agreement, the CRES hereby grants to AEP Ohio a present and continuing security interest in, and lien on, and right of setoff against, its right, title and interest, whether now owned or hereafter acquired or arising, in (i) all securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash and other tangible property delivered by the CRES (or its agents or custodians) to and held by AEP Ohio and (ii) all proceeds (as defined in the UCC) of any and all of the foregoing. The CRES agrees to take such action as reasonably required to create and perfect AEP Ohio's first priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or at any time after the occurrence or deemed occurrence and during the continuation of default by the CRES of its obligation under this Agreement or a misrepresentation by it, AEP Ohio may do any one or more of the following in any order: (i) exercise any of the rights and remedies of AEP Ohio, including the right to set-off and liquidation, against any and all Performance Assurance or other collateral of the CRES in the possession of AEP Ohio, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of the CRES and (ii) draw on any outstanding Letter of Credit provided by the CRES. AEP Ohio will apply the proceeds of the Performance Assurance realized upon the exercise of such rights or remedies to reduce the CRES's obligation under this Agreement, and the CRES shall remain liable for any amounts owing to AEP Ohio after such application, subject to AEP Ohio's obligation to return any surplus proceeds remaining after all such obligations are satisfied in full. All notices, demands or requests regarding Performance Assurance or deposit transfers shall be sent in accordance with Section 10.1.

**5.4 Interest on Cash Held by AEP Ohio**

AEP Ohio will pay simple interest calculated at Interest Index per annum on all cash held by AEP Ohio pursuant to this Agreement.

## ARTICLE 6

### BILLING AND SETTLEMENT

#### 6.1 PJM Billing

For each Billing Period, PJM will invoice the CRES its AEP Ohio FRR Reliability Charges, Schedule 9-5 Charges and Schedule 9-6 Charges and any other applicable charges for such Billing Period, as determined by PJM, and the CRES shall pay all such charges when due. PJM will assess to AEP Ohio a corresponding credit after PJM receives payment for such charges from the CRES. AEP Ohio may, from time to time, have PJM create new Billing Line Items (BLIs) to separate charges and credits that are billed on behalf of AEP Ohio versus being billed on behalf of PJM. Any such newly created BLIs will be calculated in the manner required by the RAA and PJM tariff for the corresponding PJM BLIs.

#### 6.2 AEP Ohio Statement

In the event that AEP Ohio issues a billing to the CRES, including without limitation, billings associated with changes in PJM load data and peak load contribution data changes, and/or AEP Ohio is required to make payment to PJM associated with a CRES obligation or responsibility, including without limitation, due to any CRES's failure to perform its obligations (payment or otherwise) under this Agreement or any errors in PJM bills:

(a) AEP Ohio will prepare and provide an invoice to the CRES, which will show all amounts due to AEP Ohio (the "Statement").

(b) The CRES will make payment within ten (10) Business Days of receipt of the Statement.

(c) All payments shall be subject to adjustment for any arithmetic errors, computation errors, or other errors, provided that the calculation errors become known within one (1) year of the end of the Term.

(d) The CRES shall make payments of funds by electronic transfer to a bank designated by AEP Ohio.

(e) If a good faith dispute arises between AEP Ohio and the CRES regarding a Statement, the CRES shall be obligated to pay the Statement when due, and shall present the dispute in writing and submit supporting detailed documentation to AEP Ohio within thirty (30) calendar days from the date of the Statement in dispute. Statement disputes must be

addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 7. Upon resolution of a Statement dispute, any payments made to AEP Ohio will include simple interest on the payment at the Interest Index per annum payable from the date that notice of a Statement dispute was received by AEP Ohio.

(f) If payment is made to AEP Ohio after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid. This late fee will be calculated at the Interest Index.

(g) In the event of a good faith dispute regarding any Statement, the CRES will have the right to verify, at its sole expense, the accuracy of the Statement or the calculation of the payment due by obtaining copies of the relevant portions of the books and records of AEP Ohio, such relevance to be determined by AEP Ohio. The right of verification will survive for one (1) year following the end of the Term.

(h) Any of the CRES's payment obligations to AEP Ohio under this Agreement shall be unconditional, shall be made in immediately available funds, without deductions, set-off or counterclaims on the date on which such payment is due.

## ARTICLE 7

### DISPUTE RESOLUTION; SUBMISSION TO JURISDICTION

#### 7.1 Negotiation

Any dispute, controversy or claim (excluding claims based on the occurrence of a Confession of Judgment Event) arising out of or relating to this Agreement or the breach, termination or validity thereof ("Dispute") shall be subject to the dispute resolution procedures specified in this Article 7. If any Dispute arises between any Parties in connection with this Agreement, such Parties in Dispute shall first attempt to resolve such Dispute by negotiation. The disputing Parties shall comply with the procedures in this Section 7.1 before commencing litigation under Section 7.2. When any such Dispute arises, a disputing Party shall deliver a written notice of Dispute to the other Party or Parties involved in the Dispute in accordance with the notice procedures set forth in Section 10.1, such notice of Dispute to include the nature of the Dispute, the amount involved, if any, and the remedies sought. Within ten (10) Business Days after the receipt of such notice, members of the senior management of the Parties in dispute shall meet in person or by telephone to discuss the Dispute. If such Parties have not resolved such Dispute for any

reasons within thirty (30) days after receipt of the notice of dispute, then any such Party may bring such action at law or in equity as it deems necessary or desirable, in accordance with the provisions of Section 7.2. Any amounts that are owed by one Party to another Party as a result of resolution of a Dispute pursuant to this Section 7.1 shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Index from the original due date through the date of payment.

