

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	
Standard Service Offer Pursuant to Section)	
4928.143, Revised Code, in the Form of)	Case No. 14-841-EL-SSO
an Electric Security Plan, Accounting)	
Modifications and Tariffs for Generation)	
Service.)	
In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its)	Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)	

VOLUME I

APPLICATION

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APPLICATION

May 29, 2014

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Testimony:

James P. Henning
Robert J. Lee
William Don Wathen Jr.
James E. Ziolkowski
Peggy A. Laub
Marc W. Arnold
Patricia W. Mullins
Mark E. Hollis
Daniel L. Jones
Jonathan L. Byrd

APPLICATION

I. Introduction

Chapter 4928 of the Ohio Revised Code (R.C.), as amended by the Ohio General Assembly through Amended Substitute Senate Bill 221, requires electric distribution utility (EDU) companies in Ohio to provide a standard service offer (SSO) “of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service,” through either a market rate offer (MRO) or an electric security plan (ESP).¹ Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) is currently providing an SSO pursuant to an ESP that will expire on May 31, 2015,² and the Company now seeks approval of its next SSO, which will again take the form of an ESP.³

Specifically, pursuant to R.C. 4928.141 and 4928.143 and Ohio Administrative Code (O.A.C.) Chapter 4901:1-35, Duke Energy Ohio respectfully requests that the Public Utilities Commission of Ohio (Commission) approve its proposed ESP for the period between June 1, 2015, and May 31, 2018.⁴ As described in this Application, and in the testimony, attachments, and tariffs filed contemporaneously herewith, Duke Energy Ohio’s proposed ESP is consistent with the public policy of this state and addresses a range of issues. Indeed, the proposed ESP appropriately balances the interests of customers, the state, and the Company by, among other things, perpetuating the

¹ R.C. 4928.141(A).

² *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, *et al.* (ESP II), Opinion and Order (November 22, 2011).

³ Consistent with O.A.C. 4901:1-35-04, Duke Energy Ohio has provided notice of this filing via electronic or regular mail delivery to parties of record in its most recent standard service offer filing, Case No. 11-3549-EL-SSO, *et al.*, with such notice and this filing being made concurrently.

⁴ The proposed term is for two years, which will automatically be extended for another year unless Duke Energy Ohio exercises its right to terminate the plan early as discussed in Section III.F., *infra*.

competitive bidding process (CBP) plan successfully implemented in Duke Energy Ohio's current ESP, introducing a transparent and straightforward rate design, allowing for timely recovery of distribution investment, and enabling retail rate stability and certainty in the state, as well as continued economic development resulting from unfettered, market-based competition for the supply of capacity and energy. Additionally, the ability of retail suppliers to compete for customers is unaffected by this Application.

Duke Energy Ohio submits that the Application and accompanying documents meet the requirements of R.C. 4928.141 and 4928.143 and O.A.C. Chapter 4901:1-35 and, as such, respectfully requests that the Commission approve the proposed ESP, without modification, including all accounting authority and tariff revisions needed to implement the ESP, effective June 1, 2015.

II. Overview of Application

As detailed below and in the accompanying testimony, Duke Energy Ohio's proposed ESP satisfies the applicable statutory and Commission rule requirements. To ease the Commission's review in this regard, attached hereto as Attachment A is a recitation of the applicable filing requirements, with specific references demonstrating Duke Energy Ohio's compliance with same.

Duke Energy Ohio further submits that the ESP discussed herein advances the policies of this state,⁵ although such policies function only as "guidelines for the [C]ommission to weigh."⁶ Significantly, Duke Energy Ohio's proposed ESP, among other things, ensures the availability of adequate, reliable, and reasonably priced retail electric service; encourages diversity in electricity supplies and suppliers and time-

⁵ R.C. 4928.02.

⁶ *In re Application of Columbus S. Power Co.*, 2011-Ohio-1788, ¶ 62, citing *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2010-Ohio-134, 125 Ohio St.3d 57, 926 N.E.2d 261, ¶ 39-40.

differentiated pricing; recognizes – and supports the development of – the competitive market for retail electric service; protects at-risk populations; and promotes Ohio’s role in the global economy.

In addition to this Application, the Company’s request is supported by the following witnesses. Unless otherwise noted, these individuals are employed by Duke Energy Ohio or an affiliated company:

- James P. Henning, President, Duke Energy Ohio and Duke Energy Kentucky, Inc.
 - Mr. Henning offers testimony as to the overall structure of the ESP and how it advances state policy. He also introduces the other witnesses in these proceedings.
- Robert J. Lee, Principal, CRA International, Inc. d/b/a Charles River Associates
 - Mr. Lee will present testimony on the CBP plan to be administered under the ESP; including, but not limited to, the auction design, parameters, and the selection of winning bids.
- William Don Wathen Jr., Director, Rates and Regulatory Strategy, Ohio and Kentucky
 - Mr. Wathen provides an overview of the proposed ESP. He testifies about the new riders included therein, as well as those that will remain unchanged by this Application. Mr. Wathen also addresses the “better in the aggregate test” and governmental aggregation.

- James E. Ziolkowski, Director, Rates and Regulatory Planning
 - Mr. Ziolkowski offers testimony regarding proposed new riders, riders to be withdrawn, riders to be modified, and continuing riders, as well as additional tariff changes. As a part of those discussions, he also discusses bill impacts.
- Peggy A. Laub, Director, Rates and Regulatory Planning
 - Ms. Laub provides testimony supporting the methodology for calculating certain riders and the methodology being proposed for the Company's significantly excessive earnings test (SEET).
- Marc W. Arnold, Director, Distribution Design Engineering
 - Mr. Arnold provides testimony on the Company's proposed Distribution Capital Investment Rider (Rider DCI).
- Patricia W. Mullins, Director, Regional Financial Forecasting
 - Ms. Mullins, through her testimony, provides the financial projections required in connection with the ESP proposal.
- Mark E. Hollis, Manager Compliance
 - Mr. Hollis provides testimony concerning the corporate separation plan and how it is consistent with applicable state policy.
- Daniel L. Jones, Senior Account Manager, Customer Choice
 - Mr. Jones offers testimony regarding the Company's Operational Support Plan and the proposed revisions to its Certified Supplier Tariff and purchase of accounts receivable (POR) program.

- Jonathan L. Byrd, Manager, Renewable Strategy and Compliance
 - Mr. Byrd offers testimony demonstrating that the proposed ESP is consistent with certain state policies.

III. Description of the Proposed Electric Security Plan

A. Introduction

Pursuant to R.C. 4928.143(B)(1), an ESP “shall include provisions relating to the supply and pricing of electric generation service... .” The other elements that may also be included in an ESP are detailed in R.C. 4928.143(B)(2). In this regard, it is notable that the ESP may include provisions relating to limitations on bypassability, distribution service, economic development, and job retention.

As directed by the General Assembly, the Commission has promulgated rules that provide further specificity regarding the statutory criteria and the substance and filing of an ESP.⁷ In the following parts of this section, Duke Energy Ohio addresses the statutory requirements for the ESP and, where appropriate, includes a discussion of Commission rule requirements applicable to each such statutory requirement.

B. Provisions Relating to the Supply and Pricing of Electric Generation Service

1. Generation Service Supply

As noted above, R.C. 4928.143(B)(1) mandates that an ESP include provisions relating to the supply and pricing of generation service. Duke Energy Ohio proposes to procure all of the supply needed for its SSO customers via a CBP plan, as described herein and in accompanying testimony.

⁷ O.A.C. 4901:1-35-03(C).

The Company proposes descending-price clock auctions, with the first two auctions to be conducted prior to the delivery period commencing on June 1, 2015; an additional two auctions prior to the delivery period commencing in 2016, and two final auctions prior to the delivery period commencing June 1, 2017, to complete the procurement process for the ESP period. This staggered auction format provides price-smoothing benefits for customers over the long term and encourages efficient pricing of products. Additionally, where possible the auctions will include a variety of product offerings, so as to attract as many prospective and diverse bidders as possible, thereby ensuring a robust, competitive process. The proposed Bidding Process Timeline is attached hereto as Attachment B.

To ensure an open, fair, and transparent process, Duke Energy Ohio's CBP plan incorporates provisions for the equal and non-discriminatory exchange of information and application of bidding requirements. In fact, the Company's CBP plan provides that all prospective bidders will be subject to the same pre-bid requirements and all successful bidders must adhere to, and assume, the same contractual commitments. These requirements are set forth in Attachments C, D, E, and G to this Application.

All bidders will have access to the same information, as the CBP plan incorporates bidder information and training sessions, an active Informational Website, and mock auctions that will be held prior to the time of the first auction. The CBP plan also includes appropriate confidentiality provisions, thus placing all prospective bidders on equal footing. Further, the rules pursuant to which bidding will occur and bids will be evaluated are expressly set forth in this public filing, thus ensuring that no prospective bidder is competitively advantaged or disadvantaged vis-à-vis any other prospective bidder.

The auction product will be an hourly, load-following, full-requirements tranche of the Company's SSO load for full requirements service, where a tranche is equal to 1.00 percent of Duke Energy Ohio's total SSO load obligation (*i.e.*, its non-shopping retail load). Full requirements service consists of energy, capacity, ancillary services, and market-based firm transmission services. A comprehensive description of the products can be found in the Company's proposed Master Standard Service Offer Supply Agreement (MSA), a copy of which is attached hereto as Attachment F.

An independent auction manager, CRA International, Inc. d/b/a Charles River Associates (CRA), has been retained to actively design, administer, and oversee the CBP. As confirmed by Duke Energy Ohio witness Robert J. Lee, CRA has substantial experience in designing and implementing competitive bids for generation service and has overseen the CBP plan successfully implemented under Duke Energy Ohio's current ESP, as well as the CBP plans of other EDUs in Ohio.

The CBP plan also contemplates Commission review through the production of a post-auction report and retention of a separate consultant. Further, the CBP plan is predicated upon an auction format that is familiar, accepted, and capable of verification through hindsight review.

As discussed in Section III, *infra*, Duke Energy Ohio is reserving its right to terminate the ESP at the conclusion of the second year thereof. As such, the Bidding Process Timeline may need to be truncated in the event Duke Energy Ohio elects to pursue this option. Consistent therewith, the MSA includes a provision that enables cancellation of all contractual obligations, without recourse to any party.

Duke Energy Ohio witness Lee provides additional detail regarding the CBP plan and related bid documents.

2. Generation Service Pricing

Duke Energy Ohio is currently providing an SSO pursuant to an ESP approved by the Commission on November 22, 2011.⁸ This ESP includes certain bypassable riders applicable to generation service, as identified in the table below.

Current Bypassable Generation Riders	
Rider RC (Retail Capacity)	Recovers cost for capacity supplied to SSO load.
Rider RE (Retail Energy)	Recovers cost for energy supplied to SSO load.
Rider SCR (Supplier Cost Reconciliation)	Reconciles and recovers costs related to competitive auctions for SSO load; conditionally non-bypassable.
Rider AER-R (Alternative Energy Resource)	Recovers costs associated with alternative energy resource requirements.

The Company intends to perpetuate these riders, proposing limited modification to two of them. Significantly, however, Duke Energy Ohio is not proposing any modification to Rider SCR. Rather, it intends to continue this recovery mechanism in its current form and seeks Commission approval, in the context of this ESP, to do so. Further, no changes are being sought in respect of Rider AER-R, a rider that will persist consistent with the Commission's approval of the Company's current ESP.⁹ Minor revisions are being proposed to Riders RC and RE to recognize Ohio's fully competitive retail market and to align these recovery mechanisms with same. The proposed revisions are identified below and discussed further in the Direct Testimony of Company witnesses William Don Wathen Jr. and James E. Ziolkowski.

⁸ ESP II, Opinion and Order, at pg. 50 (November 22, 2011). Unless expressly identified as continuing, either as requested through this Application or due to existing Commission approval, all provisions of the current ESP will expire at the end of the term thereof.

⁹ ESP II, Stipulation and Recommendation, at pp. 14-15 (October 24, 2011) and Opinion and Order, at pg. 50 (November 22, 2011).

a. Retail Capacity Rider – Rider RC

The Company is proposing to convert the rates for Rider RC to “energy-only” rates, thereby eliminating all existing demand charges currently applicable under this tariff. The changes to Rider RC will better align the overall SSO rates with offers that customers receive from competitive retail electric service (CRES) providers. Further, this revision is consistent with the rate design approved for the FirstEnergy distribution utilities and with the rate design being proposed by AEP Ohio in its pending ESP application.¹⁰ Duke Energy Ohio witnesses Wathen and Ziolkowski testify as to the intended revision to Rider RC.

b. Retail Energy Rider – Rider RE

Duke Energy Ohio intends to maintain the current structure for Rider RE, but to modify the design for certain base rates. Specifically, for customers taking service under Rate RS, Rate RSL1, Rate RS3P, Rate ORH, and Rate DM, the Rider RE rates consist of stepped, summer and winter rates. Seasonal stepped rates under the identified riders will be maintained; however, the differences between the stepped rates will be reduced. This revision is intended to produce auction-procured residential rates that more closely reflect offers extended in the competitive retail market. Duke Energy Ohio witness Ziolkowski provides testimony on the proposed revision.

¹⁰ *In the Matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012), and *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, *et al.*, Application and Direct Testimony of Andrea E. Moore and David M. Roush (December 20, 2013).

C. Additional Provisions Relating to the Structure of the ESP

As the Ohio Supreme Court has found, an ESP may make provision for the categories listed in R.C. 4928.143(B)(2). Consistent therewith, the Commission approved for inclusion in the Company's current ESP certain non-bypassable riders, which are identified in the table below.

Current Non-Bypassable Riders	
Rider UE-GEN (Uncollectible Generation Expense)	Recovers uncollectible generation expense from all retail customers, including shopping customers served by CRES providers participating in Duke Energy Ohio's POR Program. ¹¹
Rider LFA (Load Factor Adjustment)	Reconciles both a demand charge and an energy credit for non-residential customers served under Rates DS, DP, and TS.
Rider DR-ECF (Economic Competitiveness Fund)	Recovers costs associated with interruptible load, as designated by eligible transmission voltage customers.

Of the three riders identified above, Duke Energy Ohio proposes to continue Rider UE-GEN, and the associated POR Program, in substantially the same form as approved by the Commission in the ESP II Opinion and Order. Rider LFA and Rider DR-ECF are obsolete and will be eliminated. Through his direct testimony, Company witness Wathen elaborates on the rationale for eliminating these two riders.

The Company details below those additional provisions of its proposed ESP that are statutorily permitted under R.C. 4928.143(B)(2), lending further support for the methods of supply and pricing, and cost recovery, as proposed herein.

1. Distribution Service

R.C. 4928.143(B)(2)(h) authorizes Duke Energy Ohio to include, in its proposed ESP, provisions regarding single-issue ratemaking, revenue decoupling, and distribution

¹¹ Rider UE-GEN is not applicable to customers of CRES providers that opt out of the Company's POR Program.

infrastructure and modernization. This statutory provision is complemented by O.A.C. 4901:1-35(C)(9)(g), which sets forth additional criteria. Consistent therewith, Duke Energy Ohio proposes two non-bypassable distribution riders, both of which are discussed more fully below.

a. Distribution Capital Investment Rider – Rider DCI

Distribution reliability is a core tenet for the Company. It is also critical to the Company's customers, whose expectations regarding reliability continue to evolve with increasing dependence upon sophisticated or more advanced technologies. Maintaining a reliable system is a continuing obligation that Duke Energy Ohio cannot meet absent ongoing capital investment. And without timely recovery of such investment, the Company's financial health and vitality are compromised. Such an outcome would not be consistent with the policies of the state and, instead, would run afoul of Ohio's regulatory compact. Thus, to enable the necessary investment in the Company's distribution system, while allowing for appropriate and timely cost recovery, Duke Energy Ohio proposes a Distribution Capital Investment rider, Rider DCI. Rider DCI is structured to recover a return on incremental capital investment and the associated depreciation and property tax expense for distribution-related reliability investment that is not otherwise recovered through base rates or another rider. Duke Energy Ohio witnesses Wathen, Peggy A. Laub, and Marc W. Arnold detail the rationale and methodology for Rider DCI.

b. Distribution Storm Rider – Rider DSR

Major storms undeniably impact utility companies and the customers they serve. In anticipation of these events, and recognizing the benefit of timely and efficient service restoration, base distribution rates typically include some level of storm costs. Indeed, in the Company's most recent electric distribution base rate case, the Commission approved

a stipulation that established an agreed-upon baseline level of storm costs for inclusion in distribution base rates.¹² But this baseline is not indicative of the storm costs that the Company may incur in any one year. Rather, just like the significant weather events that give rise to them, storm restoration costs are unpredictable. And the financial impact to a distribution utility can be substantial. As such, Duke Energy Ohio proposes here to establish a rider to track the difference between actual restoration costs associated with major storms in any calendar year and the amount in base rates. The proposed rider will serve to mitigate the potential for excessive volatility in the Company's earnings. It is also designed to be symmetrical so that the benefit of actual storm costs below the baseline amount can be credited to customers and storm costs above the baseline will be charged to customers. The proposed storm rider is similar to a storm rider approved for AEP Ohio in its ESP¹³ and adopts a recommendation made by the Staff in a pending case involving storm cost recovery for The Dayton Power & Light Company.¹⁴ Duke Energy Ohio witnesses Wathen and Laub provide further detail on this proposal.

2. Terms, Conditions, and Charges Related to Bypassability as Would Have the Effect of Stabilizing and Providing Certainty Regarding Retail Electric Service

R.C. 4928.143(B)(2)(d) expressly authorizes an electric utility to include, in its ESP, "[t]erms, conditions, or charges relating to limitations on customer shopping for retail electric generation service [and] bypassability...as would have the effect of stabilizing or providing certainty regarding retail electric service." Significantly, the

¹² *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Electric Distribution Rates*, Case No. 12-1682-EL-AIR, *et al.*, Opinion and Order, at pp. 7 and 16 (May 1, 2013).

¹³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order, at pp. 42-47 (August 8, 2012).

¹⁴ *In the Matter of the Application of The Dayton Power and Light Company for Authority to Recover Certain Storm-Related Service Restoration Costs*, Case No. 12-3062-EL-RDR, Audit Report Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio, at pg. 8 (January 3, 2014).

Commission has authorized terms and conditions related to unavoidable charges.¹⁵ Such statutory provisions and Commission rules, as well as Commission precedent, therefore, authorize the riders identified herein.

a. Price Stabilization Rider – Rider PSR

Duke Energy Ohio proposes a non-bypassable rider, Rider PSR (Price Stabilization Rider), through which it will provide to customers the net benefit of all revenues accruing to the Company as a result of its ownership interest and contractual entitlement in the Ohio Valley Electric Corporation (OVEC), less all costs associated with said entitlement. The Company further proposes Rider PSR as a rider in which additional contractual arrangements could be included to increase the benefits available to customers. So as to ensure a fully competitive auction process for SSO supply, Duke Energy Ohio proposes that the energy, capacity, and ancillary services to which it is currently entitled from its contractual rights in OVEC not be used for such supply obligations. Rather, Duke Energy Ohio proposes that it sell energy, capacity, and ancillary services associated with the OVEC contract into the market. This proposal also will not interfere with CRES providers' ability to compete for customers, as the non-bypassable rider will neither reward nor penalize customers' decisions regarding choice. Importantly, however, the rider will mitigate some of the volatility in overall rates that customers pay for generation service, as the amounts flowing through the rider will reflect market conditions. As such, in a rising market price environment, when the margins from Duke Energy Ohio's contractual entitlement from OVEC are positive, the

¹⁵ See, e.g., *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 12-426-EL-SSO, *et al.*, Opinion and Order, at pp. 21-22 (September 4, 2013). See also *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order, at pp. 31-33 (August 8, 2012).

net rider amount should similarly increase to the benefit of customers. In this regard and to enable customers to benefit from those periods of increasing market volatility, Duke Energy Ohio proposes that the term of Rider PSR extend beyond the term of this ESP. Specifically, the Company seeks approval of a term for Rider PSR that corresponds with the period during which Duke Energy Ohio receives energy and capacity under its contract with OVEC.

Duke Energy Ohio witnesses James P. Henning and Wathen provide further detail regarding this proposal.

D. In the Aggregate Comparison

Duke Energy Ohio has the burden of proving that its proposed ESP, including its pricing and all terms and conditions, is “more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.”¹⁶ This comparison is not limited only to those elements of the ESP that can be quantified. Rather, as the Ohio Supreme Court has confirmed, the comparison appropriately takes into consideration the non-quantifiable benefits of an ESP.¹⁷ As discussed herein and in the Direct Testimony of Company witness Wathen, the proposed ESP is more favorable, in the aggregate, than the results that would otherwise apply under R.C. 4928.142.

Turning first to the quantitative comparison, the proposed ESP is necessarily equivalent to the results that would otherwise apply under an MRO. Specific to generation supply for SSO load, the proposed ESP employs a CBP plan that will yield market-based prices. Similarly, generation supply under an MRO would be procured through a CBP plan, also predicated upon market-based prices. There is thus no

¹⁶ R.C. 4928.143(C)(1).

¹⁷ *In re Application of Columbus Southern Power Co.*, 128 Ohio St. 3d 402, 2011-Ohio-958 at ¶27.

distinction between the two forms of SSO with regard to generation supply.¹⁸ Rider DCI and Rider DSR are also available should the Company provide an SSO in the form of an MRO and, as such, they have no impact on the qualitative comparison and should be excluded.¹⁹

With regard to qualitative benefits, the proposed ESP is better, in the aggregate, than the results that would otherwise be expected under R.C. 4928.142. The proposed ESP enables timely investment in the Company's distribution system, while simultaneously protecting Duke Energy Ohio's financial integrity. Additionally, the proposed ESP provides customers with price stability and certainty, affording them the benefits of Duke Energy Ohio's contractual entitlement in OVEC in an otherwise volatile environment. The development of the competitive retail market is further enhanced by the Company's proposal, as reflected in this Application and supporting testimony. Modifications to rate design will result in costs for SSO supply being charged consistent with the manner in which they are incurred and in a manner that is reflective of the offers that customers may receive from CRES providers. And by eliminating non-market based riders or arrangements, generation-related costs will be established by market forces, which is appropriate in a competitive environment.

¹⁸ See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order, at pg. 44 (August 25, 2010) and *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order, at pg. 55 (July 18, 2012).

¹⁹ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order, at pp. 55-56 (July 18, 2012).

E. Significantly Excessive Earnings Test

R.C. 4928.143(F) requires the Commission to conduct annual reviews of an ESP, for the purpose of determining whether any adjustments to such plan resulted in an EDU's receipt of significantly excessive earnings.²⁰ The application of the SEET to Duke Energy Ohio has been performed consistent with discrete, Commission-approved parameters²¹ and the Company proposes continuing those same parameters in respect of its next ESP. Duke Energy Ohio witness Laub provides additional detail regarding the SEET.

F. Early Termination

Duke Energy Ohio expressly reserves the right to terminate its proposed ESP at the conclusion of the second year thereof, or May 31, 2017. Said unilateral right may be exercised in the event there is a substantive change in either Ohio or federal law that affects SSOs or rate plans concerning same. For purposes of this provision, Ohio law includes statutes, rules, regulations, Ohio Supreme Court decisions, and Commission decisions and federal law includes statutes, federal court decisions, rules, regulations, decisions of the Federal Energy Regulatory Commission, and the rules, tariffs, and agreements of PJM Interconnection, L.L.C., or any successor regional transmission operator.

In the event the Company, at its sole discretion, exercises this right to terminate, it will do so by providing notice to the Commission no later than September 1, 2016. The Company will further submit an application for a new SSO to commence June 1, 2017.

²⁰ R.C. 4928.143(F) ("With regard to the provisions that are included in an electric security plan under this section, the commission shall consider, following the end of each annual period of the plan, if any such adjustments resulted in excessive earnings...").

²¹ See, *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, *et al.*, Opinion and Order, at pp. 21, 39 (December 17, 2008); and ESP II, Opinion and Order, at pp. 35 and 50 (November 22, 2011).

Should the proposed ESP terminate early, consistent with this provision, all MSAs pertaining to delivery between June 1, 2017, and May 31, 2018, shall be declared null and void, without recourse by or to any contracting party.

IV. Rate Structure and Impacts

A. Pro Forma Financial Projections

As set forth in O.A.C. 4901:1-35-03(C)(2), Duke Energy Ohio must provide financial projections of the “effect of the ESP’s implementation upon the electric utility for the duration of the ESP.”²² The Company must also provide sufficient information to enable an understanding of the assumptions used and methodology employed in deriving the pro forma financial projections.

Duke Energy Ohio witness Patricia W. Mullins testifies as to the financial projections, which are set forth as attachments to her testimony.

B. Rate Impacts

Duke Energy Ohio’s Application must include “[p]rojected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals, if any.”²³ Duke Energy Ohio witness Ziolkowski provides a summary of the estimated rate impacts by rate class and describes how the projected prices were derived.

C. Tariffs

As detailed in the testimony of Company witness Ziolkowski, Duke Energy Ohio proposes to implement new riders under its ESP, as well as modifying certain existing riders. Furthermore, certain riders currently in effect under its existing ESP will terminate while other riders will remain unchanged by the proposed ESP.

²² O.A.C. 4901:1-35-03(C)(2).

²³ O.A.C. 4901:1-35-03(C)(3).

For a full list of the tariffs that are being proposed in this ESP Application, see attachments to the Direct Testimony of Mr. Ziolkowski.

V. Other Filing Requirements

A. Corporate Separation

O.A.C. 4901:1-35-03(C)(4) imposes upon the Company an obligation to describe its current corporate separation plan. Such description must include “the current status of the...plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its...plan, and a timeline of any anticipated revisions or amendments.”²⁴ Additionally, O.A.C. 4901:1-35-03(F) requires Duke Energy Ohio to demonstrate how its corporate separation plan is consistent with state policy.

Duke Energy Ohio witness Mark E. Hollis discusses the Company’s current corporate separation plan, which was most recently approved by the Commission in the ESP II Opinion and Order.²⁵ Mr. Hollis further provides a brief overview of the Company’s prior corporate separation plans and the dockets in which they were approved, as well as the pending consideration of an amended plan.²⁶ Duke Energy Ohio has neither sought nor obtained any waivers of its current corporate separation plan. Further, Mr. Hollis discusses the Company’s future plans for revision and the consistency of the plan with state policy.

B. Operational Support Plan

O.A.C. 4901:1-35-03(C)(5) requires the Company to state whether its operational support plan has been implemented and whether any problems exist with regard to such implementation. As explained by Duke Energy Ohio witness Daniel L. Jones, Duke

²⁴ O.A.C. 4901:1-35-03(C)(4).

²⁵ ESP II, Opinion and Order, at pg. 51 (November 22, 2011).

²⁶ *In the Matter of the Application of Duke Energy Ohio for Approval of the Fourth Amended Corporate Separation Plan*, Case No. 14-0689-EL-UNC.

Energy Ohio's Operational Support Plan has been implemented. Duke Energy Ohio is not aware of any outstanding problems with regard to that implementation.

C. Governmental Aggregation

Pursuant to O.A.C. 4901:1-35-03(C)(6), the Company's Application must include a description of how it proposes "to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code." Further, the Company must, pursuant to O.A.C. 4901:1-35-03(C)(7), include in its ESP a "description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed" in the ESP.

As supported by the testimony of Company witness Wathen, Duke Energy Ohio's ESP will not impede the formation of large-scale governmental aggregations. The provisions of R.C. 4928.20(I) are not implicated here as Duke Energy Ohio is not seeking a deferral, under R.C. 4928.144, in respect of its ESP. Similarly, Duke Energy Ohio is not seeking Commission approval of a separate charge for standby service and, consequently, the provisions of R.C. 4928.20(J) are not a consideration for Commission review. Admittedly, Duke Energy Ohio's proposed ESP does include non-bypassable charges. However, those charges will not adversely affect governmental aggregation. Rather, the Company's proposal should function to ease the process of evaluating competitive offers and ensure a vigorous environment in which CRES providers engage. Furthermore, a non-bypassable crediting mechanism removes from customers the dilemma of not switching suppliers in order to continue receiving the credit versus exercising the right to switch suppliers.

D. Advancement of State Policy

Pursuant to O.A.C. 4901:1-35-03(C)(8), the Company must describe how its proposed ESP advances the policies of the state as set forth in R.C. 4928.02. Significantly, these policies function only as guidelines for the Commission to weigh in reviewing the Company's Application. As described in further detail in the direct testimony of Company witness Henning, the proposed ESP effectuates state policies. Specifically, Mr. Henning reviews each enumerated state policy and explains how the proposal set forth in this Application advances the goals of the state of Ohio, with reference, as appropriate, to other Company witnesses in these proceedings.

E. Proposed Notice of Publication

Consistent with O.A.C. 4901:1-35-04(B), Duke Energy Ohio attaches hereto as Attachment I its proposed notice of publication regarding the filing of this Application.

F. Direct Testimony

The Commission has required, through O.A.C. 4901:1-35-03(A), that the applicant for an ESP include a complete set of testimony, along with all schedules. Duke Energy Ohio incorporates herein the direct testimony of its witnesses, as identified in Section II, above.

G. Work Papers

The Commission has required, under O.A.C. 4901:1-35-03(G), that each ESP application include a complete set of work papers. The work papers of Duke Energy Ohio witnesses are, to the extent such work papers exist, included as attachments to the testimony of each such witness.

VI. Waivers

Duke Energy Ohio submits that its Application, as supported by the testimony, schedules, and tariffs, complies with R.C. 4928.141 and 4928.143 and the relevant administrative rule, O.A.C. 4901:1-35-03.²⁷ However, Duke Energy Ohio respectfully seeks any waivers of any provisions of O.A.C. 4901:35-03 necessary to support the findings requested herein.

VII. Procedural Schedule

Duke Energy Ohio defers to the Commission in the management of its docket. However, recognizing the desire to conduct two competitive auctions for SSO supply beginning June 1, 2015, the Company respectfully proposes the following procedural schedule for Commission consideration:

- Technical conference: June 6, 2014
- Motions to Intervene due: July 7, 2014
- Testimony on behalf of Intervenors: July 24, 2014
- Deadline for tendering discovery requests served: July 28, 2014
- Testimony on behalf of Staff: August 8, 2014
- Procedural conference: August 12, 2014
- Evidentiary Hearing: August 19, 2014
- Issuance of Opinion and Order: October 29, 2014
- Issuance of Entry on Rehearing: December 3, 2014

²⁷ See Attachment A to this Application, which identifies the various filing requirements and the manner through which Duke Energy Ohio has complied with same.

VIII. Conclusion

Duke Energy Ohio respectfully requests that the Commission approve the proposed electric security plan, together with necessary accounting and tariff modifications described herein.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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Summary of Filing Requirements

The following summary is prepared for reference purposes only. It is not a substantive part of the Application and nothing herein should be interpreted as superseding the Application, the other Attachments to the Application, the testimony of the Company's witnesses, or any attachments thereto.

Ohio Administrative Code 4901:1-35-03(A)

Summary of Filing Requirement

Twenty copies plus an original of the application shall be filed. Applications must include a complete set of direct testimony of the electric utility personnel or other expert witnesses. This testimony shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues identified by the electric utility.

Response

See Direct Testimony of:

James P. Henning
Robert J. Lee
William Don Wathen Jr.
James E. Ziolkowski
Peggy A. Laub
Marc W. Arnold
Patricia W. Mullins
Mark E. Hollis
Daniel L. Jones
Jonathan L. Byrd

Ohio Administrative Code 4901:1-35-03(C)(1)

Summary of Filing Requirement

A complete description of the ESP and testimony explaining and supporting each aspect of the ESP.

Response

See Application and Direct Testimony filed in support thereof.

Ohio Administrative Code 4901:1-35-03(C)(2)

Summary of Filing Requirement

Pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP, together with testimony and work papers sufficient to provide an understanding of the assumptions made and methodologies used in deriving the pro forma projections.

Response

See Direct Testimony of Patricia W. Mullins.

Ohio Administrative Code 4901:1-35-03(C)(3)

Summary of Filing Requirement

Projected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals, if any.

Response

See Direct Testimony of James E. Ziolkowski.

Ohio Administrative Code 4901:1-35-03(C)(4)

Summary of Filing Requirement

The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including, but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the commission pursuant to Chapter 4901:1-37 of the Administrative Code.

Response

See Direct Testimony of Mark E. Hollis.

Ohio Administrative Code 4901:1-35-03(C)(5)

Summary of Filing Requirement

Division (A)(3) of section 4928.31 of the Revised Code required each electric utility to file an operational support plan as a part of its electric transition plan. Each electric utility shall provide a statement as to whether its operational support plan has been implemented and whether there are any outstanding problems with the implementation.

Response

See Direct Testimony of Daniel L. Jones.

Ohio Administrative Code 4901:1-35-03(C)(6)

Summary of Filing Requirement

A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.

Response

See Direct Testimony of William Don Wathen Jr.

Ohio Administrative Code 4901:1-35-03(C)(7)

Summary of Filing Requirement

A description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP.

Response

See Direct Testimony of William Don Wathen Jr.

Ohio Administrative Code 4901:1-35-03(C)(8)

Summary of Filing Requirement

The initial filing for an ESP shall include a detailed account of how the ESP is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings shall include how the state policy is advanced by the ESP.

Response

See Direct Testimony of James P. Henning, William Don Wathen Jr., Mark E. Hollis, and Jonathan L. Byrd.

Ohio Administrative Code 4901:1-35-03(C)(9)(a)

Summary of Filing Requirement

Division (B)(2) of Section 4928.143 of the Revised Code authorizes the provision or inclusion in an ESP of a number of features or mechanisms. To the extent that an electric utility includes any of these features in its ESP, it shall file the corresponding information in its application.

Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and certain other specified costs. An application including such provisions shall include, at a minimum, the information described below:

- (i) The type of cost the electric utility is seeking recovery for under division (B)(2) of section 4928.143 of the Revised Code including a summary and detailed description of such cost. The description shall include the plant(s) that the cost pertains to as well as a narrative pertaining to the electric utility's procurement policies and procedures regarding such cost.
- (ii) The electric utility shall include in the application any benefits available to the electric utility as a result of or in connection with such costs including but not limited to profits from emission allowance sales and profits from resold coal contracts.
- (iii) The specific means by which these costs will be recovered by the electric utility. In this specification, the electric utility must clearly distinguish whether these costs are to be recovered from all distribution customers or only from the customers taking service under the ESP.
- (iv) A complete set of work papers supporting the cost must be filed with the application. Work papers must include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative and other support of assumptions made in completing the work papers.

Response

See Direct Testimony of James P. Henning and William Don Wathen Jr.

Ohio Administrative Code 4901:1-35-03(C)(9)(b)

Summary of Filing Requirement

Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an electric utility to include unavoidable surcharges for construction, generation, or environmental expenditures for electric generation facilities owned or operated by the electric utility. Any plan which seeks to impose surcharge under these provisions shall include the following sections, as appropriate:

- (i) The application must include a description of the projected costs of the proposed facility. The need for the proposed facility must have already been reviewed and determined by the commission through an integrated resource planning process filed pursuant to rule 4901:5-5-05 of the Administrative Code.
- (ii) The application must also include a proposed process, subject to modification and approval by the commission, for the competitive bidding of the construction of the facility unless the commission has previously approved a process for competitive bidding, which would be applicable to that specific facility.
- (iii) An application which provides for the recovery of a reasonable allowance for construction work in progress shall include a detailed description of the actual costs as of a date certain for which the applicant seeks recovery, a detailed description of the impact upon rates of the proposed surcharge, and a demonstration that such a construction work in progress allowance is consistent with the applicable limitations of division (A) of section 4909.15 of the Revised Code.
- (iv) An application which provides recovery of a surcharge for an electric generation facility shall include a detailed description of the actual costs, as of a date certain, for which the applicant seeks recovery and a detailed description of the impact upon rates of the proposed surcharge.
- (v) An application which provides for recovery of a surcharge for an electric generation facility shall include the proposed terms for the capacity, energy, and associated rates for the life of the facility.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(c)(i)

Summary of Filing Requirement

Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:

- (i) A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service. Such components would include, but are not limited to, terms and conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale and, to the extent possible, a quantitative justification shall be provided.
- (ii) A description and quantification or estimation of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery, together with the carrying costs, amortization periods, and avoidability of such charges.
- (iii) A listing, description, and quantitative justification of any unavoidable charges for standby, back-up, or supplemental power.

Response

See Direct Testimony of James P. Henning, William Don Wathen Jr., Robert J. Lee, James E. Ziolkowski, and Daniel L. Jones.

Ohio Administrative Code 4901:1-35-03(C)(9)(d)

Summary of Filing Requirement

Division (B)(2)(e) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for automatic increases or decreases in any component of the standard service offer price. Pursuant to this authority, if the ESP proposes automatic increases or decreases to be implemented during the life of the plan for any component of the standard service offer, other than those covered by division (B)(2)(a) of section 4928.143 of the Revised Code, the electric utility must provide in its application a description of the component, the proposed means for changing the component, and the proposed means for verifying the reasonableness of the change.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(e)

Summary of Filing Requirement

Division (B)(2)(f) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the securitization of authorized phase-in recovery of the standard service offer price. If a phase-in deferred asset is proposed to be securitized, the electric utility shall provide, at the time of an application for securitization, a description of the securitization instrument and an accounting of that securitization, including the deferred cash flow due to the phase-in, carrying charges, and the incremental cost of the securitization. The electric utility will also describe any efforts to minimize the incremental cost of the securitization. The electric utility shall provide all documentation associated with securitization, including but not limited to, a summary sheet of terms and conditions. The electric utility shall also provide a comparison of costs associated with securitization with the costs associated with other forms of financing to demonstrate that securitization is the least cost strategy.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(f)

Summary of Filing Requirement

Division (B)(2)(g) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions relating to transmission and other specified related services. Moreover, division (A)(2) of section 4928.05 of the Revised Code states that, notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs (net of transmission related revenues), including ancillary and net congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.

Any utility which seeks to create or modify its transmission cost recovery rider in its ESP shall file the rider in accordance with the requirements delineated in Chapter 4901:1-36 of the Administrative Code.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(g)**Summary of Filing Requirement**

Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility shall provide a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses any cost savings to the electric utility, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility shall also include, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific requirements:

- (i) A description of the infrastructure modernization plan, including but not limited to, the electric utility's existing infrastructure, its existing asset management system and related capabilities, the type of technology and reason chosen, the portion of service territory affected, the percentage of customers directly impacted (non-rate impact), and the implementation schedule by geographic location and/or type of activity. A description of any communication infrastructure included in the infrastructure modernization plan and any metering, distribution automation, or other applications that may be supported by this communication infrastructure also shall be included.
- (ii) A description of the benefits of the infrastructure modernization plan (in total and by activity or type), including but not limited to the following as they may apply to the plan: the impacts on current reliability, the number of circuits impacted, the number of customers impacted, the timing of impacts, whether the impact is on the frequency or duration of outages, whether the infrastructure modernization plan addresses primary outage causes, what problems are addressed by the infrastructure modernization plan, the resulting dollar savings and additional costs, the activities affected and related accounts, the timing of savings, other customer benefits, and societal benefits. Through metrics and milestones, the infrastructure modernization plan shall include a description of how the performance and outcomes of the plan will be measured.
- (iii) A detailed description of the costs of the infrastructure modernization plan, including a breakdown of capital costs and operating and maintenance expenses net of any related savings, the revenue requirement, including recovery of stranded investment related to replacement of un-depreciated plant with new technology, the impact on customer bills, service disruptions associated with plan implementation, and description of (and dollar value of) equipment being made obsolescent by the plan and reason for early plant retirement. The infrastructure

modernization plan shall also include a description of efforts made to mitigate such stranded investment.

- (iv) A detailed description of any proposed cost recovery mechanism, including the components of any regulatory asset created by the infrastructure modernization plan, the reporting structure and schedule, and the proposed process for approval of cost recovery and increase in rates.
- (v) A detailed explanation of how the infrastructure modernization plan aligns customer and electric utility reliability and power quality expectations by customer class.

Response

See Direct Testimony of James P. Henning, William Don Wathen Jr., James E. Ziolkowski, Peggy A. Laub, and Marc W. Arnold.

Ohio Administrative Code 4901:1-35-03(C)(9)(h)

Summary of Filing Requirement

Division (B)(2)(i) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for economic development, job retention, and energy efficiency programs. Pursuant to this section, the electric utility shall provide a complete description of the proposal, together with cost-benefit analysis or other quantitative justification, and quantification of the program's projected impact on rates.

Response

See Direct Testimony of James P. Henning, Robert J. Lee and James E. Ziolkowski.

Ohio Administrative Code 4901:1-35-03(F)

Summary of Filing Requirement

The SSO application shall include a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. If any waivers of the corporate separation plan have been granted and are to be continued, the applicant shall justify the continued need for those waivers.

Response

See Direct Testimony of Mark E. Hollis.

Ohio Administrative Code 4901:1-35-03(G)

Summary of Filing Requirement

A complete set of work papers must be filed with the application. Work papers must include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative or other support of assumptions made in the work papers. Work papers shall be marked, organized, and indexed according to schedules to which they relate. Data contained in the work papers should be footnoted so as to identify the source document used.

Response

See Application, Section V.G.

Ohio Administrative Code 4901:1-35-03(H)

Summary of Filing Requirement

All schedules, tariff sheets, and work papers prepared by, or at the direction of, the electric utility for the application and included in the application must be available in spreadsheet, word processing, or an electronic non-image-based format, with formulas intact, compatible with personal computers. The electronic form does not have to be filed with the application but must be made available within two business days to staff and any intervening party that requests it.

Response

See Direct Testimony of James E. Ziolkowski and Daniel L. Jones. See also, Application, Section V.G.

Ohio Revised Code 4928.143(C)(1)

Summary of Filing Requirement

The burden of proof in the proceeding shall be on the electric distribution utility. ...[T]he commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.

Response

See Direct Testimony of William Don Wathen Jr.

Ohio Revised Code 4928.143(B)(1)

Summary of Filing Requirement

[I]f the proposed electric security plan has a term longer than three years, it may include provisions in the plan to permit the commission to test the plan pursuant to division (E) of this section and any transitional conditions that should be adopted by the commission if the commission terminates the plan as authorized under that division.

Response

N/A

		2014												2015												2016												2017												2018																				
Auction	Product	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6																											
Auction 1	12 Month													1							June 2015 thru May 2016 16																																																	
	24 Month														June 2015 thru May 2017 17																																																							
	36 Month														June 2015 thru May 2018 17																																																							
Auction 2	12 Month													2							June 2015 thru May 2016 16																																																	
	24 Month														June 2015 thru May 2017 17																																																							
	36 Month														June 2015 thru May 2018 17																																																							
Auction 3	24 Month														3												June 2016 thru May 2018 16																																											
Auction 4	24 Month																				4												June 2016 thru May 2018 16																																					
Auction 5	12 Month																											5												June 2017 thru May 2018 17																														
Auction 6	12 Month																																								6												June 2017 thru May 2018 17																	
Total #														100												100												100																																

Attachment C

Bidding Rules for Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions

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Bidding Rules for Duke Energy Ohio's Competitive Bidding Process Auctions

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1. INTRODUCTION

These Bidding Rules apply to the competitive bidding process ("CBP") auctions for Duke Energy Ohio to procure supply for the provision of Standard Service Offer supply ("SSO Supply") for all of their retail customers that take retail generation from Duke Energy Ohio.

Bidders also need to be familiar with other documents for the auctions including the Master Standard Service Offer Supply Agreement ("Master SSO Supply Agreement"), the Part 1 Application, the Part 2 Application, the Communications Protocols, and the Glossary. Bidders also should visit the Information Website regularly for up-to-date information including information specific to each auction.

The URL for the Information Website is <http://www.duke-energyohiocbp.com>. It contains relevant data, the schedule and key dates for participating in the auction process, frequently asked questions, and other information.

Unless noted otherwise, "days" refer to business days and times refer to prevailing Eastern Time. Unless noted otherwise, all capitalized terms are defined in the Glossary available on the Information Website.

Examples in these Bidding Rules are illustrative only.

These Bidding Rules may be modified from time to time by the Auction Manager in order to: (i) facilitate a more competitive process, (ii) make any necessary corrections and/or clarifications, (iii) account for any change in ESP products, (iv) conform to any change in state or federal law or rule, and (v) apply any change deemed necessary at the discretion of the Auction Manager. Such modifications will be carried out in consultation with Duke Energy Ohio but without prior consent from the Public Utilities Commission of Ohio ("PUCO") or any past, current, or potential bidder and will be posted to the Information Website.

1.1 Auction Manager

The Auction Manager is CRA International Inc. d/b/a Charles River Associates, Inc. The Auction Manager can be contacted by sending an email to duke-energyauctionmanager@crai.com. The full contact information for the Auction Manager is as follows:

CRA International, Inc.
John Hancock Tower
200 Clarendon Street, T-32
Boston, MA 02116-5092
Phone: 617.425.3365
Fax: 617.425.6574
Email: duke-energyauctionmanager@crai.com
Attn: Robert Lee, Vice President / Auction Manager

2. THE PRODUCTS BEING PROCURED

This section summarizes the common elements of the products to be procured in the auctions. The Information Website provides details about the products to be procured in a specific auction, including the delivery periods, the number of tranches, the nominal MW size of the tranches, and the seasonal price factors.

2.1 SSO Load

Standard Service Offer ("SSO") Load will be Duke Energy Ohio's full electricity requirements for SSO Service for SSO Customers and it will include distribution losses. For purposes of these Bidding Rules, an "SSO Customer" is a retail customer of Duke Energy Ohio taking Standard Service Offer.

SSO Load will exclude the requirements of customers served by Competitive Retail Electric Service suppliers ("CRES Suppliers"). CRES Suppliers are certified by the PUCO and serve shopping customers.

SSO Load will include the requirements of any Special Contract customers of Duke Energy Ohio who are served under special contracts.

2.2 Full Requirements Service

The auctions are designed to procure all elements of full requirements service for SSO Customers of Duke Energy Ohio. Winning bidders will assume all responsibilities of a Load Serving Entity ("LSE") and will be responsible for supplying all obligations associated with full requirements service. Full requirements service includes energy, capacity, market-based transmission service and market-based transmission ancillaries, and any other LSE service or other service as may be required by PJM to serve the SSO Load of Duke Energy Ohio.

Duke Energy Ohio also will provide distribution services and will be responsible for Network Integrated Transmission Services ("NITS") charges and for other non-market-based FERC approved transmission charges for shopping and non-shopping load.

Full requirements service and the LSE obligations of winning bidders are defined in the Master SSO Supply Agreement.

2.3 Tranches

SSO Load will be divided into identical units called tranches, each representing an equivalent percentage of SSO Load. Each tranche represents one percent (1%) of the hourly full requirements service for SSO Customers of Duke Energy Ohio for the applicable delivery period.

The number of tranches intended to be procured for each product in the auction is referred to as the "tranche target" for that product. The Auction Manager may reduce the tranche targets prior to the auction if indications of interest in the auction are such that doing so is required to promote more competitive bidding.