**7.2 Formal Dispute Resolution**

All Disputes between the Parties that are not resolved in accordance with Section 7.1 shall be submitted to any of the courts of competent jurisdiction located in Franklin County, Ohio, which courts shall have exclusive jurisdiction to settle such Disputes. Each Party hereto unconditionally and irrevocably agrees to submit to the jurisdiction of the aforesaid courts for the purpose of any such proceedings and unconditionally and irrevocably waives any objections which they may have now or in the future to the jurisdiction of such courts including without limitation objections by reason of lack of personal jurisdiction, improper venue or inconvenient forum.

**ARTICLE 8**

**LIMITATION OF LIABILITY**

Except to the extent expressly set forth in this Agreement, including Articles 5 and 9, except for the CRES's obligation to reimburse and indemnify AEP Ohio for Charges and other costs and expenses incurred by AEP Ohio in procuring and managing Capacity under this Agreement, as between AEP Ohio and the CRES, each Party will be liable to the other for direct damages incurred as a result of such Party's failure to comply with this Agreement and no Party will have any liability to the other Party for consequential, indirect, special or punitive damages, including lost profits or lost revenues, arising out of such Party's failure to comply with its obligations under this Agreement.

**ARTICLE 9**  
**INDEMNIFICATION**

**9.1 Indemnification**

(a) The CRES must defend (at AEP Ohio's option), indemnify and hold harmless AEP Ohio, their shareholders, board members, directors, officers and employees, agents and attorneys from and against (a) any Charges assessed to AEP Ohio by PJM which are attributable to the CRES under the terms of this Agreement and (b) to the extent not duplicative with clause (a) above, any and all third party (including, without limitation PJM and other CRES's) claims or liabilities for losses, penalties, expenses, damage to property, injury to or death of any Person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the CRES with respect to an obligation arising under or in connection with this Agreement, or for which the CRES has otherwise assumed liability under the terms of this Agreement, except in each case to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of AEP Ohio. AEP Ohio may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) The obligation of the CRES to defend, indemnify, and hold harmless AEP Ohio under this Article will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for any CRES under any statutory scheme.

(c) If AEP Ohio intends to seek indemnification under Section 9.1(a) from the CRES, AEP Ohio shall give the CRES notice of such claim within thirty (30) days of the later of the commencement of, or AEP Ohio's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by AEP Ohio. To the extent the CRES will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the CRES under the provisions for indemnification contained in this Agreement. The CRES may settle or compromise any claim without the prior consent of AEP Ohio.



**ARTICLE 10**  
**MISCELLANEOUS PROVISIONS**

**10.1    Notices**

All notices, demands or requests required or permitted under this Agreement must be in writing and must be personally delivered or sent by email, overnight express mail, courier service or facsimile transmission (provided that in the case of an email or facsimile, the original shall then be transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to a CRES:

Notification information for each CRES is set forth on Appendix A.

If to AEP Ohio:

In the case of all notices except those required under Article 5, to:

Contract Administration  
Tracy McLaughlin  
American Electric Power Service Corporation  
155 W. Nationwide Blvd., Suite 500

Columbus, OH 43215  
Telephone: 614-583-6731  
Facsimile: 614-583-1604  
tamclaughlin@aep.com

Copy to:

Legal Dept.

American Electric Power Service Corporation  
155 W. Nationwide Blvd., Suite 500  
Columbus, OH 43215  
Telephone: 614-583-7634  
Facsimile: 614-583-1602  
jejadwin@aep.com

In the case of all notices required under Article 5 in addition to the above addresses, also, to:

Lisa Groff  
American Electric Power Service Corporation  
155 W. Nationwide Blvd., Suite 500  
Columbus, OH 43215  
Telephone: 614-583-6728  
Facsimile: 614-583-1604  
lrgroff@aep.com

or to such other person or such other address as a Party may designate by notice to the other Party. Notice received after the close of the Business Day will be deemed received on the next Business Day. Notice by email or facsimile transmission will be deemed to have been received by the recipient on the date the recipient confirms receipt either orally or in writing.

**10.2 No Waiver or Prejudice of Rights**

The failure of AEP Ohio to insist in one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, may not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which will remain in full force and effect. No term or condition of this Agreement will be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by AEP Ohio.