3. PRICES PAID TO SSO SUPPLIERS

The payment to SSO Suppliers for tranches won will be a seasonal function of the auction prices. The summer payment for a tranche, paid to the winning bidder of the tranche from June 1 through September 30 during each year of the applicable delivery period, will be higher than the winning price for that tranche. The winter payment for the same tranche, paid to the winning bidder of that tranche for the remaining months in the calendar year during each year of the applicable delivery period, will be lower than the winning price for that tranche. The seasonal factors are multiplied by the winning price for a tranche in determining the summer and winter payments for that tranche. Duke Energy Ohio reserves the right to calculate the seasonal factors in advance of each auction in response to changing market conditions. The seasonal factors will be announced to suppliers prior to the auction and will be constant during the duration of the Master SSO Supply Agreement.

Example 1. Seasonal Supplier Payments

Assume the summer factor is 1.0727 and the winter factor is 0.9580, and the delivery period is June 1, 2013 through May 31, 2015.

Assume a bidder in the auction wins three (3) 24-month tranches at a price of \$60.00/MWh. The size of each tranche is 1% of the SSO Load. Thus, the bidder will serve 3% of the SSO Load from June 1, 2013 through May 31, 2015. The bidder will receive \$64.36 ($\60.00×1.0727) for each MWh of SSO Load served in the summer months and \$57.48 ($\60.00×0.9580) for each MWh of SSO Load served in the winter months.

4. PRIOR TO THE START OF BIDDING

4.1 Information Provided to Bidders

Duke Energy Ohio will make available certain information to suppliers in advance of qualification. This information will be posted on the Information Website.

4.1.1 Load Data

Duke Energy Ohio will provide:

- Historical hourly load data for total retail load and SSO Load for a three-year period.
- Historical switching statistics including counts of switched customers by revenue class.
- Peak Load Contribution and NSPL for eligible and SSO load.
- Monthly consumption information specific to the Percentage of Income Payment Plan ("PIPP") load that includes hourly consumption, and number of accounts.
- Above information provided in a useable or active electronic format such as Excel where possible.

4.1.2 Minimum and Maximum Starting Prices

The Auction Manager will announce a minimum starting price and a maximum starting price for each product in the auction. The minimum and maximum starting prices establish the range for the possible round 1 prices for the auction.

4.1.3 Tranche Size, Tranche Target

No later than eight (8) days prior to the Part 1 Application Due Date, the Auction Manager will announce for each product in the auction:

- The tranche target or the number of tranches being procured.
- The size (%) and MW-measure of the tranches in the auction.

No later than four (4) days prior to the Part 2 Application Due Date, the Auction Manager will announce:

- Any update to the MW-measure of the tranches in the auction.

4.2 Qualification Process

There are two parts to the application process. In Part 1, prospective bidders apply to become Qualified Bidders. In Part 2, each Qualified Bidder provides certifications and its indicative offer and pre-bid security in order to become a Registered Bidder.

4.2.1 Part 1 Application: Certifications and Other Qualified Bidder Requirements

In the Part 1 Application process, prospective bidders will be required to:

- Submit an application from a person with the power to bind the bidder.
- Agree to comply with all rules of the auction.
- Agree that if they become winning bidders, they will execute the Master SSO Supply Agreement with Duke Energy Ohio within 3 business days following the close of the auction.
- Show either that they are a PJM Market Participant and Load Serving Entity in PJM, or that there exist no impediments to them becoming a PJM Market Participant and Load Serving Entity in PJM by the start of the applicable delivery period.
- Agree that if they become winning bidders, they will comply with the creditworthiness requirements set forth in the Master SSO Supply Agreement.
- Certify that if they qualify to participate, they will not disclose information regarding the list of Qualified Bidders or confidential information that may be obtained during the bidding process about Qualified Bidders.
- Certify that if they qualify to participate, they will not substitute another entity in their place, transfer their rights to another entity, or otherwise assign their status as Qualified Bidders to another entity.

Part 1 Applications must be submitted to the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time on the Part 1 Application Due Date. Prospective bidders will be notified by the Auction Manager no later than three (3) days after the Part 1 Application Due Date whether they succeeded in becoming a Qualified Bidder.

A prospective bidder that has qualified during the Part 1 Application process becomes a Qualified Bidder. The Auction Manager will send a list of all Qualified Bidders to relevant parties that have undertaken to maintain the confidentiality of the list of Qualified Bidders. The relevant parties that will receive this list of Qualified Bidders are as follows:

- Each Qualified Bidder.
- Other parties as necessary to oversee the proper conduct of the auction, including representatives from Duke Energy Ohio, PUCO Staff, and any advisor ("PUCO Consultant") that PUCO Staff may have retained for this purpose.

All parties receiving a list of Qualified Bidders will be subject to the confidentiality requirements as specified below and in the Communications Protocols.

4.2.2 Part 2 Application: Certifications, Indicative Offer, and Pre-Bid Security

For each auction, Qualified Bidders must successfully complete the Part 2 Application process in order to become a Registered Bidder that can bid in the auction. Only Qualified Bidders may submit a Part 2 Application.

Part 2 Applications must be submitted to the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time on the Part 2 Application Due Date. Qualified Bidders will be notified by the Auction Manager whether they succeeded in the Part 2 Application process no later than three (3) days after the Part 2 Application Due Date.

Certifications

In the Part 2 Application, each Qualified Bidder will make a number of certifications regarding associations to ensure that they are participating independently of other Qualified Bidders and to ensure the confidentiality of information regarding the auction.

A Qualified Bidder is associated with another Qualified Bidder if the two bidders have ties that could allow them to act in concert or that could prevent them from competing actively against each other. The competitiveness of the auction and the ability of the auction to produce competitive prices may be harmed by the coordinated or collusive behavior that associations facilitate. As the Auction Manager relies on a number of factors to assess and promote competitive bidding, including the number of independent competitors, using inaccurate information or insufficient disclosure of associations in the Part 2 Application is prohibited. The protocols for participation by associated bidders in Duke Energy Ohio, Inc. CBP auctions are included as an Appendix to these Bidding Rules.

Indicative Offer

With its Part 2 Application, a Qualified Bidder will be required to submit an indicative offer and to post pre-bid security sufficient for this indicative offer. A Qualified Bidder's indicative offer specifies two (2) numbers of tranches for each product in the auction. For each product, the first number represents the number of tranches that the Qualified Bidder is willing to serve at the minimum starting price for the product and the second number represents the number of tranches that the Qualified Bidder is willing to serve at the maximum starting price for the product. For each product, the number of tranches specified in the indicative offer at the minimum starting price cannot exceed the number of tranches specified at the maximum starting price.

Indicative offers are important in two respects. First, the Auction Manager may use the indicative offers to inform the setting of the starting price for each product (i.e., round 1 announced price). Second, the total number of tranches indicated by the Qualified Bidder at the maximum starting prices is used to determine the Qualified Bidder's initial eligibility (i.e., the maximum total number of tranches the Qualified Bidder can bid across all products in round 1 of the auction): the Qualified Bidder's initial eligibility is set to the sum of the number of tranches at the maximum starting prices across all products in the Qualified Bidder's indicative offer. During the auction, bidders are free to switch their tranches among products in response to changes in announced prices (subject to any bidding restrictions). However, a bidder will never be able to bid a total number of tranches across products that exceeds the bidder's initial eligibility. Thus, the number of tranches for each product at the maximum starting prices in the Qualified Bidder's indicative offer does not limit the number of tranches the Qualified Bidder can bid on a particular product, but the total number of tranches at the maximum starting prices across all products in the indicative offer must be equal to the Qualified Bidder's desired initial eligibility across all products.

Restrictions on the Indicative Offer

A Qualified Bidder may have restrictions on its initial eligibility — due to a credit-based tranche cap and/or due to load caps — and therefore may have restrictions on its indicative offer.

A Qualified Bidder may have a credit-based tranche cap that limits the Qualified Bidder's initial eligibility. Thus, the total number of tranches at the maximum starting prices across all products in the Qualified Bidder's indicative offer must not exceed the Qualified Bidder's credit-based tranche cap. This credit-based tranche cap is based on the credit rating of the Qualified Bidder or its Guarantor. A Qualified Bidder's credit-based tranche cap is determined as follows. The Qualified Bidder or Guarantor must:

- Be rated by at least one of the following rating agencies: Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's"), or Fitch, Inc. ("Fitch") and
- Have a senior unsecured debt rating (or, if unavailable, corporate or issuer rating).

If the Qualified Bidder or Guarantor is rated by only one rating agency, that rating will be used. If the Qualified Bidder or Guarantor is rated by only two rating agencies, and the ratings differ, the lower of the two ratings will be used. If the Qualified Bidder or Guarantor is rated by three rating agencies and the ratings differ, the lower of the two highest ratings will be used provided that, in the event that the two highest ratings are common, such common rating will be used. The credit-based tranche cap for a Qualified Bidder or its Guarantor is determined as shown in the following table:

Table 1. Credit-Based Tranche Cap

Credit Rating of Qualified Bidder or Guarantor			
S&P	Moody's	Fitch	Credit-Based Tranche Cap
BB and above	Ba2 and above	BB and above	No Cap
BB-	Ba3	BB-	10
Below BB-	Below Ba3	Below BB-	5

The parameters in the table above may vary by auction and over time, at Duke Energy Ohio's sole discretion. The credit-based tranche cap is in effect only during the bidding process. After the Master SSO Supply Agreement has been executed by a winning bidder, the credit-based tranche cap will no longer be in effect and the SSO Supplier will be required to meet the credit terms in accordance with Article 5: Credit and Performance Security in the Master SSO Supply Agreement.

In addition to any credit-based tranche cap, a Qualified Bidder will be subject to a load cap that limits the number of tranches the bidder can bid on and win. The load cap will be 80 percent on an aggregated load basis across all auction products for each auction date such that no bidder may bid on and win more tranches than the load cap. The load cap will be implemented by ensuring that each bidder's initial eligibility does not exceed the load cap in an auction.

Pre-Bid Security

Each Qualified Bidder must post pre-bid security sufficient for its indicative offer at the maximum starting prices. Each Qualified Bidder must post pre-bid security in an amount equal to \$250,000 per tranche for all products included in the bidder's indicative offer at the maximum starting prices. Either cash or a letter of credit will be accepted as pre-bid security. Some bidders may be subject to additional credit requirements or may be required to submit a letter of intent from a Guarantor or a letter of reference from a bank. The standard form of the letter of credit and other security documents that are in a form acceptable to Duke Energy Ohio will be posted to the Information Website.

If a draft letter of credit, alternate guaranty, letter of intent, letter of reference, or any alternate security submitted by the prospective bidder with the Part 1 Application does not conform to the standard form, the prospective bidder shall indicate clearly any and all modifications in electronic, redlined format from the standard form. Duke Energy Ohio will assess, in their sole and exclusive discretion, whether such modifications are acceptable. The prospective bidder, in its Part 2 Application, must provide the required executed credit documents that either use the standard form or incorporate only those modifications to the standard form accepted by Duke Energy Ohio upon review of the bidder's Part 1 Application.

The following is an example calculation of the pre-bid security.

Example 2. Pre-Bid Security

A Qualified Bidder submits an indicative offer of 5 tranches for Product 1 at the minimum starting price and 10 tranches for Product 1 at the maximum starting price, 3 tranches for Product 2 at the minimum starting price and 6 tranches for Product 2 at the maximum starting price, and 2 tranches for Product 3 at the minimum starting price and 4 tranches for Product 3 at the maximum starting price. The Qualified Bidder must submit with this indicative offer of 20 tranches at the maximum starting prices cash or a letter of credit of \$250,000 per tranche. The Qualified Bidder thus posts cash or a letter of credit of \$5.0 million (20 tranches multiplied by \$250,000 per tranche).

Depending on whether the Qualified Bidder is relying on its own financial standing or on that of a Guarantor, and depending on the results of the creditworthiness assessment at the time of the Part 1 Application, the Qualified Bidder may be required additionally to submit a letter of intent to provide a guaranty from its Guarantor or to provide a letter of reference from its bank. Any such additional requirements would be communicated to the Qualified Bidder at the time of qualification during the Part 1 Application process.

For a Part 2 Application to be accepted, it must be complete, including the Qualified Bidder's indicative offer, letter of credit, and additional security (if required). After its Part 2 Application is accepted, a Qualified Bidder becomes a Registered Bidder. The Auction Manager will send each Registered Bidder a summary of its indicative offer, pre-bid security amount, and the Registered Bidder's initial eligibility.

The Auction Manager also will send simultaneously to each Registered Bidder, and to those other parties as necessary to oversee the proper conduct of the auction, a list of Registered Bidders, and the total initial eligibility aggregated across all Registered Bidders. The list of Registered Bidders and the total initial eligibility will not be released publicly. Qualified Bidders, in their Part 2 Applications, will have undertaken to maintain the confidentiality of the list of Registered Bidders and the total initial eligibility, and to destroy documents including electronic files with this information provided by the Auction Manager within five (5) days following the conclusion of the auction, as explained further in the Part 2 Application.

Letters of credit and additional security (if required) will remain in full force, at a minimum, until the fifth calendar day after the conclusion of the auction. Subsequently, a bidder's financial guaranty will be marked cancelled and returned:

- As soon as practicable if the bidder has won no tranches.
- After the bidder has signed the Master SSO Supply Agreement and has complied with all creditworthiness requirements of the Master SSO Supply Agreement for the tranches that it has won.

Duke Energy Ohio can collect on the financial guarantees of bidders that win tranches but that fail to sign the Master SSO Supply Agreement or fail to comply with the creditworthiness requirements immediately following the close of the auction.

4.2.3 Sanctions for Failing to Comply with the Part 1 and Part 2 Applications

Sanctions can be imposed on a bidder for failing to disclose information relevant to determining associations, for coordinating with another bidder, or for failing to abide by any of the certifications that it will have made in its Part 1 and Part 2 Applications. Such sanctions can include, but are not limited to, termination of the Master SSO Supply Agreement, loss of all rights to provide supply for Duke Energy Ohio to serve any load won by such bidder, forfeiture of financial guarantees and other fees posted or paid, prosecution under applicable state and federal laws, debarment from participation in future competitive bidding processes, and other sanctions that may be appropriate. For any failure to disclose information or for any violation of the certifications, the Auction Manager will make a recommendation on a possible sanction.

4.3 Starting Prices (Round 1 Prices)

No later than three (3) days before bidding starts for an auction, the Auction Manager will inform all Registered Bidders of the starting price for each product in the auction, which are the announced prices that will be in effect for round 1. For each product, the starting price will be no higher than the maximum starting price and no lower than the minimum starting price for the product. The Auction Manager will set the starting prices.

4.4 Extraordinary Events

The Auction Manager, in consultation with Duke Energy Ohio, may determine that, due to extraordinary events, the minimum starting prices and the maximum starting prices require revision. In this event, the schedule for the auction process also may be revised. If the indicative offers have already been received, the Auction Manager will request that the Registered Bidders (or the Qualified Bidders if the Part 2 Application process had not been completed) revise their indicative offers on the basis of the revised minimum starting prices and the revised maximum starting prices.

For such a revision to be necessary, an extraordinary event must occur between the time at which the minimum starting prices and the maximum starting prices are announced and the day on which bidding starts. An extraordinary event must be agreed to by Duke Energy Ohio and the Auction Manager. Such events could include, but are not limited to, the advent of war, the disruption of a major supply source for potentially extended periods, or other events that could significantly affect the cost of supply.

If an extraordinary event occurs during that time, the Auction Manager in consultation with Duke Energy Ohio will determine revised minimum starting prices and revised maximum starting prices. New indicative offers based on these prices will be required from bidders. To the extent practicable, the determination of new minimum and maximum starting prices, the submission of new indicative offers, and if necessary the announcement of new starting prices, will be carried out so as to afford bidders sufficient time. If an extraordinary event occurs during that time that causes a possible change in the schedule, the Auction Manager in consultation with Duke Energy Ohio will determine a revised schedule.

5. BIDDING FORMAT FOR AUCTIONS OF MULTIPLE PRODUCTS

In order to participate in the auction, bidders must have been successful in the Part 1 Application process and the Part 2 Application process. Only Registered Bidders are permitted to participate in the auction. Registered Bidders will bid in the auction by accessing the Auction Manager's secure Bidding Website.

5.1 Descending-Price Clock Format

The auction format is a simultaneous, multiple-round, descending-price clock format for "N" rounds. The number of rounds "N" for the auction is not pre-determined. Instead, it is determined by the closing rule for the auction. All products are bid on during bidding rounds in the auction. Prices are announced for the products prior to each bidding round, and during a bidding round, a bidder submits for each product the number of tranches it would supply at the product's announced price. If the total number of tranches bid on a product exceeds the product's tranche target — i.e., the product is over-subscribed — the announced price for the product will be reduced for the next round. Announced prices will tend to decline round by round until the number of tranches bid falls sufficiently so that no product is over-subscribed and the auction closes.

An important rule is that a bidder cannot reduce the number of tranches it bids on a product if the product's announced price does not fall from one round to the next, the bidder can only maintain or increase the number of tranches it bids on the product (subject to other rules).

5.1.1 Rounds

Each bidding round has a specified start time and a specified end time. These start and end times are enforced by the Bidding Website. Prior to the start of the auction, the initial schedule of rounds will be available on the Bidding Website. As the auction progresses, the Auction Manager will keep bidders informed of the start and end times of subsequent rounds through the Bidding Website. The Auction Manager retains the option of pausing a round, delaying the start or end of a round, or otherwise adjusting the round times. The Auction Manager will inform bidders through the Bidding Website if it exercises this discretion to change the start time or end time of a round.

Bidders submit bids only during a round. When a round ends, the bids submitted during that round are processed and results of that round are reported to all bidders as explained in the section "Reporting Round Results" below. Each bidder then prepares to submit a bid for the next round if the auction remains open.

5.1.2 The Announced Prices and a Bid

Prior to the start of each round, the Auction Manager announces the price that will be in effect for each product for the round. The announced prices are specified in dollars per MWh or \$/MWh. The price announced by the Auction Manager for a product applies to all the product's tranches. Each bidder decides how many tranches it is willing and able to supply for each product at the product's announced price. A bid by a bidder is, for each product, the number of tranches that the bidder is willing to supply at that announced price for the product. All bids are irrevocable and binding upon the bidders.

At sufficiently high announced prices there will be excess supply for a product causing it to be over-subscribed; that is, the number of tranches bid on the product will exceed the product's tranche target. Excess supply for a product is measured as the total number of tranches bid across all bidders on the product in the round minus the product's tranche target.

5.1.3 Reservation Prices and Starting Prices

There are reservation prices for the auction. The reservation price for a product is the price above which tranches for the product will not be purchased. If, at the conclusion of the auction, the reservation price for a product has not been met, no tranches for that product will be awarded. At the conclusion of the auction, the Auction Manager will inform bidders through the Bidding Website if the reservation price for a product has not been met.

Starting prices for the auction are determined after reservation prices are determined. The starting price for a product will be no lower than the reservation price for the product. The starting price may be the same as or higher than the reservation price for the product. The Auction Manager will not announce the reservation prices to bidders in advance of an auction.

5.1.4 Restrictions on What a Bidder Can Bid

The total number of tranches a bidder bids across all products in a round cannot exceed the bidder's eligibility for that round. That is, a bidder's eligibility to bid in a round is the maximum number of tranches it is allowed to bid across all products in that round. A bidder's eligibility for a round simply is the number of tranches the bidder bid across all products in the preceding round. Thus, a bidder cannot increase its eligibility from round to round; its eligibility can only stay the same or decrease from round to round.

A bidder is not allowed to bid more tranches on a product in a round than the product's tranche target.

A bidder is not allowed to bid a number of tranches that would violate either its credit-based tranche limit or any applicable load cap.

If the announced price for a product has been reduced from one round to the next round, the bidder can reduce the number of tranches it bid on that product.

If the announced price for a product has not been reduced from one round to the next round, the bidder cannot reduce the number of tranches it bid on that product.

Subject to the rules above, in each round a bidder is free to bid its tranches of eligibility across products however it would like to. Thus, subject to the rules above, bidders are free to reduce the tranches they bid and/or to switch tranches across products from round to round in response to changes in the announced prices for the products.

As discussed above, a bidder's initial eligibility is its eligibility for round 1 of the auction and is determined by the total number of tranches across products at the maximum starting prices in the bidder's indicative offer. During the course of the auction, the bidder's eligibility will decline or remain unchanged depending on the total number of tranches bid by the bidder across all products in each round of the auction.

If a bidder's eligibility falls to zero tranches, it will not be allowed to bid in any more rounds of the auction.

5.1.5 Multiple Bids by a Bidder

Because a bidder may decide to change a bid it submitted previously within the current open round, a bidder is allowed to make multiple bid submissions in a round as long as the round remains open for bidding, with each new confirmed bid fully replacing any prior bids it submitted in the round. If a bidder submits multiple bids in a round, the only bid considered in the round for that bidder is the last confirmed bid it submitted in the round.

5.1.6 Default Bid

After the end of a round, a default bid is submitted automatically on behalf of a bidder if the bidder:

- Entered the round with positive eligibility, and
- Did not submit a confirmed bid in the round.

If the announced price for a product declined from the prior round, then zero tranches will be the default bid for that product.

If the announced price for a product did not decline from the prior round, then the number of tranches that the bidder bid on the product in the prior round as determined by the end-of-round ("EOR") procedure following the prior round will be the default bid for the product.

Each bidder is solely responsible for ensuring it submits a confirmed bid prior to the end of the round in order to avoid a default bid of being submitted on the bidder's behalf.

5.1.7 The EOR Procedure

At the end of each round, the EOR procedure is used to process the confirmed bids submitted during the round. The EOR procedure includes the following steps.

- (a) The supply for each product is measured by summing up — across the confirmed bids for all bidders — the number of tranches bid for each product.
- (b) The subscription level for each product is measured by comparing the supply for the product to the tranche target for the product. A product is over-subscribed, subscribed, or under-subscribed if supply (i.e., the number of tranches bid) is greater than, equal to, or less than the product's tranche target, respectively.
- (c) If a product has become under-subscribed in a round after being over-subscribed or subscribed the preceding round, then tranches will be rolled back to the point that the product is subscribed. That is, at least some of the tranches that were bid on the product in the preceding round but were not bid on the product in this round will be deemed to still be bid on the product. The price at which a rolled-back tranche is deemed to have been bid is the announced price at which the bidder had bid the tranche. There is a priority for selecting tranches to roll back: tranches that otherwise would no longer be bid on any product in the auction and therefore would be reductions in bidders' eligibilities are rolled back first (referred to as "eligibility reduction tranches"), and then if needed, tranches that were switched from being bid on the product to being bid on another product are selected next for rollbacks (referred to as "switched tranches"). Eligibility reduction tranches are selected for rollback proportionally tranche by tranche, not bidder by bidder. Likewise, switched tranches are selected for rollback proportionally tranche by tranche, not bidder by bidder. More precisely, because integer tranches are needed, the actual selection mechanism uses a random number generator to select rollbacks tranche by tranche (first for eligibility reduction tranches and then for switched tranches), but on average the selection process results in proportional rollbacks (with priority given to rolling back eligibility reduction tranches first and then switched tranches second). All tranches that are rolled back maintain their eligibility for the bidder. Any bidder subjected to a rollback will be notified through the Bidding Website that a rollback has taken place and will be informed about the number of tranches deemed bid on each product and the price at which those tranches have been deemed bid.