**10.3 Assignment**

(a) AEP Ohio may assign this Agreement or their rights or obligations hereunder without the prior written consent of the CRES and shall be relieved of such obligations upon the assignment and assumption of the assignee of such obligations and the CRES's receipt of notice thereof, except for such obligations of AEP Ohio which have arisen prior to the date of the assignment.

(b) The CRES may not assign this Agreement or its rights or obligations hereunder without the prior written consent of AEP Ohio.

**10.4 Governing Law**

To the extent not subject to the jurisdiction of FERC, questions including those concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement will be governed by the laws of the State of Ohio, without regard to principles of conflicts of law.

**10.5 Third Party Beneficiaries**



This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement may be construed to create any duty, or standard of care with reference to, or any liability to, any Person not a Party to this Agreement.

**10.6 Unenforceability or Invalidity**

Should any provision of this Agreement be held invalid or unenforceable, such provision will be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof, unless it materially changes the agreement of the Parties.

**10.7 Entire Agreement**

Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement with respect to the subject matter hereof. The Parties further agree that this Agreement is the complete and exclusive statement of agreement with respect to the subject matter hereof and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto.

**10.8 Taxes**

All present and future sales, use, excise or other similar taxes imposed by any federal, state, municipal or other taxing authority by reason of the payments arising under this Agreement by a CRES under this Agreement (collectively, the "Taxes") will be the liability of the CRES. The CRES shall pay all Taxes to the applicable taxing authority to the extent required or permitted by law. If any transaction is exempt from the payment of any such Taxes, the CRES will, if requested, provide AEP Ohio with valid tax exemption certificates. Should AEP Ohio be required to remit any Taxes directly to any applicable taxing authority, the CRES will defend and indemnify AEP Ohio and will pay to AEP Ohio all such Tax amounts upon demand. Each Party shall provide to the other Party all information, data and exemption certificates as such other Party may from time to time reasonably request and otherwise fully cooperate with such other Party in connection with (i) the reporting of any Taxes payable by the CRES; (ii) any Tax audit; or (iii) any assessment,

refund claim or proceeding relating to Taxes. Each Party shall cooperate with the other Party and take any action reasonably requested, which does not cause the Party to incur any material cost or inconvenience, in order to minimize any Taxes payable.

#### **10.9 Rules of Interpretation**

The following principles shall be observed in the interpretation and construction of this Agreement:

- (a) unless otherwise stated, the terms “include” and “including” when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
- (b) all titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
- (c) references to the singular include the plural and vice versa;
- (d) references to Articles, Sections, Appendices and the preamble are, unless the context indicates otherwise, references to Articles, Sections, Appendices and the preamble of this Agreement;
- (e) any reference to laws, rules, regulations, ordinances or decrees in this Agreement shall mean such law, rules, regulations, ordinances and decrees as may be amended, modified, replaced, codified or superseded from time to time;
- (f) this Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties (or any of them), or to impose any partnership obligation or liability upon any Party; and
- (g) any rule of interpretation that provides that ambiguities shall be construed against the drafting party shall not apply.

#### **10.10 Confidentiality**

- (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement without consent of such Party; provided however that a Party may disclose such document or information without the consent of the other Party (i) if required by any federal, state or local agency or by a court of competent jurisdiction, provided that the disclosing Party shall seek a

protective order or other legal protection as is reasonably available under the circumstances to preserve the confidentiality of the document or information; (ii) to its directors, employees, representatives, agents and rating agencies all documents and information furnished by the other Party in connection with this Agreement, provided that they have been advised of the confidentiality provisions of this Section 10.10, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC; (iii) such document or information is generally available to the public; or (iv) such document or information was available to the receiving Party on a non-confidential basis from a third party, provided that the receiving Party does not know that such third party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation.

(b) Notwithstanding any other provision of this Section 10.10, AEP Ohio may disclose any document or information furnished by a CRES in connection with this Agreement without the consent of such CRES to (i) PJM or the PJM Market Monitor or (ii) to the extent required or AEP Ohio deems appropriate before any regulatory agency or court (in which case the proviso in Section 10.10(a)(i) shall apply).

(c) No Party, nor any of its employees or agents, will be responsible or liable to any other Party for any disclosure of data or information permitted under this Section 10.10.

(d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 10.10. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the Party breaches or threatens to breach its obligations under this Section 10.10, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

#### **10.11 Amendment**

(a) This Agreement shall not be amended, modified, terminated, discharged or supplanted, nor any provision hereof waived, unless mutually agreed in writing by the Parties. The rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 and 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all Parties, the standard of review for changes to this Agreement proposed by a Party, a non-Party or FERC acting sua sponte shall

be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and affirmed by *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 128 S. Ct. 2733 (2008).

(b) The CRES may not file an amendment to this Agreement with FERC or any other Governmental Authority without the express written approval of AEP Ohio.

**10.12 Agent**

AEP Ohio shall have the right at any time and from time to time during the Term to appoint an agent to act on their behalf to exercise or pursue any of their rights or remedies and to perform any of their obligations or duties under this Agreement. Appointment by AEP Ohio of such an agent would, absent the express consent of the CRES, not relieve AEP Ohio of any of its obligations under this Agreement.

**10.13 Counterparts**

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which will constitute one instrument.

**10.14 Confession of Judgment**

(a) THIS AGREEMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION THAT CONSTITUTES A WAIVER OF IMPORTANT RIGHTS THE CRES MAY HAVE HEREUNDER AND ALLOWS AEP OHIO TO OBTAIN A JUDGMENT AGAINST A CRES WITHOUT FURTHER NOTICE.

(b) THE FOLLOWING PROVISIONS SET FORTH WARRANTS OF AUTHORITY FOR AN ATTORNEY TO CONFESS JUDGMENT AGAINST THE CRES. IN GRANTING THESE RIGHTS, THE CRES HEREBY, ON THE ADVICE OF THE SEPARATE COUNSEL OF SUCH CRES, KNOWINGLY, INTENTIONALLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS THE CRES HAD OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE STATE OF OHIO, AND ALL OTHER JURISDICTIONS.

(c) UPON A CONFESSION OF JUDGMENT EVENT (AS DEFINED IN THIS AGREEMENT), THE CRES HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE UNITED STATES OF AMERICA OR ELSEWHERE TO APPEAR FOR THE CRES, WITH OR WITHOUT COMPLAINT FILED, TO WAIVE ISSUANCE OF SERVICE OF PROCESS AND TO CONFESS JUDGMENT, OR A SERIES OF JUDGMENTS, AGAINST THE CRES IN FAVOR OF AEP OHIO FOR AN AMOUNT EQUAL TO THE CONFESSED AMOUNT (AS DEFINED IN THIS AGREEMENT), TOGETHER WITH THE COSTS OF SUIT AND REASONABLE ATTORNEYS' FEES. FOR DOING SO, THIS AGREEMENT OR A COPY VERIFIED BY AFFIDAVIT SHALL BE A SUFFICIENT WARRANT. NO SINGLE EXERCISE OF THE FOREGOING POWER TO CONFESS JUDGMENT, OR A SERIES OF JUDGMENTS, SHALL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE INVALID, VOIDABLE OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND IT MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS AEP OHIO SHALL ELECT UNTIL SUCH TIME AS AEP OHIO SHALL HAVE RECEIVED PAYMENT IN FULL OF THE CONFESSED AMOUNT AND THE COSTS OF SUIT AND REASONABLE ATTORNEYS' FEES.

(d) THE CRES HEREBY ACKNOWLEDGES THAT BY AGREEING TO THE FOREGOING CONFESSION OF JUDGMENT AND WARRANT OF ATTORNEY, THE CRES WAIVES THE RIGHT TO NOTICE AND A PRIOR JUDICIAL PROCEEDING TO DETERMINE ITS RIGHTS AND LIABILITIES (INCLUDING, WITHOUT LIMITATION, ALL STAYS OF EXECUTION, RIGHTS OF INQUISITION AND EXTENSION UPON ANY LEVY UPON REAL ESTATE), AND FURTHER ACKNOWLEDGES THAT AEP OHIO MAY, UPON A CONFESSION OF JUDGMENT EVENT, OBTAIN A JUDGMENT AGAINST THE CRES FOR THE CONFESSED AMOUNT AND THE COSTS OF SUIT AND REASONABLE ATTORNEYS' FEES, AND LEVY EXECUTION ON JUDGMENT AGAINST ANY AND ALL PROPERTY OF THE CRES WITHOUT ANY OPPORTUNITY OF THE CRES TO RAISE ANY DEFENSE, SETOFF, COUNTERCLAIM OR OTHER CLAIM THAT THE CRES MAY HAVE, AND



THAT THE CRES KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND INTELLIGENTLY GRANTS AEP OHIO THE FOREGOING RIGHT TO CONFESS JUDGMENT AND WARRANT OF ATTORNEY AS AN EXPLICIT AND MATERIAL PART OF THE CONSIDERATION BARGAINED FOR BETWEEN THE CRES AND AEP OHIO.

(e) THE CRES HEREBY CERTIFIES THAT IT HAS BEEN REPRESENTED AT THE SIGNING OF THIS AGREEMENT AND IN THE GRANTING OF THIS CONFESSION OF JUDGMENT AND WARRANT OF ATTORNEY BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THE CONFESSION OF JUDGMENT AND WARRANT OF ATTORNEY WITH SUCH COUNSEL. THE CRES HEREBY FURTHER CERTIFIES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND EFFECT OF THE FOREGOING CONFESSION OF JUDGMENT AND WARRANT OF ATTORNEY. THE CRES FURTHER ACKNOWLEDGES THAT THIS AGREEMENT IS A COMMERCIAL TRANSACTION, NOT A CONSUMER LOAN OR OTHER CONSUMER TRANSACTION, AND THAT THE RELATIONSHIP BETWEEN AEP OHIO AND THE CRES CREATED HEREUNDER IS COMMERCIAL IN NATURE.