For example, suppose a bidder bids five tranches on a product and no tranches on other products in round 8, and the price for that product is reduced for round 9 and the bidder bids only 1 tranche on the product and no tranches on other products for round 9. Absent any EOR rollbacks following round 9, the bidder's eligibility would fall from 5 tranches to 1 tranche. But during the EOR procedure, suppose two of the bidder's 4 "eligibility reduction tranches" are rolled back on the product, so after the EOR procedure the bidder is deemed to have bid 3 tranches on the product — one at the announced price of the round just ended and two at the announced price of the preceding round — and therefore the bidder is deemed to have 3 tranches of eligibility for round 10.

- (d) "Free eligibility tranches" are determined as follows. A product's "bid stack" is a list of the tranches currently deemed bid on the product and the price at which each tranche was bid for the product. Because of rollbacks, a product's bid stack could have tranches bid at two different prices: some tranches bid at the earlier, higher announced price and some tranches bid at the current, lower announced price. Any new tranche bid on such a product necessarily will be bid at the current, lower announced price. This new tranche will displace a tranche in the product's bid stack at the earlier, higher announced price. The displaced tranche becomes a "free eligibility tranche". The free eligibility tranche counts as eligibility for the bidder and the bidder can bid the tranche on any product next round, or the bidder can choose not to bid the tranche at all. But if the bidder does not bid the free eligibility tranche next round, the tranche will be withdrawn from the auction permanently and will reduce the bidder's eligibility by one tranche after the next round.
- (e) In some cases, the Auction Manager may reduce the tranche targets. The criteria that could lead to such a reduction will be determined prior to the auction but will not be announced to bidders. Once certain pre-specified criteria related to excess supply and related to the reservation price have been met, the discretion to reduce a product's tranche target because of insufficient supply will be eliminated. Thus, any tranche target reduction would more likely occur in the earlier rounds of the auction. If the Auction Manager reduces the tranche target for a product, bidders will be informed of the revised tranche target. Any bidder that otherwise would have eligibility exceeding the new tranche targets will have its eligibility reduced so as not to exceed the new tranche targets.
- (f) A determination is made as to whether the auction has concluded. The auction concludes if either case (1) or case (2) holds as follows:

-
- (1) If no product is over-subscribed and no bidder has free eligibility tranches, then the auction has concluded. Note that it is possible for the auction to continue with no reductions in announced prices: if no product is over-subscribed there will be no reductions in announced prices but if there are free eligibility tranches (which "expire" after one round), the auction will remain open for one more round (subject to case (2) described next), allowing bidders with free eligibility to bid those tranches.
 - (2) If this is the Nth consecutive round in which no product is over-subscribed, and the number of tranches of free eligibility across all bidders as a percentage of the sum of the tranche targets across all products is less than or equal to X percent, then the auction has concluded. The parameter values for N and X will be determined before the auction and disclosed to bidders. The likelihood that this case (2) would occur in a particular auction is expected to be low.
- (g) If the auction has concluded, the winning tranches, winning bidders, and winning prices are determined as described below.
 - (h) If the auction has not concluded, then each bidder's eligibility is determined for the next round and the price decrement (if any) is determined for each product for the next round.

5.1.8 Price Decrements

The announced prices will decrease round by round by a price decrement for over-subscribed products. Pre-specified price guidelines are used to determine the price decrements. Generally the price decrement for a product will be larger during the earlier rounds in the auction and when the excess supply for the product is greater. The price decrement is expected to be between 0.5 percent and 5 percent of the announced price for the most recently completed round.

The Auction Manager reserves the right to override the price decrement guidelines. The exercise of that right is expected to occur rarely and only if doing so is believed to facilitate timely progression of the bidding process.

5.2 Determination of Winning Tranches, Winning Bidders, and Winning Prices

At the close of the auction, the winning tranches, winning bidders, and winning prices will be determined as follows.

As a result of the EOR procedure as described above, there are two possible scenarios for a product at the close of the auction.

5.2.1 Bid Stack for a Product has All Tranches at the Same Price

In this scenario, there are no rolled-back tranches in the product's bid stack: all tranches in the bid stack were bid at the last announced price, including any tranches bid on the product in the last round of the auction as determined by the EOR procedure. That announced price is the product's clearing price, and all tranches in the product's bid stack are winning tranches if the clearing price satisfies the product's reservation price. Bidders who bid those tranches are winning bidders for those tranches, and all bidders with winning tranches on a product are paid the same price — i.e., the clearing price — for each winning tranche on the product. Note that this scenario includes the case in which a product was over-subscribed at some point in the auction and later became subscribed, as well as the case in which a product was always under-subscribed in the auction (i.e., it was never subscribed or over-subscribed in the auction).

5.2.2 Bid Stack for a Product has Tranches at Two Different Prices

In this scenario, there are rolled-back tranches in the product's bid stack: some tranches in the bid stack were bid at the last announced price (including any tranches bid on the product in the last round of the auction as determined by the EOR procedure), and some tranches in the bid stack were bid at the next most recent announced price. In this case, the product's clearing price is the next most recent announced price — which necessarily is higher than the last announced price for the product. All tranches in the product's bid stack are winning tranches if the clearing price satisfies the product's reservation price. Bidders who bid those tranches are winning bidders for those tranches, and all bidders with winning tranches on a product are paid the same price — i.e., the clearing price — for each winning tranche on the product.

5.3 Example of Round by Round Bidding

Appendix A provides an illustrative example of round by round bidding.

5.4 Reporting Round Results

During a round, a bidder can see the current status of the auction and the status of the current round, including the announced price for each product as well as the bidder's own bidding status. A bidder will not see information about other bidders.

Between rounds the Bidding Website will report the results for the most recently completed round. Results for all prior rounds also will be accessible. The round results for each completed round in the auction will show:

- The announced price for each product and a range of total supply across all bidders and all products (that is, a range that includes the total number of tranches bid). The range of total supply will be defined by two different integers. Actual total supply will not be reported but will be at least as high as the lower of the two integers and no higher than the higher of the two integers. There is an exception to reporting total supply as a range of two integers: if and when total supply has declined below a pre-determined level, total supply will be reported simply as being below that level. The reporting ranges will be made available to bidders in advance of each auction.
- For each bidder, that bidder's bid for the round — i.e., the number of tranches bid on each product — and the bidder's eligibility for the next round. (Each bidder does not see information about other bidders.)
- The announced price for each product for the next round if the auction will continue with the next round.

5.5 Frequency of Rounds

The early rounds of bidding may be longer in duration than later rounds. The duration of a bidding round will be at least five (5) minutes.

The time between early rounds of bidding may be longer in duration than for later rounds. The time between bidding rounds will be at least five (5) minutes.

The schedule of rounds and any changes to the schedule will be made available to bidders through the Bidding Website.

5.6 Auction Pause Declared by Auction Manager

At any time during the auction, the Auction Manager may decide to pause the auction. This is not expected to happen often and it may not happen at all. If the Auction Manager pauses the auction, bidders will be notified and bidders will be notified if there are any changes to the schedule of rounds.

6. BIDDING FORMAT FOR AUCTIONS OF A SINGLE PRODUCT

In order to participate in the auction, bidders must have been successful in the Part 1 Application process and the Part 2 Application process. Only Registered Bidders are permitted to participate in the auction. Registered Bidders will bid in the auction by accessing the Auction Manager's secure Bidding Website.

The auction format is a multiple-round descending-price clock format for "N" rounds (N is not pre-determined, as discussed below) possibly followed by a sealed-bid round. The descending-price clock rounds are referred to as the "clock phase." If there is a round following the last clock round, it is referred to as the "sealed-bid round."

The number of rounds for the clock phase is not pre-determined. Instead, it is determined by a rule called "the transition rule," which determines the last round of bidding in the clock phase.

The clock phase, the transition rule, and the sealed-bid round are described next.

6.1 Clock Phase

The description in this section applies to the clock phase of the auction. In a descending-price clock bidding format, the Auction Manager announces a price prior to the start of each bidding round and each bidder bids the quantity it would supply at that price. The rounds continue with the price declining each round, causing the total supply bid to fall.

An important rule is that a bidder cannot increase the number of tranches it bids round to round as the price falls, it can only maintain or reduce the number of tranches it bids.

6.1.1 Rounds

The clock phase is conducted with rounds of bidding. Each bidding round has a specified start time and a specified end time. These start and end times are enforced by the Bidding Website. Prior to the start of the auction, the initial schedule of rounds will be available on the Bidding Website. As the auction progresses, the Auction Manager will keep bidders informed of the start and end times of subsequent rounds through the Bidding Website. The Auction Manager retains the option of pausing a round, delaying the start or end of a round, or otherwise adjusting the round times. The Auction Manager will inform bidders through the Bidding Website if it exercises this discretion to change the start time or end time of a round.

Bidders submit bids only during a round. When a round ends, the bids submitted during that round are processed and results of that round are reported to all bidders as explained in the section "Reporting Round Results" below. Each bidder then prepares to submit a bid for the next round if the auction remains open.

6.1.2 The Announced Price and a Bid

Prior to the start of each round, the Auction Manager announces the price that will be in effect for the round. The announced price is specified in dollars per MWh or \$/MWh. The price announced by the Auction Manager applies to all the tranches. Each bidder decides how many tranches it is willing and able to supply at the announced price. A bid is the number of tranches the bidder is willing to supply at that announced price. All bids are irrevocable and binding upon the bidders.

The announced price will decrease round by round by a price decrement.

At sufficiently high announced prices there will be excess supply for the tranches being procured in the auction. Excess supply for the tranches in a round is measured as the total number of tranches bid across all bidders in the round minus the tranche target.

6.1.3 Reservation Price

There is a reservation price for the auction. The reservation price is the price above which tranches will not be purchased. At the conclusion of the auction, the Auction Manager will inform bidders through the Bidding Website if the reservation price has not been met.

The starting price for the auction is determined after the reservation price is determined. The starting price will be no lower than the reservation price. The starting price may be the same as or higher than the reservation price. The Auction Manager will not announce the reservation price to bidders in advance of an auction.

6.1.4 A Bidder's Eligibility to Bid

A bidder's eligibility to bid in a round is the maximum number of tranches it is allowed to bid in that round. A bidder's eligibility for a round is the number of tranches the bidder bid in the preceding round. Thus, a bidder cannot increase its eligibility from round to round; its eligibility can only stay the same or decrease from round to round. If a bidder bids zero tranches in a round, it will not be allowed to bid in any more rounds of the clock phase.

As discussed above, a bidder's initial eligibility is its eligibility for round 1 of the auction.

6.1.5 Multiple Bids by a Bidder

Because a bidder may decide to change a bid it submitted previously within the current open round, a bidder is allowed to make multiple bid submissions in a round as long as the round remains open for bidding, with each new confirmed bid fully replacing any prior bids it submitted in the round. If a bidder submits multiple bids in a round, the only bid accepted in the round for that bidder is the last confirmed bid it submitted in the round.

6.1.6 Default Bid

After the end of a round, a default bid of zero (0) tranches is submitted automatically on behalf of a bidder if the bidder:

- Entered the round with positive eligibility, and
- Did not submit a confirmed bid in the round.

As with any bidder that actively bids zero tranches in a round, a bidder having a default bid of zero tranches submitted and confirmed on its behalf in a round will not be allowed to bid in any more rounds of the clock phase.

Each bidder is solely responsible for ensuring it submits a confirmed bid prior to the end of the round in order to avoid a default bid of being submitted on its behalf.

6.1.7 Price Decrements

The announced price will decrease round by round by a price decrement. Pre-specified price guidelines are used to determine the price decrement. Generally the price decrement will be larger for the earlier rounds in the auction and the greater is the excess supply for the tranches. The price decrement is expected to be between 0.5 percent and 5 percent of the announced price for the most recently completed round.

The Auction Manager reserves the right to override the price decrement guidelines. The exercise of that right is expected to occur rarely and only if doing so is believed to facilitate timely progression of the bidding process.

6.1.8 Frequency of Rounds

The early rounds of bidding may be longer in duration than later rounds. The duration of a bidding round will be at least five (5) minutes.

The time between early rounds of bidding may be longer in duration than for later rounds. The time between bidding rounds will be at least five (5) minutes.

The schedule of rounds and any changes to the schedule will be made available to bidders through the Bidding Website.

6.1.9 Insufficient Supply for the Tranches

If there is insufficient supply for the tranches to ensure competitive bidding, the Auction Manager will reduce the tranche target. The criteria that could lead to such a reduction will be determined prior to the auction but will not be announced to bidders. Once certain pre-specified criteria related to excess supply and related to the reservation price have been met, the discretion to reduce the tranche target will be eliminated and there will be no reduction in the tranche target. Thus, any exercise of this discretion would be more likely in the earlier rounds of the auction.

If the Auction Manager reduces the tranche target for the auction, bidders will be informed of the revised tranche target. Any bidder that otherwise would have eligibility exceeding the new tranche target will have its eligibility reduced to the new tranche target.

6.2 Transition Rule

The rule that determines the last round of bidding in the clock phase is referred to as the transition rule.

The transition rule is that the last round of bidding in the clock phase is the first round of bidding in the clock phase in which excess supply falls to zero or below zero.

- If excess supply is zero, then the auction closes and the winning tranches, winning bidders, and the winning price are determined as described in section 6.4.
- If excess supply is less than zero and only one bidder reduced the number of tranches it bid between the last two rounds of the clock phase, then the auction closes and the winning tranches, winning bidders, and the winning price are determined as described in section 6.4.
- If excess supply is less than zero and two or more bidders reduced the number of tranches they bid between the last two rounds of the clock phase, then a sealed-bid round will be held as described next in section 6.3.

6.3 Sealed-Bid Round

The description in this section applies to the sealed-bid round of the auction. As with the clock phase, bidders bidding in the sealed-bid round will submit their bids by accessing the Auction Manager's secure Bidding Website.

If there is a sealed-bid round, it follows the last round of the clock phase. For ease of description, the last round of the clock phase will be referred to as "round N" and the next-to-last round of the clock phase will be referred to as "round N-1", so the sealed-bid round is "round N+1."

Bidders for the sealed-bid round are those bidders that bid at least one tranche in round N-1 and bid fewer tranches in round N. Any such bidder must submit a bid in the sealed-bid round (even if it bid zero tranches in round N). If it fails to submit a bid in the sealed-bid round, a default bid will be submitted on its behalf as described below in the section on default bids.

Only bidders that bid at least one tranche in round N-1 and bid fewer tranches in round N can submit a bid in the sealed-bid round.

6.3.1 Allowed Bids

While each round in the clock phase has an announced price, there is no announced price for the sealed-bid round. In the sealed-bid round, a bidder submits a bid by specifying for each tranche it bids the price at which the bidder is committing to supply the tranche. A bid by a bidder is, for each tranche in the bid, an irrevocable binding commitment to supply the tranche at the price it bids for the tranche.

The tranches in the bidder's bid will be treated as a supply schedule. That is, the tranches will be sorted in ascending order by price and the price it bid for the first tranche is the price at which the bidder is committing to supply the first tranche, the price it bid for the second tranche is the price at which it is committing to supply the second tranche, and so on.

The bid that a bidder can submit in the sealed-bid round is restricted as follows.

- The bidder's bid must include each of the tranches that it bid in round N-1 but did not bid in round N (even if it bid zero tranches in round N).
- For each of the tranches that the bidder bid in round N-1 but did not bid in round N, the bidder's bid in the sealed-bid round must specify a price that is no higher than the announced price in effect for round N-1. The bidder can specify a different price for each of the tranches. Alternatively, the bidder can specify the same price for two or more of the tranches.

The units for prices specified in the bidder's bid are \$/MWh. The precision of prices is \$0.01/MWh or one cent per MWh. Prices that are entered with greater precision than \$0.01/MWh will be rounded up to the next \$0.01/MWh.

The following example shows four bidders participating in the clock phase and two of those bidders participating in the sealed-bid round.

Example 3. Bids in Clock Phase and Allowed Bids in Sealed-Bid Round

Clock Phase							
Round	Tranche Target	Announced Price (\$/MWh)	Number of Tranches Bid				
			BidderA	BidderB	BidderC	BidderD	Total
1	100	\$75.00	34	55	21	72	182
2	100	\$70.00	30	55	15	50	150
3	100	\$66.00	20	52	10	45	127
4	100	\$62.00	15	48	0	44	107
5	100	\$59.50	0	48	—	42	90

Sealed-Bid Round					
BidderA (must bid 15 tranches)			BidderD (must bid 2 tranches)		
# Tranches Bid	Max. Allowed Price (\$/MWh)	Price Bid (\$/MWh)	# Tranches Bid	Max. Allowed Price (\$/MWh)	Price Bid (\$/MWh)
5	\$62.00	\$62.00	1	\$62.00	\$60.04
8	\$62.00	\$61.40	1	\$62.00	\$59.50
2	\$62.00	\$59.95	—	—	—

In the example above, the clock phase was stopped after round 5 (round N) because it was the first round in which excess supply no longer was positive: in the round only 90 tranches of supply were bid against 100 tranches being procured.

- BidderA must bid 15 tranches in the sealed-bid round because it bid 15 tranches in round 4 and no tranches in round 5. For each of the 15 tranches, BidderA must submit a price in the sealed-bid round that is no higher than the announced price in round 4, or \$62.00/MWh. The bid submitted by BidderA in the sealed-bid round above satisfies that requirement: 5 tranches bid at \$62.00/MWh, 8 tranches bid at \$61.40/MWh, and 2 tranches bid at \$59.95/MWh.
- BidderB does not bid in the sealed-bid round because it bid at least one tranche in round 4 and it did not bid fewer tranches in round 5. BidderB thus wins the 48 tranches it bid in rounds 4 and 5, and the winning price for those 48 tranches is the round 5 announced price, or \$59.50/MWh.
- After round 4 it is known that BidderC can no longer participate in the auction because it bid zero tranches in round 4 and round 4 was not the last round of the clock phase. Thus, BidderC does not bid in the sealed-bid round and will not win any tranches.
- BidderD wins the 42 tranches it bid in round 5, and the winning price for those 42 tranches is the round 5 announced price, or \$59.50/MWh. In addition, BidderD must bid 2 tranches in the sealed-bid round because it bid 2 fewer tranches in round 5 than it bid in round 4. For each of the 2 tranches, BidderD must submit a price in the sealed-bid round that is no higher than the announced price in round 4, or \$62.00/MWh. The bid submitted by BidderD in the sealed-bid round above satisfies that requirement: 1 tranche bid at \$60.04/MWh and 1 tranche bid at \$59.50/MWh.

6.3.2 Multiple Bids by a Bidder

As in the clock phase, a bidder is allowed to make multiple bid submissions in the sealed-bid round as long as the round remains open for bidding, with each new confirmed bid fully replacing any prior bids it submitted in the round. If a bidder submits multiple bids in the round, the only bid accepted in the round for that bidder is the last bid confirmed by the bidder in the round. Section 8.1 below discusses the process for confirming a bid.

6.3.3 Default Bid

A bidder in the sealed-bid round must submit a confirmed bid for all the tranches that it must bid in the sealed-bid round. If it fails to submit a confirmed bid by the end of the sealed-bid round, a default bid will be submitted on its behalf. This default bid will be as follows:

For each of the tranches the bidder bid in round N-1 but did not bid in round N, the default bid for the bidder in the sealed-bid round will specify a price that is the announced price in effect for round N-1.

After the sealed-bid round the auction closes and the winning tranches, winning bidders, and the winning price are determined as described in section 6.4.

6.4 Determination of Winning Tranches, Winning Bidders, and Winning Prices

At the close of the auction, the winning tranches, winning bidders, and winning prices will be determined as follows.

6.4.1 Excess Supply = 0 at End of Clock Phase

If the last round of the clock phase had zero excess supply then there is no sealed-bid round. The winning tranches are the tranches bid in the last round of the clock phase, the winning bidders are the bidders who bid those tranches, and the winning price in the auction is the announced price for the last round of the clock phase.

6.4.2 Excess Supply < 0 at End of Clock Phase with No Sealed-Bid Round

If the last round of the clock phase had excess supply less than zero but only one bidder reduced the number of tranches it bid between the last two rounds of the clock phase, then there is no sealed-bid round. Tranches bid in the last round of the clock phase are winning tranches, bidders who bid those tranches are winning bidders, and the winning price for those tranches is the announced price for the last round of the clock phase.

Additional winning tranches total the difference between the tranche target and the total number of tranches bid in the last round of the clock phase (i.e., round N). Those additional winning tranches are awarded to the one bidder who reduced its number of tranches bid between round N-1 and round N. The bidder is awarded the additional winning tranches at the announced price in effect for the next-to-last round of the auction.

6.4.3 Excess Supply < 0 at End of Clock Phase with Sealed-Bid Round

If the last round of the clock phase had excess supply less than zero and two or more bidders reduced the number of tranches they bid between the last two rounds of the clock phase, then there is a sealed-bid round. Tranches bid in the last round of the clock phase are winning tranches, bidders who bid those tranches are winning bidders, and the winning price for those tranches is the announced price for the last round of the clock phase.

Additional winning tranches are determined as follows.

Random numbers will be assigned to the tranches bid in the sealed-bid round to be used as a tie-breaker, if needed, in case two or more tranches are bid at the same price. The tranches from the bids in the sealed-bid round will be sorted in ascending order by price and then in ascending order by random number. The assignment of random numbers to tranches and the sorting of tranches by price and by random number are done tranche by tranche without regard to bidder.

A winning tranche from the sorted list of tranches is a tranche that satisfies the following condition:

- It is one of the first T tranches that appears in the sorted list of bids, where T is the difference between the tranche target and the number of tranches bid in the last round of the clock phase. The bidder who bid such a winning tranche is the winning bidder for that tranche and the winning price for that tranche is the price the bidder bid for the tranche.

Tranches in the sorted list of bids that do not meet the condition above are not winning tranches.

None, some, or all of the tranches in a bidder's bid in the sealed-bid round may be winning tranches.

In Example 3 above, 17 tranches were bid in the sealed-bid round, and 10 of those tranches are selected as winning tranches. The winning tranches are selected in order of ascending price bid: one tranche bid at price \$59.50/MWh by BidderD, two tranches bid at price \$59.95/MWh by BidderA, one tranche bid at price \$60.04/MWh by BidderD, and six tranches bid at price \$61.40/MWh by BidderA.

6.5 Reporting Round Results

During a round, a bidder will see the current status of the auction and the status of the current round (including the announced price for a round in the clock phase) as well as its own bidding status. A bidder will not see information about other bidders.

Between rounds the Bidding Website will report the results for the most recently completed round. Results for all prior rounds also will be accessible. The round results for each completed round in the clock phase will show:

- For the completed round, the announced price and a range of total supply across all bidders (that is, a range that includes the total number of tranches bid). The range of total supply will be defined by two different integers. Actual total supply will not be reported but will be at least as high as the lower of the two integers and no higher than the higher of the two integers. There is an exception to reporting total supply as a range of two integers: if and when total supply has declined in the clock phase below a pre-determined level, total supply will be reported simply as being below that level. This pre-determined level of total supply will not be disclosed.
- For each bidder, that bidder's bid for the round and the bidder's eligibility for the next round. (Each bidder does not see information about other bidders.)
- The announced price for the next round if the clock phase will continue with the next round.

6.6 Auction Pause Declared by Auction Manager

At any time during the auction, the Auction Manager may decide to pause the auction. This is not expected to happen often and it may not happen at all. If the Auction Manager pauses the auction or changes the round schedule, bidders will be notified.

7. AFTER THE AUCTION CLOSES

7.1 Notification of Results

At the close of the auction, if the Auction Manager determines that the auction did not violate the competitive bidding process rules in such a manner so as to invalidate the auction, the Auction Manager will notify Duke Energy Ohio, the PUCO, the PUCO Consultant (if one has been retained), and the bidders as follows.