(f) IN ANY SUCH ACTION FOR CONFESSION OF JUDGMENT, IF AEP OHIO SHALL FIRST CAUSE TO BE FILED IN SUCH ACTION AN AFFIDAVIT MADE BY THEM OR SOMEONE ACTING FOR THEM SETTING FORTH THE FACTS NECESSARY TO AUTHORIZE THE ENTRY OF JUDGMENT, SUCH AFFIDAVIT SHALL BE CONCLUSIVE EVIDENCE OF SUCH FACTS; AND IF A TRUE COPY OF THIS AGREEMENT (AND SUCH AFFIDAVIT SHALL BE SUFFICIENT EVIDENCE OF THE TRUTH OF THE COPY) BE FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY, ANY RULE OF COURT, CUSTOM OR PRACTICE TO THE CONTRARY NOTWITHSTANDING. THE CRES HEREBY WAIVES AND RELEASES AEP OHIO, AND ANY AND ALL ATTORNEYS WHO MAY APPEAR FOR AEP OHIO, FROM ALL PROCEDURAL ERRORS IN ANY PROCEEDINGS TAKEN BY AEP OHIO OR SUCH ATTORNEYS, WHETHER BY VIRTUE OF THE WARRANTS OF ATTORNEY CONTAINED IN THIS AGREEMENT OR NOT,

STAY OF EXECUTION AND EXTENSION OF TIME OF PAYMENT AND ALL LAWS EXEMPTING REAL AND PERSONAL PROPERTY FROM EXECUTION AND ALL LIABILITY THEREFOR, AND NO BENEFIT OF EXEMPTION WILL BE CLAIMED BY THE CRES UNDER AND BY VIRTUE OF ANY EXEMPTION LAW NOW IN FORCE OR WHICH MAY HEREAFTER BE PASSED.

(g) IN ANY CASE IN WHICH AEP OHIO SHALL SEEK TO ENFORCE THIS CONFESSION OF JUDGMENT IN A COURT BOUND BY THE PROVISIONS OF SECTION 2323.13 OF TITLE 23 OF THE OHIO REVISED CODE ("WARRANT OF ATTORNEY TO CONFESS") OR ANY SUCCESSOR PROVISIONS, AEP OHIO ACKNOWLEDGE BEING BOUND BY AND SUBJECT TO COMPLIANCE WITH THESE PROVISIONS AS FAR AS REQUIRED FOR THE VALIDITY AND ENFORCEABILITY OF THE CONFESSION OF JUDGMENT, ANY STATEMENTS ABOVE TO THE CONTRARY NOTWITHSTANDING.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

Ohio Power Company

By \_\_\_\_\_  
Name:  
Title:

[CRES]

By \_\_\_\_\_  
Name:  
Title:

**WARNING — BY SIGNING THIS PAPER, YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT TIMELY PAY, A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

**APPENDIX A**  
**CRES INFORMATION**

To be completed by the CRES:

CRES: \_\_\_\_\_

Address for Notice:

1. In the case of all notices except those required under Article 5:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Copy to:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

2. In the case of all notices required under Article 5, if different from the contract information above:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Copy to:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

[CRES]

By \_\_\_\_\_  
Name:  
Title:



**APPENDIX B**

**CRES'S CONFESSED AMOUNT**

To be completed for the CRES:

CRES: \_\_\_\_\_

The CRES's Confessed Amount is equal to the dollar amount derived by multiplying the Capacity Obligation times the AEP Ohio FRR Capacity Rate multiplied by the number of months (including any fraction thereof) between the date on which the confession of judgment contemplated by Section 10.14 is filed with the applicable court and the day after the Delivery Period, and any damages as reasonably determined by AEP Ohio occurring prior to the filing of the confession of judgment.

**APPENDIX C**  
**FORM OF CRES STANDBY LETTER OF CREDIT**

\_\_\_\_\_ (Date)

Letter of Credit No. \_\_\_\_\_

To: Ohio Power Company ("Beneficiary")

1. We hereby establish in your favor this irrevocable transferable Standby Letter of Credit (this "Letter of Credit") for the account of \_\_\_\_\_ (the "Applicant"), in the aggregate amount of \$\_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ and expiring 364 days from date of issuance or any extension thereof (in the form of Annex 5), unless terminated earlier or automatically extended, in accordance with the provisions hereof or otherwise extended.

2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in Paragraph 12 hereof. This Letter of Credit may be drawn in the event that (i) the Applicant fails to perform any obligation set forth in that certain Capacity Payment Agreement between the Applicant and you dated \_\_\_\_\_, or any representation or warranty made by the Applicant in such Agreement is false or misleading in any material respect when made, or you receive notice from us that this Letter of Credit is being cancelled and the Applicant fails to provide a substitute Letter of Credit from us or an alternative bank satisfying the requirements in such Agreement, or if our credit rating falls below the levels set forth in Paragraph 11 of this Letter of Credit and the Applicant fails to obtain a suitable Letter of Credit from another bank or other financial institution that meets the standards set out in such Agreement.

3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (prevailing Eastern Time) on such Business Day to (Bank), (address), (i) a notice executed by you in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of each of the Beneficiary and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of each of the

Beneficiary. "Authorized Officer" shall mean President, Treasurer, any Vice President, any Assistant Treasurer or any other person holding an equivalent title.

4. We may, but shall not be obligated to, accept any request to issue a substitute letter of credit. Such request shall be in an Availability Certificate in the form of Annex 3 hereto by you to us for exchange for a new letter of credit in the amount set forth in an Availability Certificate, which amount shall not exceed the present value of this Letter of Credit. Upon acceptance by us of any such request to issue a substitute letter of credit for exchange, the new letter of credit shall be issued in the amount as set forth in the Availability Certificate.

5. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. prevailing Eastern Time on the date of such drawing, if delivery of this requisite document is made prior to 11:00 A.M. (prevailing Eastern Time) on a business day pursuant to Paragraph 3 herein above, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made after 11:00 A.M. (prevailing Eastern Time) on any Business Day pursuant to Paragraph 3 herein above.

6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not later than three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, that in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.

7. This Letter of Credit will automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the maximum amount available to be made hereunder; (ii) the date we issue a new letter of credit in exchange for this Letter of Credit in accordance with Paragraph 4 herein above; and (iii) the date we receive from you a Certificate of Expiration in the form of Annex 4 hereto. The Letter of Credit will be automatically extended without written amendment for successive additional one (1) year periods from the current or any future extended expiry date, unless at least ninety (90) days prior to such date of expiration, we give written notice to Beneficiary by registered or certified mail, return receipt requested, or by overnight courier, at the address set forth above, or at such other address of which prior written notice has been provided to us, that we elect not to renew this irrevocable standby Letter of Credit for such additional one (1) year period.

8. As used herein:

“Availability Certificate” shall mean a certificate substantially in the form of Annex 3 hereto, appropriately completed and duly signed by your Authorized Officer.

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, NY and any day on which payments can be effected on the Fed wire system.

9. This Letter of Credit is assignable and transferable, in accordance with Annex 6, to an entity certified by you to us in the form of Annex 6, and we hereby consent to such assignment or transfer, provided that this Letter of Credit may not otherwise be amended or modified without consent from us, you and the Applicant, and, except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 Revision, ICC Publication No. 600, or any successor publication thereto (the “UCP”). Any and all transfer fees, expenses and costs shall be borne by the Applicant. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.

10. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document,

instrument or agreement referred to herein, except for Annexes 1 through 6 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

11. We certify that as of \_\_\_\_\_ (date) we \_\_\_\_\_ ("Bank") satisfy either the senior unsecured debt rating of "A" from Standard & Poor's Rating Service or the senior unsecured debt rating of "A2" from Moody's Rating Service.

12. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder.

13. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_ confirmed by telephone to \_\_\_\_\_.

14. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this letter of credit to be closed for business on the last day of presentation, the expiration date of this letter of credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

15. This original letter of credit has been sent to the Beneficiary located at \_\_\_\_\_ above (as per Applicant's instructions). The aggregate amount paid to Ohio Power Company during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of the Beneficiary. Acceptance or rejection of any amendments to this Letter of Credit or any extensions pursuant to Annex 5 must be signed by an Authorized Officer of each of the Beneficiary.

Capacity Payment Agreement

Very truly yours,

(Bank)

\_\_\_\_\_  
By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**Annex 1 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

To: Bank)

(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$\_\_\_\_\_, in the event that the Applicant fails to perform any obligation set forth in that certain Agreement between the Applicant and Ohio Power Company dated \_\_\_\_\_, or any representation or warranty made by the Applicant in such Agreement is false or misleading in any material respect when made, or due to receipt from you of notice that the Letter of Credit is being cancelled and the Applicant has failed to provide a substitute Letter of Credit from an alternative bank satisfying the requirements in such agreement, or due to a decline in your credit rating below the levels set forth in Paragraph 11 of the Letter of Credit and the Applicant has failed to obtain a substitute Letter of Credit from another bank or other financial institution that meets the standards in such agreement.
3. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

Ohio Power Company

By: \_\_\_\_\_

Name:

Title:

Date:

**Annex 2 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

ON [Business Day set forth in Paragraph 5]

PAY TO: Ohio Power Company

\$ \_\_\_\_\_

For credit to the account of \_\_\_\_\_.

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_ OF

(Bank)

(Address)

Ohio Power Company

By: \_\_\_\_\_

Name:

Title:

Date:



**Annex 3 to Letter of Credit**

AVAILABILITY CERTIFICATE  
UNDER LETTER OF CREDIT NO. \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_  
To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned hereby requests that, in exchange for the above-referenced Letter of Credit, a new letter of credit be issued in the aggregate amount of \$\_\_\_\_\_ (the "New Amount") and to expire on \_\_\_\_\_ (date), but otherwise in the form of the above-referenced Letter of Credit.