- The Auction Manager will notify Duke Energy Ohio, the PUCO, and the PUCO consultant of the identities of the winning bidders, the number of tranches won by each winning bidder, and the prices for the tranches won.
- The Auction Manager will notify each winning bidder of how many tranches the bidder has won and at what prices. The Auction Manager also will notify the unsuccessful bidders that they have not won any tranches.

The names of the winning bidders, the number of tranches won by each bidder, and the winning prices will remain confidential until released publicly by the PUCO or as required by law.

The PUCO may reject the results of the auction, through an Order filed within forty-eight (48) hours of the conclusion of the auction, based upon a report from the independent auction manager or the Commission's consultant that the auction violates a specific CBP rule in such a manner so as to invalidate the auction or if the PUCO determines that one or more of the following criteria were not met:

1. The bidding process was oversubscribed based on bidder indicative offers submitted as part of the Part 2 Application, such that the amount of the supply bid upon was greater than the amount of the load bid out;
2. There were four or more bidders; or
3. Consistent with the load cap, no bidder won more than 80% of the initial tranche target for the auction.

Otherwise, the Commission shall approve the auction results.

7.2 Execution of Master SSO Supply Agreement

The winning bidders and Duke Energy Ohio will execute the Master SSO Supply Agreements three (3) business days following the close of the auction once the specific pricing information and load obligations have been inserted upon completion of the auction. Each winning bidder must demonstrate compliance with the creditworthiness requirements set forth in the Master SSO Supply Agreement.

7.3 Sanctions for Failure to Execute the Master SSO Supply Agreement

A winning bidder's financial guaranty posted with its Part 2 Application may be forfeited if the winning bidder does not execute the Master SSO Supply Agreement within three (3) business days following the close of the auction, if it fails to demonstrate compliance with the creditworthiness requirements set forth in the Master SSO Supply Agreement, or if it fails to agree to any of the terms of the Master SSO Supply Agreement. If Duke Energy Ohio exercises its right to collect on the financial guarantees, then any contractual rights or other entitlements of the winning bidder will terminate immediately without further notice by Duke Energy Ohio. In addition, the winning bidder will be liable for damages incurred by Duke Energy Ohio, which will be determined in accordance with the terms of the Master SSO Supply Agreement as though the winning bidder were a defaulting party to the Master SSO Supply Agreement.

8. USE OF THE BIDDING WEBSITE

Bidders will bid in the auction by accessing the Auction Manager's secure Bidding Website. An Authorized Representative of a bidder will access the Bidding Website using their own Web browser. The URL address for the Bidding Website, as well as user names and passwords, will be provided to Registered Bidders prior to the start of the auction.

The Bidding Website allows a Registered Bidder to submit and confirm bids, to verify its status, to view results from prior rounds, to view the schedule of rounds, and to view messages from the Auction Manager.

8.1 Importance of Confirmed Bids

Submitting a bid on the Bidding Website involves three steps:

- (1) Web page for entry and submission of the bid quantities. The bidder enters its desired bid and then submits the bid in order to proceed to the next step.
- (2) Web page for validation of the bid. The bidder is asked to review the bid it submitted in the first step before proceeding to the confirmation step.
- (3) Web page showing confirmation of the bid. The bidder receives a unique confirmation ID for the bid and the time-stamp at which the bid was recorded by the Bidding Website server.

It is important to note that a bid is not accepted and recorded as an accepted bid until and unless the bidder reaches the third step in which the bid confirmation Web page displays the unique confirmation ID and time-stamp for the bid.

8.2 Requirements for Using the Bidding Website

Access to the Bidding Website requires all of the following:

- User name and password provided by the Auction Manager.
- Access to the Internet.
- Compatible Web browser.
- Status as a Registered Bidder.

A bidder loses access to the Bidding Website after it no longer is possible to win tranches in the auction.

8.3 Messaging

The Bidding Website displays messages from the Auction Manager. These messages from the Auction Manager are displayed for all bidders with access to the Bidding Website.

9. BACKUP BIDDING PROCEDURE

In case a bidder has technical difficulties, and as a result is not able to submit a bid via the Bidding Website in a round, a backup bidding procedure will be provided as follows. The bidder uses the Backup Bidding Fax Number to submit its bid via facsimile. It is recommended that the bidder call the Help Desk and inform the operator that it has submitted a bid using the backup bidding procedure. Reasonable efforts will be made to contact the bidder if the backup bid is not received via facsimile in the time expected. Once the backup bid is received via facsimile, a member of the Auction Manager team will attempt to enter the bid on the Bidding Website on behalf of the bidder.

Prior to the auction, bidders will be provided with the Backup Bidding Fax Number and with forms to use for faxing a bid using the backup bidding procedure.

Bidders must be aware and understand that there is no guarantee or other assurance that if it submits a bid using the backup bidding procedure that its bid will be submitted and confirmed on its behalf by the Auction Manager team consistent with the intentions of the bidder and in time before the round ends.

If a backup bid submitted by a bidder is not accepted and confirmed by the Bidding Website because the round has ended, a default bid will be entered for the bidder as described above in the sections on default bids.

If a backup bid submitted by a bidder is not accepted and confirmed by the Bidding Website for other reasons (e.g., the number of tranches bid is greater than a bidder's eligibility or violates the bidder's credit-based tranche limit or applicable load cap), the Auction Manager team will use reasonable efforts to inform the bidder that a new bid must be submitted.

If a backup bid submitted by a bidder is confirmed by the Bidding Website, the Auction Manager team will contact the bidder by faxing confirmation of the accepted bid to the bidder.

Bidders use the backup bidding procedure at their own risk. In all cases involving backup bids, the Auction Manager team does not accept any responsibility, obligation, or liability for errors, omissions, timeliness, or otherwise, related to whether a backup bid is entered into and confirmed by the Bidding Website on behalf of the bidder or as intended by the bidder.

10. WHO TO CONTACT IN CASE OF PROBLEMS DURING THE AUCTION

A bidder should contact the Help Desk if it has questions or problems. The phone number for the Help Desk will be provided to bidders prior to the start of the auction.

11. CONTINGENCY PLAN TO PURCHASE TRANCHES

11.1 If Fewer Tranches than the Tranche Target are Purchased in the Auction

In the event that fewer tranches than a product's tranche target are purchased in the auctions in a given year, Duke Energy Ohio will implement a Contingency Plan for the unfilled tranches. Under that plan, any unsubscribed tranches from the first auction in a year will be rolled over to the second auction in the year. If all tranches are not fully subscribed after all the auctions in any given year, the remaining tranches will be offered to current Duke Energy Ohio SSO Suppliers. These suppliers will have won tranches in the current or a prior Duke Energy Ohio CBP auction. An SSO Supplier will be considered a current SSO Supplier from the conclusion of the CBP auction in which such supplier won tranches until the termination of the prevailing Master SSO Supply Agreement. Suppliers will be assigned a random number and each unfilled tranche will be offered to current SSO Suppliers in descending order of random number, subject to any credit-based tranche limits and any applicable load caps for such suppliers. The tranches will be offered to current suppliers at the clearing price, starting price, or reservation price, whichever is lowest.

If, after the conclusion of the steps above used to assign unfilled tranches there still are unfilled tranches, then the necessary SSO supply requirements will be met through PJM-administered markets at prevailing Day-ahead, Real-time zonal spot prices, and, unless otherwise instructed by the PUCO, Duke Energy Ohio will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve these tranches.

11.2 If a Winning Bidder Defaults Prior to or During the SSO Delivery Period

In the event a winning bidder defaults prior to or during the delivery of SSO Load requirements, Duke Energy Ohio will implement a Contingency Plan for the open tranches. Open tranches will be offered to other current SSO Suppliers using the same procedure as used for unfilled tranches at the auction as described above.

If tranches still remain open after the procedures above are applied, the necessary SSO supply requirements will be met through PJM-administered markets at prevailing Day-ahead, Real-time zonal spot prices, and, unless instructed otherwise by the PUCO, Duke Energy Ohio will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve these tranches.

Additional costs incurred by Duke Energy Ohio in implementing the Contingency Plan will be assessed first against the defaulting supplier's credit security, to the extent available.

12. ASSOCIATION AND CONFIDENTIAL INFORMATION RULES

The Association and Confidential Information rules are described below.

12.1 Process for Reporting Associations, Identifying Concerns and Remedies

A prospective bidder applying to qualify to bid will be required to disclose in its Part 1 Application any bidding agreement or arrangement in which it may have entered. A prospective bidder will be required to certify in its Part 1 Application that, should it qualify to participate, it will not disclose information regarding the list of Qualified Bidders. A prospective bidder also will be required to certify that it accepts the terms of the Master SSO Supply Agreement and, should it win tranches, it will sign the applicable Master SSO Supply Agreement and comply with all creditworthiness requirements by the stated deadline.

Once entities are qualified to bid, each Qualified Bidder will be asked in its Part 2 Application to make a number of certifications, each detailed in the Part 2 Application, and each bidder may be required to provide additional information to the Auction Manager if a certification cannot be made. Each Qualified Bidder will be asked to certify that it will undertake to appropriately restrict its disclosure of Confidential Information relative to its bidding strategy and Confidential Information regarding the auction. A Qualified Bidder also will be asked to certify that it has not and will not come to any agreement with another Qualified Bidder with respect to bidding in the auction, except as disclosed and approved by the Auction Manager in its Part 1 Application.

Before obtaining sealed documentation necessary to participate in the auction, Registered Bidders will be required to certify that they will continue to maintain the confidentiality of any information that they will have acquired through their participation in the auction.

12.2 Confidential Information

Confidential Information relative to bidding strategy means information relating to a bidder's bid(s) in the auction, whether in writing or verbally, which if it were to be made public likely would have an effect on any of the bids that another bidder would be willing to submit.

Confidential Information relative to bidding strategy includes (but is not limited to): a bidder's strategy; a bidder's indicative offer; the quantities that a bidder wishes to supply; the bidder's estimation of the value of a tranche; the bidder's estimation of the risks associated with serving the load for the auction; and a bidder's contractual arrangements for purchasing power to serve such load were the bidder to win tranches in the auction.

Confidential Information regarding the auction means information that is not released publicly by the PUCO, Duke Energy Ohio or the Auction Manager and that a bidder acquires as a result of participating in the auction, whether in writing or verbally, which if it were to be made public could impair the integrity of current or future competitive bidding processes, impair the ability of Duke Energy Ohio to hold future competitive bidding processes, or harm consumers, bidders or applicants. Confidential Information regarding the auction includes (but is not limited to): the list of Qualified Bidders, the list of Registered Bidders, the initial eligibility, the status of a bidder's participation, and all non-public reports of results and announcements made by the Auction Manager to any or all bidders in this auction.

Absolute protection from public disclosure of the bidders' data and information filed in this auction process cannot be provided. By participating in this auction process, each bidder acknowledges and agrees to the confidentiality provisions set forth herein, as well as any limitations thereto.

In addition, the bidder agrees the bidder's data and information submitted in this auction process will be disclosed if required by any federal, state or local agency (including, without limitation, the PUCO) or by a court of competent jurisdiction. However, Duke Energy Ohio will endeavor to notify the bidder in advance of such disclosure. In any event, neither Duke Energy Ohio nor the Auction Manager, nor any of their employees or agents, will be responsible to the bidders or any other party, or liable for any disclosure of such designated materials before, during or subsequent to this auction. Notwithstanding the above, Duke Energy Ohio and the Auction Manager reserve the right to use and communicate publicly and/or to third parties any and all information/data submitted as part of this auction process in any proceedings before FERC, the PUCO, and any other regulatory body and the courts, if necessary, without the prior consent/approval of, or notice to, any such bidder.

12.3 Certifications and Disclosures to Be Made

A prospective bidder will be required in its Part 1 Application to disclose any bidding agreement or any other arrangement in which the prospective bidder may have entered and that is related to its participation in the auction. A prospective bidder that has entered into such an agreement or arrangement must name the entities with which the prospective bidder has entered into a bidding agreement, or a joint venture for the purpose of participating in the auction, or a bidding consortium, or any other arrangement pertaining to participating in the auction. A bidding consortium is a group of separate businesses or business people joining together to submit joint bids in the auction.

In addition, a prospective bidder will be required to make the certifications listed in the Part 1 and Part 2 Applications.

The PUCO may publicly release the winning prices and the names of the winning bidders from the auction. The PUCO may choose to release additional information. After the auction, a winning bidder itself may release information regarding the number of tranches it has won, and a non-winning bidder itself may release information only regarding the fact that it participated in the auction. The winning bidders and the non-winning bidders otherwise continue to be bound by their certifications as described previously. In particular, no winning bidder and no non-winning bidder itself can reveal the winning prices of the auction prior to these being publicly released by the PUCO.

12.4 Actions to Be Taken if Certifications Cannot Be Made

If a bidder cannot make all the certifications above, the Auction Manager will decide within five (5) days following the deadline to submit the Part 2 Application on a course of action on a case-by-case basis. To decide on this course of action, the Auction Manager may make additional inquiries to understand the reason for the inability of the bidder to make the certification.

If Qualified Bidders do not comply with additional information requests by the Auction Manager regarding certifications required in the Part 2 Application, the Auction Manager may reject the application.

12.5 Sanctions for Failure to Comply

Sanctions may be imposed on a Qualified Bidder for failing to properly disclose information relevant to determining associations, for coordinating with another bidder without disclosing this fact, for releasing Confidential Information or disclosing information during the auction (aside from only the specific exceptions provided above with respect to entities explicitly named in the Part 1 Application as entities that are part of a bidding agreement or other arrangement, to an Advisor; or bidders with which it is associated), and in general for failing to abide by any of the Communications Protocols. Such sanctions can include, but are not limited to, any one or more of the following: termination of the Master SSO Supply Agreement; the loss of all rights to provide tranches won by such bidder; the forfeiture of letters of credit and other fees posted or paid; action (including prosecution) under applicable state and/or federal laws; attorneys' fees and court costs incurred in any litigation that arises out of the bidder's improper disclosure; debarment from participation in future competitive bidding processes; and/or other sanctions that may be appropriate. Should such an event occur, the Auction Manager will make a recommendation to Duke Energy Ohio regarding sanctions. The imposition of such sanctions will be at the discretion of Duke Energy Ohio.

13. MISCELLANEOUS

13.1 Warranty on Information

The information provided for the auction, including but not limited to information provided on the Information Website, has been prepared to assist bidders in evaluating the auction process. It does not purport to contain all the information that may be relevant to a bidder in satisfying its due diligence efforts. Neither Duke Energy Ohio nor the Auction Manager make any representation or warranty, expressed or implied, as to the accuracy or completeness of the information, and shall not, either individually or as a corporation, be liable for any representation expressed or implied in the auction process or any omissions from the auction process, or any information provided to a bidder by any other source. A bidder should check the Information Website frequently to ensure it has the latest documentation and information. Neither Duke Energy Ohio, nor the Auction Manager, nor any of their representatives, shall be liable to a bidder or any of its representatives for any consequences relating to or arising from the bidder's use of information.

13.2 Hold Harmless

Bidder shall hold Duke Energy Ohio and the Auction Manager harmless of and from all damages and costs, including but not limited to legal costs, in connection with all claims, expenses, losses, proceedings or investigations that arise in connection with the auction process or the award of a bid pursuant to the auction process.

13.3 Bid Submissions Become Duke Energy Ohio's Property

All bids submitted by bidders participating in the auction will become the exclusive property of Duke Energy Ohio upon conclusion of the auction process.

13.4 Bidder's Acceptance

Through its participation in the auction process, a bidder acknowledges and accepts all the terms, conditions and requirements of the auction process and the Master SSO Supply Agreement.

13.5 Permits, Licenses, Compliance with the Law and Regulatory Approvals

Bidders shall obtain all licenses and permits and status that may be required by any governmental body, agency or organization necessary to conduct business or to perform hereunder. Bidders' subcontractors, employees, agents and representatives of each in performance hereunder shall comply with all applicable governmental laws, ordinances, rules, regulations, orders and all other governmental requirements.

13.6 Auction Intellectual Property

All title, interests and other intellectual property rights in and to the auction design, the auction format and methodology, the auction software, the source code (including all modifications, enhancements, customization, adaptations and derivative works made by the Auction Manager) and associated documentation, including but not limited to these Bidding Rules, and the screen formats and forms designed by the Auction Manager (the "Auction Software"), are proprietary to the Auction Manager and all rights, title, and interest to the Auction Software remain with the Auction Manager. The Auction Manager grants Qualified Bidders a non-exclusive, non-transferable, limited license to use the Auction Software, solely for use in connection with the auction, subject to the terms and conditions set forth herein, and not for copying, relicensing, sublicensing, distribution or marketing by the Qualified Bidder. No other interest is conveyed to the Qualified Bidder other than the license expressly granted herein. The foregoing use license shall immediately terminate upon disqualification of the Qualified Bidder or upon termination or completion of the auction process. If at any time it is determined in the Auction Manager's sole discretion that the Qualified Bidder is in breach of this section 13.6, the Auction Manager shall be entitled to terminate the Qualified Bidder's access rights to the Auction Software.

Notwithstanding anything herein to the contrary, and without limiting the Qualified Bidder's other obligations herein, the Qualified Bidder shall not, nor shall it permit any third party to: (i) modify, translate or otherwise create derivative works of the Auction Software; (ii) reverse engineer, decompile, decode, disassemble or translate any Auction Software, or output thereof, or otherwise attempt to reduce to human readable form or derive the source code, protocols or architecture of any Auction Software; (iii) use or study any Auction Software, or output thereof, for the purpose of developing any software that is intended to replace, or that has functions, structure or architecture similar to, such Auction Software, or any part thereof; (iv) publish, or otherwise make available to any third party, any benchmark or other testing information or results concerning the Auction Software; (v) permit any other person who is not authorized to access or use all or any part of the Auction Software or (vi) copy the Auction Software, distribute the Auction Software, remove or obscure any proprietary labeling on or in the Auction Software, create any derivative works based on the Auction Software, or modify the Auction Software, in each case, except to the extent expressly permitted by the Auction Manager in writing.

In using the Auction Software, a Qualified Bidder shall take steps to prevent any virus, worm, built-in or use-driven destruction mechanism, algorithm, or any other similar disabling code, mechanism, software, equipment, or component designated to disable, destroy or adversely affect the Auction Software from being introduced into the systems.

APPENDIX A — EXAMPLE OF ROUND BY ROUND BIDDING IN AUCTIONS OF MULTIPLE PRODUCTS

The illustrative example below shows for two bidders (BidderA and BidderB) and two products (Product-1 and Product-2) the confirmed bids (pre-EOR) and the post-EOR results for each round. In the example, the auction closes after round 4.

Round 1

For round 1, the announced prices are \$75.00 and \$82.00 for Product-1 and Product-2, respectively. At those announced prices, BidderA bids 55 tranches and 85 tranches on Product-1 and Product-2, respectively. BidderB bids 80 tranches and 27 tranches on Product-1 and Product-2, respectively.

When the round closes the EOR procedure is executed. Each product is over-subscribed: 135 tranches were bid on Product-1 which has a tranche target of 100, and 112 tranches were bid on Product-2 which has a tranche target of 100.

The announced price for Product-1 will be reduced from \$75.00 to \$72.50 for round 2. The announced price for Product-2 will be reduced from \$82.00 to \$78.60 for round 2.

BidderA will have eligibility of $55+85 = 140$ tranches for round 2, and BidderB will have eligibility of $80+27 = 107$ tranches for round 2.

Round 2

At the announced prices for round 2, BidderA bids 40 tranches and 85 tranches on Product-1 and Product-2, respectively. Thus, BidderA reduced its tranches bid on Product-1 from 55 to 40 tranches. BidderB bids 50 tranches and 57 tranches on Product-1 and Product-2, respectively. Thus, BidderB switched 30 tranches from Product-1 to Product-2.

When the round closes the EOR procedure is executed. Product-1 is under-subscribed by 10 tranches: only 90 tranches bid against the tranche target of 100 tranches: BidderA's bid represents a reduction in its eligibility by 15 tranches, while BidderB's bid maintained its eligibility. Thus, 10 of the 15 eligibility reduction tranches of BidderA are rolled back on Product-1. Those 10 tranches are priced at the announced price for Product-1 at which they were bid in round 1: \$75.00. The announced price for Product-1 will remain at \$72.50 for round 3.

Product-2 is over-subscribed by 42 tranches. The announced price for Product-2 will be reduced from \$78.60 to \$76.10 for round 3.

BidderA will have eligibility of $50+85 = 135$ tranches for round 3 (including the 10 tranches rolled back on Product-1), and BidderB will have eligibility of $50+57 = 107$ tranches for round 3.

Round 3

At the announced prices for round 3, BidderA bids 99 tranches and 36 tranches on Product-1 and Product-2, respectively. Thus, BidderA is switching 49 of the tranches bid from Product-2 to Product-1. BidderB bids 50 tranches and 35 tranches on Product-1 and Product-2, respectively. Thus, BidderB is reducing its tranches bid on Product-2 from 57 to 35 tranches.

When the round closes the EOR procedure is executed. Product-1 is over-subscribed by 49 tranches. Product-2 is under-subscribed by 29 tranches: only 71 tranches bid against the tranche target of 100 tranches. BidderA's bid maintained its eligibility while BidderB's bid represents a reduction in its eligibility by 22 tranches. Thus, all 22 of the eligibility reduction tranches of BidderB are rolled back on Product-2. Those 22 tranches are priced at the announced price for Product-2 at which they were bid in round 2: \$78.60. Even after rolling back those 22 eligibility reduction tranches of BidderB, Product-2 still is under-subscribed — by 7 tranches. So 7 tranches that BidderA had switched from Product-2 to Product-1 are rolled back to Product-2. Those 7 tranches are priced at the announced price for Product-2 at which they were bid in round 2: \$78.60.

After rolling back 7 tranches from Product-1 to Product-2 for BidderA, BidderA still has increased the number of tranches it is bidding on Product-1: from 50 tranches bid in round 2 (10 tranches at \$75.00 and 40 tranches at \$72.50) to 92 tranches bid in round 3 (10 tranches at \$75.00 and 82 tranches at \$72.50). Product-1 is over-subscribed as a result, so higher-priced tranches in Product-1's bid stack can be removed. All 10 of BidderA's higher-priced tranches are removed from Product-1's bid stack, and these 10 tranches become BidderA's free eligibility for round 4. In round 4, BidderA can bid any of the 10 tranches on any product, but to the extent those 10 tranches are not bid on a product in round 4, those free eligibility tranches and their associated eligibility for BidderA will be permanently removed from the auction after round 4.

Because Product-1 is over-subscribed, the announced price for Product-1 will be reduced from \$72.50 to \$70.15 for round 4. Because Product-2 is not over-subscribed, the announced price for Product-2 will remain at \$76.10 for round 4.

BidderA will have eligibility of $82+43+10 = 135$ tranches for round 4, and BidderB will have eligibility of $50+57 = 107$ tranches for round 4 (including the 22 tranches rolled back on Product-2).

Round 4

At the announced prices for round 4, BidderA bids 46 tranches and 43 tranches on Product-1 and Product-2, respectively. Thus, BidderA reduced its tranches bid on Product-1 from 82 to 46 tranches. BidderB bids 32 tranches and 57 tranches on Product-1 and Product-2, respectively. Thus, BidderB reduced its tranches bid on Product-1 from 50 to 32 tranches.