Please acknowledge your intention to issue such new letter of credit in the New Amount upon the surrender of the above-referenced Letter of Credit by signing the attached acknowledgment copy hereof and forwarding it to:

[Beneficiary' Addresses]

Very truly yours,

Ohio Power Company

By: \_\_\_\_\_  
Name:  
Title:  
Date:

Agreed and Accepted  
(Bank)

By: \_\_\_\_\_  
Date:

APPLICANT NAME  
(Applicant Name)

By: \_\_\_\_\_  
Date:

**Annex 4 to Letter of Credit**

CERTIFICATE OF EXPIRATION  
OF LETTER OF CREDIT NO. \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without payment. Attached hereto is said Letter of Credit, marked cancelled.

Ohio Power Company

By: \_\_\_\_\_  
Name:  
Title:  
Date:

cc: \_\_\_\_\_ (Applicant Name)

**Annex 5 to Letter of Credit**

NOTICE OF EXTENSION  
OF LETTER OF CREDIT NO. \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

To Ohio Power Company:

Re: Our Letter of Credit no. \_\_\_\_\_ presently in the aggregate amount of  
USD \_\_\_\_\_ issued for the account of \_\_\_\_\_ and expiring  
on \_\_\_\_\_.

On the expiration date of the Letter of Credit No. \_\_\_\_\_, we will issue a new  
Letter of Credit No. \_\_\_\_\_ to expire on \_\_\_\_\_ (date). This new  
Letter of Credit No. \_\_\_\_\_ will, aside from the expiration date, be in the  
amount and form of our Letter of Credit No. \_\_\_\_\_.

Very truly yours,

cc: \_\_\_\_\_ (Applicant Name)

**Annex 6 to Letter of Credit**

NOTICE OF TRANSFER  
OF LETTER OF CREDIT NO. \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

To:  
[Bank]  
[Bank Address]

To Whom It May Concern:  
Re: Credit \_\_\_\_\_  
Issued by \_\_\_\_\_  
Advice No \_\_\_\_\_

For the value received, the undersigned beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases, extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary. The advice of such Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

Very Truly Yours,

Ohio Power Company

By: \_\_\_\_\_  
Name:  
Title:  
Date:

(Name of authenticating party)

\_\_\_\_\_  
(Authorized signature, name and title of authenticating party)

**APPENDIX D**  
**FORM OF GUARANTY**

**CORPORATE GUARANTY**

TO: Ohio Power Company, its successors and assigns, and any of its subsidiaries ("AEP").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and to induce AEP to do business with [Name of CRES supplier], a [State of incorporation] corporation ("Debtor"), the undersigned [Name of Guarantor] ("Guarantor"), hereby unconditionally and absolutely guarantees the full and prompt payment and performance of all present and future obligations of Debtor to AEP, up to an aggregate amount of \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_,\_\_\_\_,\_\_\_\_), arising from Debtor's and AEP's Capacity Payment Agreement, whether such obligations are due or to become due, secured or unsecured, absolute or contingent, joint or several (collectively, the "Obligations"). GUARANTOR'S OBLIGATION UNDER THIS CORPORATE GUARANTY ("GUARANTY") IS A GUARANTY OF PAYMENT AND NOT OF COLLECTION. SHOULD ANY PRESENT OR FUTURE OBLIGATIONS INCURRED BY DEBTOR NOT BE PAID WHEN DUE, AEP MAY PROCEED AGAINST THE GUARANTOR FOR SUCH INDEBTEDNESS AT ANY TIME, WITHOUT NOTICE AND WITHOUT ANY PROCEEDING OR ACTION AGAINST DEBTOR. AND GUARANTOR HEREBY WAIVES ANY DEMAND FOR PAYMENT. This Guaranty is a primary obligation of Guarantor and shall be construed as an unconditional, absolute and continuing guaranty, irrespective of the validity or enforceability of the underlying agreements between AEP and Debtor or any other guaranteed amount, the absence of any action to enforce the same or any circumstances which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

Guarantor hereby waives notice of acceptance of this Guaranty, notice of the transactions between AEP and Debtor, notice of the execution and delivery, amendment, extension or renewal of any present or future instrument pertaining to Obligations, diligence, presentment, demand for payment, protest, notice of default by Debtor, and any other notice not expressly required by this Guaranty. Guarantor further consents, without further notice, to any extension or extensions of the time or times of payment of said Obligations, or any portion thereof, and to any change in form or amount, or renewal at any time, of such Obligations, or any portion thereof, in each case up to an aggregate amount of \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_,\_\_\_\_,\_\_\_\_).

This Guaranty shall remain in full force and effect with respect to the Obligations until finally and irrevocably paid in full. No termination of this Guaranty shall affect any Obligations outstanding or contracted or committed for at the time of termination, and this Guaranty shall remain in full force and effect with respect to such Obligations until finally and irrevocably paid in full. In the event that any payment to AEP in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, Guarantor shall remain liable hereunder in respect of such Obligations as if such payment had not been made.