When the round closes the EOR procedure is executed. Product-1 is under-subscribed by 22 tranches: only 78 tranches bid against the tranche target of 100 tranches: BidderA's bid represents a reduction in its eligibility by 36 tranches, while BidderB's bid represents a reduction in its eligibility by 18 tranches. Of the 54 fewer tranches bid on Product-1, 36 were eligibility reductions from BidderA and 18 were eligibility reductions from BidderB. Of those 54 fewer tranches bid, $100-78 = 22$ tranches need to be rolled back on Product-1. The selection of which tranches are rolled back is done by assigning random numbers tranche by tranche (not bidder by bidder) to each of the 54 fewer tranches bid on Product-1. On average, the selection of the rolled back tranches will be proportional based on the number of tranches by which each bidder reduced its bid on the product. Thus, if the assignment of random numbers and selection of rolled back tranches were repeated many times, the number of rolled back tranches for BidderA on Product-1 would be expected to be 15 on average or $(82-46)/(132-78)*(100-78) = 36/54*22$, rounded, and the number of rolled back tranches for BidderB on Product-1 would be expected to be 7 on average: $(50-32)/(132-78)*(100-78) = 18/54*22$, rounded.

Auction Close

After the rollback is done for Product-1, it is determined that no product is over-subscribed and no bidder has free eligibility tranches. Thus, the criteria are met for closing the auction.

Product-1's bid stack has tranches bid at \$72.50 and tranches bid at \$70.15. So Product-1's clearing price is the higher of the two, or \$72.50. BidderA wins 61 tranches and BidderB wins 39 tranches for Product-1. All 100 tranches procured for Product-1 are paid the price of \$72.50.

Product-2's bid stack has tranches bid at \$78.60 and tranches bid at \$76.10. So Product-2's clearing price is the higher of the two, or \$78.60. BidderA wins 43 tranches and BidderB wins 57 tranches for Product-2. All 100 tranches procured for Product-2 are paid the price of \$78.60.

Example 4. Round by Round Bidding with Pre-EOR and Post-EOR Results

Round	Product-1					Product-2					Next-Round Eligibility	
	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Free	Total
1	-\$75.00					\$82.00						
Pre-EOR		100	135		35		100	112		12		
BidderA			55	@ \$75.00				85	@ \$82.00			140
BidderB			80	@ \$75.00				27	@ \$82.00			107
Post-EOR		100	135		35		100	112		12		
BidderA			55	@ \$75.00				85	@ \$82.00			140
BidderB			80	@ \$75.00				27	@ \$82.00			107
2	\$72.50					\$78.60						
Pre-EOR		100	90		(10)		100	142		42		
BidderA			40	@ \$72.50				85	@ \$78.60			125
BidderB			50	@ \$72.50				57	@ \$78.60			107
Post-EOR		100	100		0		100	142		42		
BidderA			50	10 @ \$75.00 40 @ \$72.50				85	@ \$78.60			135
BidderB			50	@ \$72.50				57	@ \$78.60			107

Bidding Rules for Duke Energy Ohio's Competitive Bidding Process Auctions

Attachment C

Round	Product-1					Product-2				Next-Round Eligibility	
	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Free Total
3	\$72.50					\$76.10					
Pre-EOR		100	149		49		100	71		(29)	
BidderA			99	10 @ \$75.00 89 @ \$72.50				36	@ \$76.10		135
BidderB			50	50 @ \$72.50				35	@ \$76.10		85
Post-EOR		100	132		32		100	100		0	
BidderA			82	@ \$72.50				43	7 @ \$78.60 36 @ \$76.10		135
BidderB			50	@ \$72.50				57	22 @ \$78.60 35 @ \$76.10		107

Bidding Rules for Duke Energy Ohio's Competitive Bidding Process Auctions

Attachment C

Round	Product-1					Product-2					Next-Round Eligibility	
	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Free	Total
4	\$70.15					\$76.10						
Pre-EOR		100	78		(22)		100	100		0		
BidderA			46	@ \$70.15				43	7 @ \$78.60 36 @ \$76.10		—	89
BidderB			32	@ \$70.15				57	22 @ \$78.60 35 @ \$76.10		—	89
Post-EOR		100	100		0		100	100		0		
BidderA			61	15 @ \$72.50 46 @ \$70.15				43	7 @ \$78.60 36 @ \$76.10		—	104
BidderB			39	7 @ \$72.50 32 @ \$70.15				57	22 @ \$78.60 35 @ \$76.10		—	96

	Product-1			Product-2			Tranches Won
	Clearing Price	Tranche Target	Tranches Won	Clearing Price	Tranche Target	Tranches Won	
Results	\$72.50	100	100	\$78.60	100	100	100
BidderA			61			43	104
BidderB			39			57	96

Bidding Rules - Appendix 1

Rules and Protocols for Participation by Associated Bidders in Duke Energy Ohio, Inc. Standard Service Offer CBP Auctions

Rules and Protocols for Participation by Associated Bidders in Duke Energy Ohio, Inc. SSO Load Auctions

1. INTRODUCTION

As outlined in Section 4.2.2 of the Bidding Rules for the Duke Energy Ohio, Inc., Standard Service Offer (“SSO”) Competitive Bidding Process (“CBP”) auctions, the competitiveness of an auction may be compromised by the coordinated or collusive behavior that bidding associations may facilitate. As a result, the Auction Manager has developed standards that apply when associated parties apply to participate in a CBP auction. The following sections outline the specific protocols that will be followed when associated entities submit Part 1 and/or Part 2 Applications to participate in a CBP auction for Duke Energy Ohio, Inc.

2. PROCEDURE

Potential associations among Qualified Bidders may come to the attention of the Auction Manager at different points in the application process. In order to improve the process efficiency and minimize the risk of disclosure of potentially confidential information, the Auction Manager will approach each case as described below.

2.1. Following the Receipt of the Part 1 Applications

Potential associations among applicants may become apparent after the Part 1 Application but before Qualified Bidders are required to disclose such associations as part of the Part 2 Application. The Auction Manager will take no action related to potential associations until each party submits their completed Part 1 Application. In cases where there is an apparent relationship among applicants, the Auction Manager will initiate a request for additional information regarding the relationship among the potentially associated parties, the structure of their organization, and the independence of the respective bidding teams.

In such cases, the Auction Manager will notify representatives of Duke Energy Ohio, Inc., PUCO Staff, and the PUCO’s consultant that there is a potential association among applicants.

In addition, as outlined in Section VII of the Part 2 Application, the Auction Manager reserves the right to request additional information from each party including, but not necessarily limited to:

- a. Information on how the entity maintains its independence from the associated party including any available supporting documentation such as a Corporate Separation Agreements, Codes of Conduct, and/or organization charts;
- b. A list of individuals within the organization who have played or will play a material role in the CBP auction;

Rules and Protocols for Participation by Associated Bidders in Duke Energy Ohio, Inc. SSO Load Auctions

- c. Information regarding the nature of any work done in conjunction with or on behalf of the associated party;
- d. Information describing the organizational structure of the associate(s), identifying common management and oversight among the associated entities as well as the management involved in or responsible for bid approval;
- e. The internal process or protocol related to determining indicative offers submitted as part of the Part 2 Application; and,
- f. Disclosure of whether the entity is bidding on behalf of itself or acting as an agent for other entities.

Any responses to the above will be treated as confidential if labeled as such.

2.2. Following the Receipt of the Part 2 Applications

In some cases, the potential relationship among Qualified Bidders will not be known to the Auction Manager until the Qualified Bidders submit final certifications along with their Part 2 Application. In such cases, the Auction Manager will initiate the steps outlined above in Section 2.1, upon receipt of the completed Part 2 Applications.

After the Auction Manager has requested and received additional information from each associate, the Auction Manager will work with representatives of Duke Energy Ohio, Inc., PUCO Staff, and the PUCO's consultant to determine:

- a. Whether each of the associated bidders will be allowed to independently participate in the CBP auction; and
- b. Any restrictions that may be applied as a result of the participation by associated bidders.

Any restrictions will be based on the information provided by the associated bidders as part of the Part 1 Application, the Part 2 Application, and the additional information that was provided at the request of the Auction Manager.

3. **REMEDIES AND ACTIONS RELATED TO PARTICIPATION BY ASSOCIATED BIDDERS**

This section summarizes the potential restrictions that will be considered by the Auction Manager, Duke Energy Ohio, Inc., PUCO Staff, and the PUCO's consultant in relationship to associated participation. Restrictions on participation may include, but may not be limited to, the following:

- a. Indicative offers may be restricted such that any applicable load cap or credit based tranche cap may apply across the associated bidders;
- b. Pre-bid security or collateral requirements may be altered for the associated bidders to ensure that associates do not gain a competitive advantage over other bidders; and,
- c. In some cases, one or more associated bidders may not be allowed to participate in the CBP auction.

4. **HANDLING OF CONFIDENTIAL INFORMATION**

In order to execute the process of gathering information on associated entities and executing the remedies outlined in Section 3, there may be situations that require the Auction Manager to share, directly, certain confidential information among the associated parties, Duke Energy Ohio, Inc., The PUCO and its staff and/or the consultant hired by the PUCO to monitor the process.

In addition, as part of the remedies outlined in Section 3, an associated party may gain access to or be able to ascertain certain confidential information of the other associated entities. While access to such information is counter to Certification (5) in the Part 2 Application, access to such information acquired through the data gathering and remedies related to associated bidders will not be considered a violation of the CBP rules.¹

Confidential information includes but may not be limited to the initial eligibility for each associated bidder based on indicative bids submitted with the Part 2 Application. The Auction Manager will make all efforts to minimize the disclosure of any such confidential information.

¹ Certification (5) from the Part 2 Application states: (5) Please certify that you do not have any knowledge of Confidential Information that is relevant to the bidding strategy of any other Qualified Bidder.

Attachment D

Part 1 Application

Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

PART 1 APPLICATION

Duke Energy Ohio, Inc.'s CBP Auctions

INSTRUCTIONS

There are two parts to the application process.

- **Part 1 Application:** Applicants submit the Part 1 Application and all documents required therein to become Qualified Bidders for the Competitive Bidding Process ("CBP").
- **Part 2 Application:** Qualified Bidders for the CBP submit the Part 2 Application, in which they will agree to comply with the Bidding Rules and Communications Protocols, accept the terms of Duke Energy Ohio, Inc.'s ("Duke Energy Ohio") Master Standard Service Offer Supply Agreement ("Master SSO Supply Agreement"), make certifications regarding associations and handling of Confidential Information, submit Indicative Offers, and post Pre-Bid Security to become Registered Bidders.

This document is the Part 1 Application.

For further information, consult the Information Website.

Unless otherwise defined, capitalized terms in this document have the definitions provided in either the Glossary or the Master SSO Supply Agreement.

PART 1 APPLICATION SUBMISSION

To become Qualified Bidders for the Auction, Applicants must submit the following to the Auction Manager by the Part 1 Application Due Date:

1. **Electronic Application Form:** Completed Part 1 Application must be submitted electronically through the Secure Online Application Website;
2. **Hardcopy Application Form:** One (1) printed hardcopy of the Part 1 Application document with original signatures, notarized signatures where applicable, and the

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

CONFIDENTIALITY OF PART 1 APPLICATION SUBMISSIONS

All Applicants are required to comply with the Communications Protocols.

Confidentiality requirements specific to the Part 1 Application are reiterated below.

CONFIDENTIALITY OF CREDIT INFORMATION

Any information and materials that you submit in this Part 1 Application may be provided on a confidential basis to the Auction Manager Team and the Public Utilities Commission of Ohio ("PUCO" or "Commission") and their representatives. Information that you provide in this Part 1 Application, except for information regarding bidding agreements provided in Section 1.11, may be provided on a confidential basis to representatives of Duke Energy Ohio for a creditworthiness assessment.

CONFIDENTIALITY OF QUALIFIED BIDDERS

Upon completion of the Part 1 Application process, the names of Qualified Bidders will be provided to other Qualified Bidders on a confidential basis. As part of this Part 1 Application, you are required to certify that you agree to release your name to other Qualified Bidders and that you will keep confidential the list of Qualified Bidders that is provided to you.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

**PART 1 APPLICATION
Duke Energy Ohio, Inc.'s
CBP Auctions**

This Part 1 Application is the application form to become a Qualified Bidder in Duke Energy Ohio's CBP.

I. Background Information

Before completing this form, please review the Bidding Rules document for this CBP ("Bidding Rules"), the Master SSO Supply Agreement, the Communications Protocols, and other documents posted on the Information Website so that you understand the conditions under which the CBP will be conducted.

II. Confirmation of Receipt

Online delivery: If your Part 1 Application is submitted online, an email will be sent to the Authorized Representative and Delegate to confirm receipt of the completed online application. You will still be required to submit a copy of the Part 1 Application with original signatures via post or hand delivery.

Delivery by post or hand delivery: If your Part 1 Application is received only by post or hand delivery, an email will be sent to the Authorized Representative and Delegate to confirm receipt.

III. Incomplete Applications

If your Part 1 Application is incomplete or requires clarification, the Auction Manager will send a deficiency notice to your Authorized Representative by email. You will have until 12:00 p.m. noon prevailing Eastern Time on the Part 1 Application Due Date, or until 5:00 p.m. prevailing Eastern Time on the Business Day following the Business Day during which a deficiency notice is sent to you, whichever comes later, to respond. If you do not correct or adequately explain the deficiency within the time allowed, your Part 1 Application may be rejected and you may be unable to participate in the CBP. All corrections to remedy deficiencies within an Applicant's Part 1 Application must be submitted online. The Authorized Representative needs to sign and date next to the correction(s) to the Part 1 Application and send to the Auction

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

Manager by email to duke-energyauctionmanager@crai.com, followed by hardcopy to the Auction Manager.

IV. Late Applications

Part 1 Applications received after the stated deadline will NOT be accepted under any circumstances.

V. Rejection of Applications

If your application is rejected, your Part 1 Application and all supporting documents will be returned to you.

VI. Notification to Qualified Bidders

If you become a Qualified Bidder for the CBP, the Auction Manager will send a Notification of Qualification to your Authorized Representative by email after the Part 1 Application Due Date. The Notification of Qualification will also be sent to your Authorized Representative by courier.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

PART 1 APPLICATION FORMS

1.1 Applicant Basic Information

Name of Applicant (Company Name)

Legal Name of Applicant (if different from above)

Place of Incorporation, if applicable

Federal Tax I.D.

D&B DUNS #

*Please state whether the
Applicant is a corporation,
partnership, etc*

Years in Business

URL for Applicant's Website

*Has the Applicant participated in a prior Duke Energy
Ohio, Inc. auction?*

*If yes, indicate the most recent auction date
(month, year):*

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.2 Authorized Representative

The Authorized Representative is authorized to represent the Applicant in the CBP. The Authorized Representative will receive all documentation related to the CBP if and when the Applicant becomes a Registered Bidder, including any CBP procedures and Confidential Information required for the submission of bids in any trial auction and in the actual auction. The Authorized Representative must ensure that only authorized persons act on behalf of the Applicant in the CBP. The Authorized Representative is the only person authorized to distribute CBP procedures and Confidential Information and should do so in accordance with the Communications Protocols. The integrity of the CBP depends upon each Authorized Representative safeguarding Confidential Information and passwords used in the CBP. The Auction Manager will communicate exclusively with the Authorized Representative or, if instructed by the Authorized Representative, with a Delegate, as designated in this Part 1 Application.

The person designated below is the Applicant's Authorized Representative.

Last Name

Given Name(s)

Title

Street Address

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

Communications with the Authorized Representative for purposes of the Part 1 Application are typically done via email and courier.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

The Applicant hereby acknowledges that any notification or other communication given by the Auction Manager to the Applicant with respect to the Part 1 Application shall be delivered by courier to the address provided above or emailed to the email address above and shall be deemed received by the Applicant at the time of delivery, provided that where delivery occurs after 5:00 p.m. prevailing Eastern Time on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 8:00 a.m. prevailing Eastern Time on the following Business Day.

This certification must be signed by the Authorized Representative and the signature must be notarized.

I hereby certify that I am authorized by the Applicant to serve as Authorized Representative, to represent the Applicant both (i) in the CBP, and (ii) to represent the Applicant for purposes of this Part 1 Application. I further certify that I will be responsible for all Confidential Information regarding the CBP and I will distribute Confidential Information only to other individuals who are authorized to act on behalf of the Applicant according to the Communications Protocols.

Signature of Authorized Representative

Date

Signature and Seal from Notary Public

Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

The person designated in this section by the Applicant is the Delegate. The Auction Manager will communicate with the Delegate if instructed to do so by the Authorized Representative.

Last Name

Given Name(s)

Company Name

Title

Street Address

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

**1.3 Designation of the Applicant's Authorized Representative and Delegate
for the CBP**

This certification should be signed by an officer or director of the Applicant and should either be notarized or attested with the corporate seal. The person making this certification cannot be either the Authorized Representative or the Delegate.

I certify that I am an officer or director of the Applicant, empowered to undertake contracts and bind the Applicant. I have read and accept the Bidding Rules, the provisions contained in the Master SSO Supply Agreement, and the provisions of the Communications Protocols pertaining to bidders in the CBP.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

All the information contained in this Application is true and correct to the best of my knowledge. If there are material changes to the Applicant's information provided in this Part 1 Application, I agree to notify the Auction Manager. I designate _____ to act as the Authorized Representative of the Applicant in the CBP and _____ to act as Delegate for the Authorized Representative. I am not designating myself as Authorized Representative or Delegate.

Signature of Officer or Director of the Applicant

Date

Printed Name

Title

Signature and Seal from Notary Public

Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.4 Applicant's Legal Representative in Ohio

Please check here ☐ if the Applicant's Authorized Representative is also the Applicant's Legal Representative. The Applicant's Legal Representative in Ohio must:

- be a legal counsel or a representative agent;
- have an address in Ohio; and
- be authorized and agree to accept service of process on the Applicant's behalf.

The person designated below is the Applicant's Legal Representative or Representative Agent.

Last Name

Given Name(s)

Title

Company Name

Street Address

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

This certification must be signed by the Legal Representative and the signature must be notarized.

I agree to serve as Legal Representative of the Applicant. I am authorized and I agree to receive service of process on the Applicant's behalf.

Signature of Legal Representative

Date

Signature and Seal from Notary Public

Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.5 Applicant's Credit Representative

The Applicant's Credit Representative is the Applicant's in-house Credit Representative who can answer questions or provide information about the Applicant's credit with respect to the requirements for the CBP.

The person designated below is the Applicant's Credit Representative.

Last Name

Given Name(s)

Title

Street Address

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.6 General Requirements to Participate in the CBP

1. If the Applicant already is a Transmission Customer of PJM who has executed the applicable PJM Agreements as that term is defined in the Master SSO Supply Agreement, please check ☐ and please provide a copy of the signature page of the PJM Agreements.

Otherwise, please certify that there exist no known impediments for the Applicant to execute the applicable PJM Agreements prior to the start of the supply period.

Signature of Authorized Representative

Date

2. If the Applicant already has PJM E-Accounts necessary to provide SSO Supply, please check ☐ and please provide documentation from PJM that the Applicant has a PJM E-Account.

Otherwise, please certify that there exist no known impediments for the Applicant to establish any PJM E-Accounts necessary to provide SSO Supply and execute the PJM E-Account contract(s) for the supply period by the start of the supply period.

Signature of Authorized Representative

Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

3. If the Applicant already is a PJM Market Participant and a Load Serving Entity in PJM, please check ☐ and please provide documentation from PJM that the Applicant is a Market Participant.

Otherwise, please certify that there exist no known impediments for the Applicant to become a PJM Market Participant and a Load Serving Entity in PJM by the start of the supply period.

Signature of Authorized Representative

Date

4. Further, please certify that:

- a) The Applicant and its corporate officers have no indictments or pending criminal litigation in any federal, state or local jurisdiction relating to the Applicant;
- b) The Applicant and its corporate officers have no criminal convictions;
- c) The Applicant has no civil penalties, judgments, sanctions or consent decrees arising out of the violation of any law, rule, regulation or ordinance in connection with its business activities;
- d) The Applicant has not had any permit or authority to do business in any jurisdiction revoked or suspended; and
- e) The Applicant has never been barred from public bidding or sanctioned for unauthorized disclosure of confidential information.

Signature of Authorized Representative

Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

If you are unable to make these certifications in Section 1.6, subsections (1) to (4), please state which certifications you are unable to make and explain all reasons in the space given below.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.7 Financial and Credit Information for the Applicant

Please provide the following information for the Applicant:

- a) If the Applicant is an SEC registrant, provide the Form 10-K most recently filed with the SEC. If unavailable, please provide most recent audited annual financial information (including a balance sheet, income statement, cash flow statement, and related footnotes);
- b) If the Applicant is an SEC registrant, provide the Form 10-Q most recently filed with the SEC. If unavailable, please provide most recent quarterly financial information (including a balance sheet, income statement, cash flow statement, and related footnotes);
- c) If the Applicant is not an SEC registrant, or if the Applicant is an SEC registrant and both the Form 10-K and Form 10-Q most recently filed with the SEC are not available, please provide most recent annual (audited) and quarterly financial data, including related footnotes, accompanied by an attestation by the Applicant's Chief Financial Officer that the information submitted is true, correct and a fair representation of the Applicant's financial condition;
- d) The following financial information along with page references to the relevant financial filings submitted;

	Amount (\$)	Financial Document Page Number	Financial Document Source	Date of Financial Document Source
Goodwill				
Shareholders' Equity				
Net Intangible Assets				

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

- e) Applicant's senior unsecured debt ratings from the following three rating agencies if available;

	Rating	Date of the Rating
Moody's		
Standard & Poor's		
Fitch		

If senior unsecured debt ratings are unavailable, but corporate or issuer ratings are available, please provide the corporate or issuer ratings, and the date of the rating, along with documentation showing the name of the rating agency, the type of rating, and the rating of the Applicant:

	Rating	Date of the Rating
Moody's		
Standard & Poor's		
Fitch		

- f) If the Applicant has not been incorporated or otherwise formed under the laws of the United States, the Applicant is asked to provide in addition to a)-f) above:
- A legal opinion acceptable to Duke Energy Ohio of counsel qualified to practice in the foreign jurisdiction in which the Applicant is incorporated or otherwise formed that the Master SSO Supply Agreement will become the binding obligation of the Applicant in the jurisdiction in which it has been incorporated or otherwise formed.
 - Any additional information that the Applicant wishes to give that could provide comparable credit assurances to those that are provided by other Applicants that have been incorporated or otherwise formed under the laws of the United States.

An Applicant that has not been incorporated or otherwise formed under the laws of the United States and that does not provide this information or any information that could provide comparable assurances of creditworthiness will be required to post the maximum Pre-Bid Security with its Part 2 Application.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

Please provide a statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative, regulatory (State, FERC, SEC or DOJ) investigations and any other matters relating to financial or operational status for the past three years that arise from the sale of electricity or natural gas, or that materially affect current financial or operational status.

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Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.8 Guarantor Information

The Guarantor information is required only if the Applicant expects to have a third party act as a Guarantor should the Applicant become an SSO Supplier.

Please check here ☐ if this section does not apply to you because you will not have a third party act as a Guarantor and proceed to the next section.

Basic Information for the Guarantor

Name of Guarantor

Legal Name of Guarantor (if different from above)

Place of Incorporation, if applicable

Federal Tax I.D.

D&B DUNS #

Please state whether the Guarantor is a corporation, partnership, etc

Years in Business

Guarantor's Contact Information

Last Name

Given Name(s)

Title

Street Address

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

The Guarantor's Credit Representative

The Guarantor's in-house Credit Representative is the individual who can answer questions or provide information about the Guarantor's credit with respect to the requirements for the CBP.

The person designated below is the Guarantor's Credit Representative.

Last Name

Given Name(s)

Title

Street Address

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

Please provide the following information for the Guarantor:

- a) If the Guarantor is an SEC registrant, provide the Form 10-K most recently filed with the SEC. If unavailable, please provide most recent audited annual financial information (including a balance sheet, income statement, cash flow statement, and related footnotes);
- b) If the Guarantor is an SEC registrant, provide the Form 10-Q most recently filed with the SEC. If unavailable, please provide most recent quarterly financial information (including a balance sheet, income statement, cash flow statement, and related footnotes);
- c) If the Guarantor is not an SEC registrant, or if the Guarantor is an SEC registrant and both the Form 10-K and Form 10-Q most recently filed with the

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

SEC are not available, please provide most recent annual (audited) and quarterly financial data, including related footnotes, accompanied by an attestation by the Guarantor's Chief Financial Officer that the information submitted is true, correct and a fair representation of the Applicant's financial condition;

- d) The following financial information along with page references to the relevant financial filings submitted;

	Amount (\$)	Financial Document Page Number	Financial Document Source	Date of Financial Document Source
Goodwill				
Shareholders' Equity				
Net Intangible Assets				

- e) Guarantor's senior unsecured debt ratings from the following three rating agencies if available;

	Rating	Date of the Rating
Moody's		
Standard & Poor's		
Fitch		

If senior unsecured debt ratings are unavailable, but corporate or issuer ratings are available, please provide the corporate or issuer ratings, and the date of the rating, along with documentation showing the name of the rating agency, the type of rating, and the rating of the Guarantor:

	Rating	Date of the Rating
Moody's		
Standard & Poor's		
Fitch		

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

- f) If the Guarantor has not been incorporated or otherwise formed under the laws of the United States, the Guarantor is asked to provide in addition to a)-f) above:
- i. A legal opinion acceptable to Duke Energy Ohio of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that the Guaranty will become the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed.
 - ii. Any additional information that the Guarantor wishes to give that could provide comparable credit assurances to those that are provided by other Guarantors that have been incorporated or otherwise formed under the laws of the United States.

An Applicant whose Guarantor has not been incorporated or otherwise formed under the laws of the United States and that does not provide this information or any information that could provide comparable assurances of creditworthiness will be required to post the maximum Pre-Bid Security with its Part 2 Application.

Further, if an Applicant with such a Guarantor becomes an SSO Supplier, the Guarantor will be required to submit additional documents as detailed in Article 5 of the Master SSO Supply Agreement, including:

- A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed;
- The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and
- The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as the Guaranty.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

Please provide a statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative, regulatory (State, FERC, SEC or DOJ) investigations and any other matters relating to financial or operational status for the past three years that arise from the sale of electricity or natural gas, or that materially affect current financial or operational status of the Guarantor.

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Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.9 Additional Certifications

The CBP Bidding Rules, the Master SSO Supply Agreement, the Communications Protocols, and the Information Website include important information that an Applicant should understand prior to participating in the CBP.

- a) Please certify that you have read the CBP Bidding Rules and that you will comply with these rules.

Signature of Authorized Representative

Date

- b) Please certify that you have read the Master SSO Supply Agreement and that you accept its terms. Please also certify that if you become a winning Bidder, you will execute the Master SSO Supply Agreement within three (3) Business Days following the close of the auction:

Signature of Authorized Representative

Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

- c) Please certify that if you qualify to participate in the CBP, you will not disclose at any time information regarding the list of Qualified Bidders in the CBP, including but not limited to the number of Qualified Bidders, the identity of any one of the Qualified Bidders (including yourself), or the fact that an entity has not qualified for participation in the CBP. Further, please certify that you will destroy any document distributed by the Auction Manager that lists the Qualified Bidders within five (5) days of the close of the bidding, or earlier if so instructed by the Auction Manager.

Signature of Authorized Representative

Date

- d) No Qualified Bidder in the CBP shall substitute another party, transfer its rights to another party, or otherwise assign its status as a Qualified Bidder to another party. Any such substitutions, transfers, or assignments shall be null and void and will result in the exclusion of the Qualified Bidder from the CBP. Please certify that you agree to the limitation set forth in this paragraph.

Signature of Authorized Representative

Date

The Bidding Rules and Communications Protocols include restrictions on the disclosure of Confidential Information. For purposes of the following certifications, the definition of Confidential Information relative to bidding strategy is defined according to Section 12.2 of the Bidding Rules:

- e) Please certify that you agree not to disclose any Confidential Information relative to bidding strategy to any party that may have an effect on the participation of another bidder, prospective bidder, or on any of the bids that another bidder would be willing to submit.

Signature of Authorized Representative

Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

- f) Please certify that, to the extent Confidential Information relative to bidding strategy is disclosed within your organization or to a third party, you will ensure that sufficient precautions are taken to ensure that such Confidential Information is not made public or made available to another Bidder. Such precautions include, but are not limited to confidentiality agreements, non-disclosure agreements, firewalls, and other contractual or structural protections that would maintain the confidential nature of a Bidder's bidding strategy.

Signature of Authorized Representative

Date

If unable to make the certifications requested above please identify the nature of your need to disclose Confidential Information without sufficient precautions to ensure that such Confidential Information is not made public or made available to another bidder.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.10 Alternate Guaranty Forms

A prospective SSO Supplier that wishes to rely on a Guarantor can use the standard form of guaranty (Attachment D to the Master SSO Supply Agreement) and be assured that the standard form of guaranty is acceptable to Duke Energy Ohio. Alternatively, Duke Energy Ohio will consider alternate forms of guaranty if they are submitted with this Part 1 Application. Also, you may submit an alternate form of guaranty that was previously approved.

The Alternate Guaranty Form must satisfy the requirements specified in Appendix B.

Please check here ☐ if this section does not apply to you because you are not submitting an alternate form of guaranty and proceed to the next section. Otherwise please read Appendix B and complete this section.

The Authorized Representative acknowledges by signing below that he/she has read the requirements of Appendix B and that he/she believes that the proposed Alternate Guaranty Form complies with these requirements:

Signature of Authorized Representative

Date

Please check below to show that you are including all required documents.

- ☐ The proposed form of alternate guaranty;
- ☐ Certification that the alternate guaranty has been in general use by the Applicant in its ordinary course of business over the past twelve months;
- ☐ An enforceability opinion with respect to the alternate form of guaranty from counsel; and
- ☐ Previously approved alternate form of guaranty.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.11 Bidding Agreements

Please note that Duke Energy Ohio will not review information provided in this section.

Please check here ☐ if you will be bidding independently and not as a party to any bidding agreement with another party or through any other arrangement involving joint or coordinated bidding with any other party and proceed to the next section.

Otherwise, please indicate below whether you are a party to or a part of a bidding agreement, a joint venture, a bidding consortium, or other arrangements for purposes of participating in the CBP or pertaining to bidding in the CBP. Please also provide the names of the other parties to the bidding agreement or other arrangement.

Other parties to the arrangement:

- | | |
|--|---|
| <input type="checkbox"/> Bidding Agreement | <input type="checkbox"/> Bidding Consortium |
| <input type="checkbox"/> Joint Venture | <input type="checkbox"/> Other (define) |

If you are part of a bidding agreement, bidding consortium or joint venture, you must nominate a single party to the bidding agreement, bidding consortium or joint venture to fulfill the creditworthiness requirements. This party may have a Guarantor. Please indicate below which party from the bidding agreement, bidding consortium, or joint venture will be fulfilling the creditworthiness requirements:

Name of the single Party fulfilling the creditworthiness requirements:

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

The Authorized Representative of the party named above must sign here to acknowledge the fact that this party has agreed to fulfill the creditworthiness requirements:

Signature of Authorized Representative

Date

1.12 Justification of Omissions

If you are unable to provide all documents or all information requested in this Part 1 Application, please justify fully any omissions in the space provided below.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

Appendix A – Enclosures to the Part 1 Application

This is a checklist of documents to be enclosed with this Part 1 Application. Please submit only one copy of required supporting documents to the application unless noted otherwise.

- ☐ A copy of the completed Part 1 Application with original signatures and original notarized signatures of Sections 1.2, 1.3 and 1.4 *[Instructions Part 1]*

For the Applicant:

- ☐ A copy of the signature page of the applicable PJM Agreements as that term is defined in the Master SSO Supply Agreement *[Section 1.6]*
- ☐ If the Applicant is an SEC registrant, provide the Form 10-K most recently filed with the SEC. If unavailable, please provide most recent audited annual financial information (including a balance sheet, income statement, cash flow statement, and related footnotes) *[Section 1.7]*
- ☐ If the Applicant is an SEC registrant, provide the Form 10-Q most recently filed with the SEC. If unavailable, please provide most recent quarterly financial information (including a balance sheet, income statement, cash flow statement, and related footnotes) *[Section 1.7]*
- ☐ If the Applicant is not an SEC registrant, or if the Applicant is an SEC registrant and both the Form 10-K and Form 10-Q most recently filed with the SEC are not available, please provide most recent annual (audited) and quarterly financial data, including related footnotes, accompanied by an attestation by the Applicant's Chief Financial Officer that the information submitted is true, correct and a fair representation of the Applicant's financial condition *[Section 1.7]*
- ☐ Senior unsecured debt ratings or, if unavailable, corporate or issuer ratings *[Section 1.7]*
- ☐ If the Applicant has not been incorporated or otherwise formed under the laws of the United States, (i) a legal opinion acceptable to Duke Energy Ohio of counsel qualified to practice in the foreign jurisdiction in which the Applicant is incorporated or otherwise formed that the Master SSO Supply Agreement will become the binding obligation of the Applicant in the jurisdiction in which it has been incorporated or otherwise formed, and (ii) any additional information that the Applicant wishes to give that could provide comparable credit assurances to those that are provided by other Applicants that have at least two credit ratings from accepted credit ratings agencies. *[Section 1.7]*

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

For the Guarantor:

- ☐ If the Guarantor is an SEC registrant, provide the Form 10-K most recently filed with the SEC. If unavailable, please provide most recent audited annual financial information (including a balance sheet, income statement, cash flow statement, and related footnotes) *[Section 1.8]*
- ☐ If the Guarantor is an SEC registrant, provide the Form 10-Q most recently filed with the SEC. If unavailable, please provide most recent quarterly financial information (including a balance sheet, income statement, cash flow statement, and related footnotes) *[Section 1.8]*
- ☐ If the Guarantor is not an SEC registrant, or if the Guarantor is an SEC registrant and both the Form 10-K and Form 10-Q most recently filed with the SEC are not available, please provide most recent annual (audited) and quarterly financial data, including related footnotes, accompanied by an attestation by the Guarantor's Chief Financial Officer that the information submitted is true, correct and a fair representation of the Applicant's financial condition *[Section 1.8]*
- ☐ Senior unsecured debt ratings or, if unavailable, corporate or issuer ratings *[Section 1.8]*
- ☐ If the Guarantor has not been incorporated or otherwise formed under the laws of the United States, (i) a legal opinion acceptable to Duke Energy Ohio of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that the Guaranty will become the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed, and (ii) any additional information that the Guarantor wishes to give about the Guarantor's financial standing that could provide comparable credit assurances to those that are provided by other Guarantors that have at least two credit ratings from accepted credit rating agencies. *[Section 1.8]*

If the Applicant is proposing an Alternate Guaranty Form:

- ☐ Proposed form of alternate guaranty *[Section 1.10]*
- ☐ Certification that the alternate guaranty has been in general use by the Applicant in its ordinary course of business over the past twelve months *[Section 1.10]*
- ☐ An enforceability opinion with respect to the alternate form of guaranty from counsel *[Section 1.10]*
- ☐ Previously approved alternate form of guaranty. *[Section 1.10]*

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

Appendix B – Alternate Guaranty Forms (Optional)

The **criteria** used to review the alternate form of guaranty are as follows:

1. The alternate guaranty must be a financial guaranty; performance guarantees are not acceptable.
2. The alternate guaranty must be an unconditional guaranty of payment of all amounts due by the SSO Supplier to Duke Energy Ohio under the Master SSO Supply Agreement. The Master SSO Supply Agreement must be expressly identified and the satisfaction of obligations through performance may not be authorized.
3. The alternate guaranty may be terminated upon not less than thirty (30) days advance written notice to Duke Energy Ohio and termination shall not discharge liabilities and obligations of the Guarantor that have been incurred before the effective date of the termination.
4. The alternate guaranty must be accompanied by a certification that this form of guaranty, subject to changes needed to conform to the specific requirements of Duke Energy Ohio, has been in general use by the submitting party in its ordinary course of business over the past twelve months.
5. The alternate guaranty must be a guaranty of payment and not of collection.
6. Assignment of the alternate guaranty shall not be permitted except with the prior written consent of Duke Energy Ohio.
7. The Applicant must provide an enforceability opinion with respect to the alternate form of guaranty from its counsel. The accompanying enforceability opinion must be from a law firm of national (i.e., United States) standing, must not be weaker than would be industry norm and must contain only those qualifications that would be typical. The opinion shall name Duke Energy Ohio and explicitly state that Duke Energy Ohio is entitled to rely on the opinion.

The alternate forms of guaranty will be reviewed in accordance with the following process:

- Upon receipt of the Part 1 Application, the Auction Manager will redact the proposed alternate form of guaranty to remove any information identifying the Applicant. The Auction Manager will then forward the redacted version to a credit and legal representative of Duke Energy Ohio.
- The credit representative and legal representative will determine whether the alternate form of guaranty provides sufficient assurances of payment, taking into account the following considerations:

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

- (i) whether the alternate form of guaranty conforms with the specific requirements identified by Duke Energy Ohio (listed above);
 - (ii) whether the alternate form of guaranty provides substantially similar credit protections to the credit protections provided to Duke Energy Ohio by the standard form of guaranty; and
 - (iii) whether the alternate form of guaranty includes defenses in favor of the Guarantor not found in the standard form of guaranty. The Duke Energy Ohio representative may also identify specific changes that would permit the alternate form of guaranty to be acceptable, if such changes are of a limited nature.
- The credit representative and legal representative shall inform the Auction Manager of its decision no later than seven (7) Business Days following the Part 1 Application Due Date.
 - Upon receipt of the Duke Energy Ohio's decision, the Auction Manager will notify the Applicant of Duke Energy Ohio's decision. The Duke Energy Ohio's decision will either state:
 - (i) The proposed alternate guaranty is acceptable to Duke Energy Ohio in the form in which it was submitted.
 - (ii) The proposed alternate guaranty is not acceptable to Duke Energy Ohio in the form in which it was submitted, but would be acceptable subject to specific changes of a minor nature. The correspondence from the Auction Manager will set forth the required changes.
 - (iii) The proposed alternate guaranty is not acceptable to Duke Energy Ohio.
 - If specific changes are required to the proposed alternate guaranty, the Applicant will be required to resubmit the alternate guaranty form with changes identified by Duke Energy Ohio on the Business Day following the Business Day during which the Auction Manager notified the Applicant of the Duke Energy Ohio's decision. No later than three (3) Business Days after the Applicant's resubmission, the Auction Manager will notify the Applicant of Duke Energy Ohio's final decision.

A potential bidder that had secured approval for an alternate form of guaranty for a prior Duke Energy Ohio CBP and that wishes to use the same alternate form of guaranty can renew this approval for any CBP by submitting:

1. The alternate form of guaranty for the prior Duke Energy Ohio CBP;
2. The enforceability opinion for the prior Duke Energy Ohio CBP;

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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3. A certification that the text of the alternate form of guaranty is exactly the same as the alternate form of guaranty that had been previously approved for the prior Duke Energy Ohio CBP;
4. A certification that the text of the enforceability opinion is the same as the enforceability opinion that had been previously approved for the prior Duke Energy Ohio CBP.

If a potential bidder submits the materials as specified above, the alternate form of guaranty will be approved. If a potential bidder had secured approval for an alternate form of guaranty for a prior Duke Energy Ohio CBP but is unable to provide the materials as specified above, the potential bidder must resubmit the alternate form of guaranty and all supporting documentation as specified in the Minimum Requirements for the Alternate Form of Guaranty section above and these materials will be re-evaluated according to the criteria set forth in this document.

All proposing parties that become Qualified Bidders under the Part 1 Application process, but whose alternate guaranty are rejected by Duke Energy Ohio, are required to submit with their Part 2 Application a supplemental certification that the Applicant unconditionally accepts all terms and conditions of the Master SSO Supply Agreement.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

Appendix C – Draft Letter of Credit for the Pre-Bid Security (Optional)

The standard form of the Letter of Credit presented in this section is in a form acceptable to Duke Energy Ohio and will be posted to the Information Website. However, an Applicant has the option to submit a draft Letter of Credit clearly identifying proposed changes in an electronic, redlined version by email with their Part 1 Application to duke-energyauctionmanager@crai.com.

Duke Energy Ohio will assess, in its sole and exclusive discretion, whether such modifications are acceptable. The Qualified Bidder, in its Part 2 Application, must provide the required executed Letter of Credit that either uses the standard form or incorporates only those modifications to the standard form accepted by Duke Energy Ohio upon review of the Part 1 Application. The draft Letter of Credit will be reviewed in accordance with the following process:

- Upon receipt of the Part 1 Application, the Auction Manager will redact the draft Letter of Credit to remove any information identifying the Applicant. The Auction Manager will then forward the redacted version to a credit and legal representative of Duke Energy Ohio.
- The credit and legal representative will determine whether such modifications are acceptable. The credit and legal representative shall inform the Auction Manager of its decision no later than seven (7) Business Days following the Part 1 Application Due Date.
- Upon receipt of the Duke Energy Ohio's' decision, the Auction Manager will notify the Applicant of Duke Energy Ohio's decision. Duke Energy Ohio's decision will either state:
 - The draft Letter of Credit is acceptable to Duke Energy Ohio in the form in which it was submitted.
 - The draft of Letter of Credit is not acceptable to Duke Energy Ohio in the form in which it was submitted, but would be acceptable subject to specific changes of a minor nature. The correspondence from the Auction Manager will set forth the required changes.
 - The draft Letter of Credit is not acceptable to Duke Energy Ohio.
- If specific changes are required to the draft Letter of Credit, the Applicant will be required to resubmit the draft Letter of Credit with changes identified by Duke Energy Ohio on the Business Day following the Business Day during which the Auction Manager notified the Applicant of the Duke Energy Ohio's decision. No

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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later than three (3) Business Days after the Applicant's resubmission, the Auction Manager will notify the Applicant of Duke Energy Ohio's final decision.

End of Part 1 Application

Attachment D

Part 2 Application

Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

PART 2 APPLICATION

Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions

INSTRUCTIONS

There are two parts to the application process.

- **Part 1 Application:** Applicants submit the Part 1 Application and all documents required therein to become Qualified Bidders for the Competitive Bidding Process ("CBP").
- **Part 2 Application:** Qualified Bidders for the CBP submit the Part 2 Application, in which they will agree to comply with the Bidding Rules and Communications Protocols, accept the terms of Duke Energy Ohio, Inc.'s ("Duke Energy Ohio") Master Standard Service Offer Supply Agreement ("Master SSO Supply Agreement"), make certifications regarding associations and handling of Confidential Information, submit Indicative Offers, and post Pre-Bid Security to become Registered Bidders.

This document is the Part 2 Application.

For further information, consult the Information Website.

Unless otherwise defined, capitalized terms in this document have the definitions provided in either the Glossary or the Master SSO Supply Agreement.

PART 2 APPLICATION SUBMISSION

The completed Part 2 Application MUST be received by the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time on the Part 2 Application due date as posted in the timeline on the Information Website.

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Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

Photocopies and facsimiles of completed forms will not be accepted under any circumstances. It is in your interest to seek independent legal and financial advice before deciding to participate in the CBP.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

CONFIDENTIALITY OF PART 2 APPLICATION SUBMISSIONS

All Applicants are required to comply with the Communications Protocols.

Confidentiality requirements specific to the Part 2 Application are reiterated below.

CONFIDENTIALITY OF CREDIT INFORMATION

Any information and materials that you submit in this Part 2 Application may be provided on a confidential basis to the Auction Manager Team and the Public Utilities Commission of Ohio ("PUCO" or "Commission") and their representatives. Representatives from Duke Energy Ohio will decide whether the form of Pre-Bid Security submitted is acceptable; Pre-Bid Security documents will be redacted prior to the closing of the bidding process so as not to reveal an Applicant's identity or the amount of the Applicant's Indicative Offer.

CONFIDENTIALITY OF REGISTERED BIDDERS AND INITIAL ELIGIBILITY

Upon completion of the Part 2 Application process, the names of Registered Bidders will be provided to other Registered Bidders on a confidential basis, as well as the total Initial Eligibility aggregated across all Registered Bidders and products. As part of this Part 2 Application, you are required to certify that you agree to release your name to other Registered Bidders and that you will keep confidential the list of Registered Bidders and total Initial Eligibility that is provided to you.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

PART 2 APPLICATION
Duke Energy Ohio, Inc.'s
Competitive Bidding Process Auctions

This Part 2 Application is the application form to become a Registered Bidder in Duke Energy Ohio's CBP.

I. Background Information

Before completing this form, please review the Bidding Rules document for this CBP ("Bidding Rules"), the Master SSO Supply Agreement, the Communications Protocols, and other documents posted on the Information Website so that you understand the conditions under which the CBP will be conducted.

II. Confirmation of Receipt

Online delivery: If your Part 2 Application is submitted online through the Secure Application Process, an email will be sent to the Authorized Representative and Delegate to confirm receipt. You will still be required to submit a copy of the Part 2 Application with original signatures via post or hand delivery.

Delivery by Post or Hand Delivery: If your Part 2 Application is received only by post or hand delivery, an email will be sent to the Authorized Representative and Delegate to confirm receipt.

III. Incomplete Applications

If your Part 2 Application is incomplete or requires clarification, the Auction Manager will send a deficiency notice to your Authorized Representative by email. You will have until 12:00 p.m. noon prevailing Eastern Time on the Part 2 Application Due Date, or until 5:00 p.m. prevailing Eastern Time on the Business Day following the Business Day during which a deficiency notice is sent to you, whichever comes later, to respond. If you do not correct or adequately explain the deficiency within the time allowed, your Part 2 Application may be rejected and you may be unable to participate in the CBP. All corrections to remedy deficiencies within an Applicant's Part 2 Application must be submitted online. The Authorized Representative needs to sign and date next to the correction(s) to the Part 2 Application and send to the Auction

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

Manager by email to duke-energyauctionmanager@crai.com, followed by hardcopy to the Auction Manager.

IV. Late Applications

Part 2 Applications received after the stated deadline will NOT be accepted under any circumstances.

V. Changes to Part 1 Application

If changes to the Part 1 Application are warranted in order to fulfill the requirements of the Part 2 Application, those changes to the Part 1 Application must be received by the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time seven (7) Business Days prior to the Part 2 Application Due Date. All changes to an Applicant's Part 1 Application must be signed and dated by the Authorized Representative and sent to the Auction Manager by email to duke-energyauctionmanager@crai.com, followed by hardcopy to the Auction Manager.

VI. Deficient Pre-Bid Security

If your Credit Documents are not in a form acceptable to Duke Energy Ohio, your Authorized Representative will be emailed a deficiency notice and you will have until 12:00 p.m. noon prevailing Eastern Time on the Part 2 Application Due Date or 5:00 p.m. prevailing Eastern Time of the second Business Day following the Business Day during which you are notified, whichever comes later, to submit revised documents. If you fail to meet this deadline, your Part 2 Application will be rejected.

If your Credit Documents are insufficient for your Indicative Offer, or if your other Pre-Bid Security is in a form that is not acceptable to Duke Energy Ohio, your Authorized Representative will be emailed a deficiency notice. You will have until the Part 2 Application Due Date or 5:00 p.m. prevailing Eastern Time of the second Business Day following the Business Day during which you are notified, whichever comes later, to submit revised documents. If you cannot correct the deficiency, your Application may be rejected or your Initial Eligibility may be reduced by the Auction Manager so that your Pre-Bid Security is sufficient to cover your Indicative Offer.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

VII. Certifications Regarding Associations

You may be required to provide additional information to the Auction Manager and to the Commission and its representatives if you are unable to make the certifications in this Part 2 Application.