Guarantor reserves the right to assert defenses that Debtor may have to payment of any Obligation other than defenses arising from the bankruptcy or insolvency of Debtor or similar proceedings affecting Debtor and other defenses expressly waived hereby.

Guarantor's obligations hereunder with respect to the Obligations shall not be affected by the existence, validity, enforceability, perfection or extent of any collateral for such Obligations covered hereunder, nor by any extension, or the acceptance of any sum or sums on account of Debtor, or of any note or draft of Debtor and/or any third party, or security from Debtor. AEP shall not be obligated to file any claim relating to the Obligations owing to it in the event that Debtor becomes subject to bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar proceedings affecting Debtor (whether voluntary or involuntary), and the failure of AEP to so file shall not affect Guarantor's obligations hereunder.

Should any present or future Obligations incurred by Debtor not be paid when due or at the time to which the same may be extended, AEP may proceed against Guarantor for such Obligations at any time, without notice and without any proceeding or action against Debtor. Guarantor agrees that AEP may resort to Guarantor for payment of any of the Obligations, whether or not AEP shall have resorted to any collateral security, or shall have proceeded against any other debtor principally or secondarily obligated with respect to any of the Obligations or any other guarantor thereof.

Guarantor shall not exercise any rights, which it may have or acquire by way of subrogation until all of the Obligations are paid in full to AEP. If any amounts are paid to Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of AEP and shall forthwith be paid to AEP by Guarantor to reduce the amount of outstanding Obligations, whether matured or unmatured. Subject to the foregoing, upon payment of all of the Obligations to AEP, Guarantor shall be subrogated to the rights of AEP against Debtor, and AEP agrees to take at Guarantor's expense such actions as Guarantor may reasonably require to implement such subrogation.

The obligations of Guarantor hereunder shall not be subject to any counterclaim, setoff, deduction, abatement or defense based upon any claim Guarantor or the Company may have against AEP.

This Guaranty shall not be affected by any change in the entity status or business structure of Debtor. If Debtor's assets or a major portion thereof are transferred to any other party or parties otherwise than by operation of law, and if AEP enters into any transaction whereby such transferee or transferees become indebted to AEP, this Guaranty, subject to all the other terms hereof, shall apply to any Obligations or balance of Obligations of such other transferee or transferees to AEP.

This Guaranty shall inure to and be binding upon the parties, their representatives, successors and assigns, provided that Guarantor may not assign or otherwise transfer any of its obligations under this Guaranty, whether by operation of law or otherwise, without the prior written consent of AEP, which consent may be arbitrarily withheld. AEP may assign this Guaranty in its sole discretion.

In the event AEP engages in litigation to enforce this Guaranty, Guarantor agrees to pay, in addition to any amounts of Debtor which Guarantor has otherwise guaranteed to pay hereunder, any and all costs and expenses incurred by AEP (including reasonable attorneys' fees) in enforcing this Guaranty.

Guarantor represents and warrants that, at the time of execution and delivery of the Guaranty, nothing (whether financial condition or any other condition or situation) exists to impair in any way the obligations and liabilities of Guarantor to AEP under this Guaranty. Guarantor further represents and warrants to AEP that: (a) it is a corporation duly organized, validly existing and in good standing in its jurisdiction of incorporation, with full power and authority to make and deliver this Guaranty; (b) that the execution, delivery and performance of this Guaranty by Guarantor have been duly authorized by all requisite corporate action of Guarantor, and does not and will not violate provisions of any applicable law or Guarantor's certificate of incorporation or bylaws; and (c) that the person signing this Guaranty on Guarantor's behalf has been properly authorized by corporate action to do so.

This Guaranty constitutes the entire agreement among the parties and supersedes and cancels any prior agreements, undertakings, declarations and representations, whether written or oral, regarding the subject matter of this Guaranty. If any provision of this Guaranty is found by a court of competent jurisdiction to be void, illegal or otherwise unenforceable in that jurisdiction, such provision, to the extent of its invalidity, shall be severed from this Guaranty and be ineffective in that jurisdiction; provided, however, that such finding shall not affect the validity, legality or enforceability of such provision in any other jurisdiction or the validity, legality or enforceability of any other provision of this Guaranty.

The rights and duties of the Guarantor, Debtor and AEP under this Guaranty shall be construed and enforced in accordance with, and governed by the laws of, the State of Ohio.

IN WITNESS WHEREOF, the Guarantor has duly executed this Guaranty on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[GUARANTOR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Guarantor's Address: \_\_\_\_\_

Attn: \_\_\_\_\_

Guarantor's Federal Tax Identification Number: \_\_\_\_\_



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**Case No(s). 13-0729-EL-ATA**

Summary: Comments from Border Energy Electric Services, Inc. reagrding Ohio Power Company's OHIO Proposed Amended Supplier Coordination Tariff and Related Contracts electronically filed by Ms. Stephanie M Chmiel on behalf of Border Energy Electric Services, Inc.