VIII. Rejection of Applications

If your application is rejected, your Part 2 Application and all supporting documents will be returned to you.

IX. Notification to Registered Bidders

If you become a Registered Bidder for the CBP, the Auction Manager will send a Notification to Registered Bidders to your Authorized Representative by email after the Part 2 Application Due Date. The Notification to Registered Bidders will also be sent to your Authorized Representative by courier. If there are material changes to the Applicant's information provided in this Part 2 Application, you are obligated to notify the Auction Manager.

Prior to the auction, Registered Bidders will receive information to participate in the auction using the Auction Manager's secure Bidding Website.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

PART 2 APPLICATION FORMS

2.1 Applicant Information

Name of Applicant (Company Name)

Authorized Representative's Contact Information

Last Name

Given Name(s)

Mr/Mrs/Ms/Dr/(other)

Title

Street Address 1

Street Address 2

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

Delegate's Contact Information

Last Name	Given Name(s)	Mr/Mrs/Ms/Dr/(other)
<input type="text"/>	<input type="text"/>	<input type="text"/>

Company Name	Title
<input type="text"/>	<input type="text"/>

Street Address 1

Street Address 2

City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>

Telephone No.	Cell Phone No.	Fax No.	Email Address
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

NOTE: The Authorized Representative and Delegate should be the same contact information that was provided in the Part 1 Application. Please email duke-energyauctionmanager@crai.com if there are any changes to this information prior to the deadline for making changes as outlined in Section V above.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

2.2 Indicative Offer and Pre-Bid Security

In Table 2.1 below, provide your Indicative Offer at the Minimum Starting Price and the Maximum Starting Price for each product in the auction. Your Indicative Offer should be the maximum number of Tranches that you would be willing to supply at the Starting Prices for the auction subject to the limitations of any applicable credit-based tranche limit and any applicable Load Cap for the auction. In the auction itself, you are not required to bid the number of Tranches in your Indicative Offer. However, your Initial Eligibility to bid in the auction will be determined by the total number of Tranches across the products in your Indicative Offer at the Maximum Starting Price.

You are required to submit a Letter of Credit for an amount equal to \$250,000 multiplied by the total number of Tranches in your Indicative Offer at the Maximum Starting Price. If you were required to do so, please provide additional Pre-Bid Security in an acceptable form. Instructions regarding the amount of the Letter of Reference and the amount of the Letter of Intent to Provide a Guaranty are provided in Table 2.1. Credit Documents in support of your Pre-Bid Security should be in the form provided on the Information Website or as approved in modified form during the Part 1 Application process.

Please check here ☐ if you are submitting a cash deposit as Pre-Bid Security.

Please check here ☐ if you are submitting a Letter of Credit as Pre-Bid Security.

Please check here ☐ if you are submitting a Letter of Intent to Provide a Guaranty from the named Guarantor on the Part 1 Application Forms [Section 1.8] as additional Pre-Bid Security.

Please check here ☐ if you are submitting a Letter of Reference from a bank as additional Pre-Bid Security.

Complete Table 2.1 to include the amounts of the cash deposits, Letter of Credit and/or other additional Pre-Bid Security that you are providing with this Part 2 Application.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant _____

Table 2.1 Indicative Offer and Pre-Bid Security

Indicative Offer (number of Tranches)	Tranches @ Min Starting Price	Tranches @ Max Starting Price
12-month supply period Starting Price: Minimum=\$XX.XX/MWh Maximum=\$YY.YY/MWh		
Amount of cash deposit or Letter of Credit All Bidders: This amount is equal to \$250,000 multiplied by the number of Tranches at Max Starting Price		Cash LoC
Amount of Additional Pre-Bid Security If required, this amount is equal to \$500,000 multiplied by the number of Tranches at Max Starting Price. NOTE: Stand-alone investment-grade companies with a sufficient Independent Credit Threshold (ICT) to cover the amount of additional Pre-Bid Security calculated above are not required to post additional security. All other Bidders are required to post additional Pre-Bid Security in the form of a Letter of Intent to Provide a Guaranty and/or a Letter of Reference for an amount not to exceed their ICT. If necessary, additional cash or a Letter of Credit may be provided in lieu of a Letter of Reference.		
<ul style="list-style-type: none"> Please enter the amount of additional Pre-Bid Security in the form of a Letter of Intent to Provide a Guaranty in the box on the right. NOTE: This is an option for companies with an investment-grade guarantor. 		
<ul style="list-style-type: none"> Please enter the amount of additional Pre-Bid Security in the form of a Letter of Reference in the box on the right. NOTE: This is an option for companies without an investment grade rating and/or with a below-investment grade guarantor. 		
<ul style="list-style-type: none"> Please enter the amount of additional Pre-Bid Security in the form of cash deposit or Letter of Credit in the box on the right. NOTE: This is an option for companies unable to provide a Letter of Reference of sufficient magnitude to cover the additional Pre-Bid Security amount. 		Cash LoC

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

If you are submitting a Letter of Credit, in the space below, please provide instructions for returning the Letter of Credit once it can be cancelled.

If you are submitting a cash deposit, please attach a copy of your W9 (for tax ID) and banking information on your company's letterhead (signed and dated) and, in the space below please provide wiring instructions for returning your cash deposit.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

- (2) Please certify that, other than parties explicitly named in Section 1.11 of your Part 1 Application as parties with whom you have entered into a Bidding Agreement, Joint Venture for the purpose of bidding in the CBP, or Bidding Consortium or other arrangement pertaining to bidding in the CBP, you have not entered into any agreement with another Qualified Bidder, directly or indirectly, regarding bids in the CBP, including, but not limited to, the amount to bid at certain prices, when or at what prices bids are to be withdrawn, or the amount of exit prices.

Signature of Authorized Representative

Date

- (3) Please certify that any person who will be advising or assisting you with bidding strategy in the CBP, with estimation of the value of Tranches, or with the estimation of the risks associated with serving SSO Load (an advisor) will either (i) not provide any similar advice or assistance to any other Qualified Bidder; or (ii) if such person will provide similar advice or assistance to another Qualified Bidder, or if such person will be privy to Confidential Information relative to any other Qualified Bidder's bidding strategy, that appropriate protections have been put into place to ensure that the advisor does not serve as a conduit of information between, or as a coordinator of the bidding strategies of, multiple bidders, and please describe such appropriate protections in the space below.

Signature of Authorized Representative

Date

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

If unable to make certification (3) requested above please name the advisor(s) and the Qualified Bidder(s) concerned.

- (4) Please certify that you are not a party to any contract for the purchase of power that might be used as a source of supply for SSO Service, and that (i) would require the disclosure of any Confidential Information (Confidential Information relative to the bidding strategy or Confidential Information regarding the CBP) to the counterparty under such a contract; or (ii) that would require the disclosure of any Confidential Information (Confidential Information relative to the bidding strategy or Confidential Information regarding the CBP) to any other party; or (iii) that would provide instructions, direct financial incentives, or other inducements for the Bidder to act in a way determined by the counterparty in the agreement and/or in concert with any other Bidder in the CBP. Notwithstanding the above, you may, during negotiations prior to the CBP for contractual arrangements for power to serve SSO Load were you to be a winner at the CBP, discuss with the counterparty to such arrangements the nature of the standard products to be purchased, the volume, and the price at which you are willing to buy these products, so long as such arrangements do not result in violation of (i), (ii) or (iii) above.

Signature of Authorized Representative

Date

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

If unable to make certification (4) requested above please disclose the contractual terms that prevent you from making the certification. Please identify the counterparty and if applicable, the party to whom information disclosure must be made under the terms of the contract.

- (5) Please certify that you do not have any knowledge of Confidential Information that is relevant to the bidding strategy of any other Qualified Bidder.

Signature of Authorized Representative

Date

If unable to make certification (5) requested above please name the other Qualified Bidder(s) and the nature of the Confidential Information.

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Name of Applicant

- (6) Please certify that you will not disclose Confidential Information relative to your bidding strategy except to bidders that were explicitly named in your Part 1 Application as parties with whom you have entered into a Bidding Agreement, Joint Venture for the purpose of bidding in the CBP, or Bidding Consortium or other arrangement pertaining to bidding in the CBP, Bidders with which you are associated as disclosed through certification (1), to your advisors, and to your financial institution.

Signature of Authorized Representative

Date

If unable to make certification (6) requested above please explain.

- (7) Please certify that, other than entities with which you are affiliated and other than bidders with which you have entered a Bidding Agreement, or Joint Venture for purposes of the CBP, or Bidding Consortium, or other arrangement pertaining to the CBP, no party has agreed to defray any of the costs of participating in the CBP, including the cost of preparing the bid, the cost of any financial guarantees, the cost to be paid upon winning a Tranche, and any other participation cost.

Signature of Authorized Representative

Date

If unable to make certification (7) requested above please explain.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

- (8) Please certify your agreement that the submission of any bid in the CBP creates a binding and irrevocable offer to provide service under the terms set forth in the Master SSO Supply Agreement and that a binding and enforceable contract to provide service with respect to the number of Tranches for which you were a winner in the CBP shall arise under the Master SSO Supply Agreement. Please note that failure to execute the Master SSO Supply Agreement within three (3) Business Days of the conclusion of the CBP may result in the forfeiture of the Letter of Credit.

Signature of Authorized Representative

Date

If unable to make certification (8) requested above please explain.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

The following certifications (9), (10) and (11) will apply from the date on which you make the certifications.

- (9) Please certify that if you are registered to participate in the CBP, you will not disclose at any time information regarding the Initial Eligibility in the CBP or the list of Registered Bidders, including the number of Registered Bidders, the identity of any one or all entities that have been registered, or the fact that an entity has not been registered for participation in the CBP.

Signature of Authorized Representative

Date

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

- (10) Please certify that you will not disclose any Confidential Information regarding the CBP to any party except your advisors and Bidders with which you are associated as disclosed in certification (1).

Signature of Authorized Representative

Date

If unable to make certification (10) requested above please explain.

- (11) Please certify that you will continue to abide by your prior confidentiality certifications. You will not disclose any Confidential Information regarding the CBP to any party except to your advisor and Bidders with which you are associated. Please certify that you will destroy all documents, written or electronic, provided by the Auction Manager that contain Confidential Information regarding the CBP within five (5) days of the close of the bidding, or earlier if so instructed by the Auction Manager.

Signature of Authorized Representative

Date

If unable to make certification (11) requested above please explain.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

2.4 Ongoing Obligations

Please note that all obligations, terms and conditions set forth in the Bidding Rules and Master SSO Supply Agreement remain in effect and apply to the certifications made herein, including but not limited to the following:

- Section 4.2.3 of the Bidding Rules - Sanctions can be imposed on a bidder for failing to disclose information relevant to determining associations, for coordinating with another bidder, or for failing to abide by any of the certifications that it will have made in its Part 1 and Part 2 Applications. Such sanctions can include, but are not limited to, termination of the Master SSO Supply Agreement, loss of all rights to provide supply for Duke Energy Ohio to serve any load won by such bidder, forfeiture of financial guarantees and other fees posted or paid, prosecution under applicable state and federal laws, debarment from participation in future competitive bidding process, and other sanctions that may be appropriate. For any failure to disclose information or for any violation of the certifications, the Auction Manager will make a recommendation on a possible sanction.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

2.5 Justification of Omissions

If you are unable to provide all documents or all information requested in this Part 2 Application, please justify fully any omissions in the space provided below.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

Appendix A – Enclosures to the Part 2 Application

This is a checklist of documents to be enclosed with this Part 2 Application.

- ☐ One copy of completed Part 2 Application forms (with original signatures)
- ☐ One copy of W9 Form (for Tax ID) and one copy of banking information on your company's letterhead (signed and dated) (if submitting Cash Deposit as Pre-Bid Security) [Section 2.2]
- ☐ Letter of Credit (if applicable) [Section 2.2]
- ☐ Letter of Intent to Provide a Guaranty (if applicable) [Section 2.2]
- ☐ Letter of Reference (if applicable) [Section 2.2]
- ☐ Other forms of alternative security (if applicable) [Section 2.2]

End of Part 2 Application

Attachment E

Communications Protocols for Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions

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1. INTRODUCTION

These Communications Protocols apply to the competitive bidding process ("CBP") auctions for Duke Energy Ohio, Inc. ("Duke Energy Ohio") to procure supply for the provision of Standard Service Offer supply ("SSO Supply") for retail customers that take retail generation service from Duke Energy Ohio.

The Communications Protocols in this document are intended to promote a fair, open, transparent, objective, and non-discriminatory process for the CBP auctions to procure a supply of energy for SSO customers of Duke Energy Ohio. These protocols also intend to protect proprietary information of participants and information that, should it be released, would be detrimental to the outcome of the auction process or future competitive bidding processes.

Unless noted otherwise, all capitalized terms are defined in the Glossary, a separate document that is incorporated herein by reference, or the Master SSO Supply Agreement.

These protocols elaborate upon the means by which confidentiality is to be maintained by all parties through adherence to the procedures in this document. Should the Auction Manager recognize that additional information should be kept confidential, the Auction Manager will establish additional procedures in keeping with the principles provided in this document and inform Duke Energy Ohio, the PUCO and PUCO Staff, the PUCO Consultant, and Bidders in a timely manner.

This document is organized as follows:

- Section 2 summarizes the objectives of this document.
- Section 3 describes protocols regarding communications between Duke Energy Ohio and Bidders, including any affiliate of Duke Energy Ohio.
- Section 4 summarizes information that may be communicated with the general public, including the media, and the means by which that information is disseminated.
- Section 5 addresses Bidder Communications Protocols, including communications among Bidders and between the Auction Manager and Bidders.
- Section 6 summarizes Communications Protocols with the PUCO, including communications between the PUCO and the Auction Manager, between the PUCO and Duke Energy Ohio and disclosure of confidential information.
- Appendix A includes a confidentiality agreement to be signed by any party other than the Auction Manager or Bidders who may have access to proprietary and confidential information.

2. OBJECTIVES

This document and the procedures it describes promote four main objectives:

- The first objective is to establish a fair and equitable process for all Bidders by ensuring all Bidders have equal access to the same information necessary to evaluate the bidding opportunity and to prepare their bids in a timely manner.
- The second objective is to take all reasonable precautions that any information generated by the auction process that could harm the competitive position of Bidders or Duke Energy Ohio, if released, is kept confidential.
- The third objective is to take all reasonable precautions that confidential information is provided only to those persons to whom it is deemed necessary for the conduct and management of the auction process.
- The fourth objective is to ensure that information that, if released, could harm the competitiveness of future competitive bidding processes, is kept confidential from all entities, including Bidders.

These objectives will be accomplished by following two guiding principles. The first is that there will be one communication point for Bidders: all communications to prospective and actual Bidders will be through the Auction Manager. The second guiding principle is that the Auction Manager will distribute and disseminate information equally and fairly to all prospective and actual Bidders. These two guiding principles facilitate equal access to the same information for all Bidders. Only the Auction Manager responds to inquiries from Bidders and information is disseminated to all Bidders by or under the supervision of the Auction Manager.

The Auction Manager also will ensure that information generated by the implementation of the auction that could harm the competitive position of Bidders, if released, is kept confidential by those who have access to such information.

3. DUKE ENERGY OHIO AND AFFILIATES

3.1 Internal Communications

Duke Energy Ohio will designate individuals to work on the auction process. These individuals, directly or indirectly, will not have communication with, or exchange information with, any individuals of an affiliate of Duke Energy Ohio that may bid in the auction process where such communication or information is related directly or indirectly to this auction process. For purposes of this Section only, an affiliate of Duke Energy Ohio includes that part of Duke Energy Ohio that engages in merchant activity.

3.2 Communications with Bidders

Duke Energy Ohio will not communicate with Bidders prior to the selection of winning bids. When the Auction Manager informs Duke Energy Ohio about the prices and tranches of the winning bids and the identity of winning Bidders, representatives from Duke Energy Ohio then will communicate with the winning Bidders in order to execute the necessary documents.

If a Bidder attempts to contact Duke Energy Ohio regarding the auction process by phone call, email, fax, or other means, Duke Energy Ohio will direct the Bidder to the Information Website and/or to the Auction Manager.

3.3 Part 1 Application Process

For the Part 1 Application process, the Auction Manager will need to provide the names of applicants to Duke Energy Ohio's credit department for purposes of confirming the applicants' credit requirements.

3.4 Part 2 Application Process

For the Part 2 Application process, the Auction Manager will need to provide the aggregate eligibility and other information from the Part 2 Applications to Duke Energy Ohio with the names of applicants redacted.

3.5 Communication of the Bid Selection Criteria

No later than one business day before bids are due, Duke Energy Ohio will provide the Auction Manager with details concerning the pre-determined bid selection criteria. The pre-determined bid selection criteria will be price-based, such as a reservation price.

3.6 Auction Results and Post-Auction Reports

If there are winning bid(s), shortly after the close of the auction, the Auction Manager will: (a) prepare its post-auction letter that informs Duke Energy Ohio (as well as the PUCO and PUCO Consultant) about the winning bids and identify the winning Bidders, and (b) notify the winning Bidders. Duke Energy Ohio will contact the winning Bidders to execute necessary documents. The Auction Manager also will inform any Bidders that did not win tranches that they have not been awarded any tranches in the auction process.

If there are no winning bid(s), the Auction Manager will inform Duke Energy Ohio (as well as the PUCO and PUCO Consultant) there are no bids that met the criteria for a winning bid.

Any paper copies of the bidding results will be secured in the Auction Manager's office.

The PUCO may receive from the PUCO Consultant a post-auction report. The Auction Manager shall review the PUCO Consultant's post-auction report in un-redacted, draft form in order to provide comments prior to the final version. Duke Energy Ohio shall receive the PUCO Consultant's report and provide comments to ensure accuracy.

4. GENERAL PUBLIC AND MEDIA

While bidding is in progress, there shall be no communication with the media or the public other than notification when the bidding begins. After the auction process is completed, results are determined, and Bidders have been notified, all media inquiries will be forwarded to Duke Energy Ohio.

4.1 The Information Website

The central source of information made available publicly and to Bidders is the Information Website. The Auction Manager will manage the information flow on the Information Website and will be designated on the Website as the contact person for any questions or inquiries from parties. Any party will have access to the public sections of the Information Website. The Information Website also will have restricted, non-public section that will be accessible only to Applicants.

4.2 Registered Users

If a party wishes to receive notices and updates regarding public information and new postings to the Information Website, then the party can register through the Information Website to become a Registered User. (Note that not all Registered Users become Registered Bidders, but a Bidder that would like to become a Registered Bidder must first register to become a Registered User so they can receive notices and updates.)

Any information the Auction Manager has concerning the auction process that is relevant and that can be disclosed publicly will be made available equally to all Registered Users in a timely manner. The method of such communication will be via the Information Website and/or emails to Registered Users using the BCC email field so identification of Registered Users is not disclosed to other Registered Users.

4.3 Press Releases

Duke Energy Ohio and/or the Auction Manager may issue one or more press releases or may place news items in the trade press with the intent to disseminate information about the auction process in an efficient, fair, and timely manner.

4.4 Answering Inquiries from the General Public or Media

Inquiries from the general public to the Auction Manager will be directed to the Information Website. Inquiries from the media to the Auction Manager will be directed to Duke Energy Ohio.

5. BIDDERS

5.1 Communications Among Bidders

Pursuant to the auction rules, Bidders are prohibited from communicating with each other in ways that would compromise the integrity and competitiveness of the auction process. Sanctions will be applied if these rules are violated.

5.2 Communications between the Auction Manager and Bidders

The central source of information made available to Bidders is the Information Website. The Website will facilitate making information available equally to Bidders in a timely manner.

Bidders will be requested to become Registered Users to receive ongoing information about the auction process. As discussed above, once registered through the Information Website, Registered Users will receive notifications from the Auction Manager about updates to the auction process and to the Information Website.

If the Auction Manager receives an inquiry from a party and prepares a response that would be relevant for other parties, the Auction Manager will ensure the information will be made available equally to all Registered Users in a timely manner and will post the information on the Information Website without revealing the identity of parties.

In addition to posting information to the Information Website, the Auction Manager may contact Bidders directly in order to seek or provide information about the auction process in a way that does not advantage any Bidder.

Any communications from the Auction Manager to a Bidder will not reveal the identity of other Bidders.

5.3 Frequently Asked Questions

Among other information and resources on the Information Website, there will be a FAQ (frequently asked questions) section with posted questions and answers. As inquiries are received, they will be converted into a FAQ and posted on the Information Website without revealing the identity of the party posing the inquiry.

Inquiries to be answered by Duke Energy Ohio will be forwarded by the Auction Manager to Duke Energy Ohio. Inquiries to be answered by the Auction Manager will be forwarded to Duke

Communications Protocols for Duke Energy Ohio's Competitive Bidding Process Auctions Attachment E

Energy Ohio with a draft response. Any inquiry or draft response forwarded by the Auction Manager to Duke Energy Ohio will not identify the party posing the inquiry. Both Duke Energy Ohio and the Auction Manager will review any inquiry and response before the FAQ is posted to the Information Website.

5.4 Bidding Process

During the auction, the Auction Manager, the PUCO, the PUCO Consultant, if any, and Duke Energy Ohio's personnel may monitor the bidding process.

The Auction Manager will ensure the bids submitted by Bidders conform to the rules of the auction process.

The Bidding Rules and pre-determined bid selection criteria will be applied to determine which bids, if any, are winning bids.

5.5 Limitations on Disclosures by Bidders

Bidders shall not disclose that they are participating in a CBP auction and winning Bidders shall not disclose that they have won any tranches in a CBP auction until the PUCO publicly reports the results of the CBP auction. Such limitation on public disclosure by bidders is waived if disclosure is required by law.

6. PUBLIC UTILITIES COMMISSION OF OHIO

6.1 Identification of the PUCO Consultant

The PUCO may identify up to three individuals who will serve as the PUCO Consultant and may be onsite at the offices of the Auction Manager during the bidding process. Other than information that is accessible by being onsite, the PUCO Consultant will not be forwarded confidential information electronically or in hardcopy format. Individuals so designated by the PUCO are required to abide by the Communication Protocols and sign the confidentiality agreement in Appendix A to these Communications Protocols.

6.2 Communications with the Auction Manager

During the bidding process, the identity of Bidders, prices, and the number of tranches each winning bidder has won will be kept confidential. This information may be released to the PUCO after the close of the auction.

6.3 Communications with Duke Energy Ohio

The PUCO may communicate with Duke Energy Ohio regarding the auction process. However, Duke Energy Ohio will not disclose any proprietary information until after the final round of the auction is completed and Bidders are informed of the results of the auction.

6.4 Communications with Bidders

The PUCO will not communicate with Bidders about the auction process prior to the determination of winning bids. If a Bidder attempts to contact the PUCO by phone call, email, fax, or other means, the PUCO will direct the Bidder to the Information Website and/or to the Auction Manager.

6.5 Information on Auction Participation

In order to maintain confidential and proprietary information provided by Bidders as part of the auction process, the identity of all Bidders that submitted Part 1 and/or Part 2 Applications in the auction and the indicative offers will be kept confidential until released publicly by the PUCO. The PUCO may elect to keep these data confidential at its sole discretion.

6.6 Round-by-Round Bids

Actual round-by-round bids by Bidders will be kept confidential pursuant to the confidentiality provisions of the Bidding Rules and the Master SSO Supply Agreement for as long as Duke Energy Ohio continues to procure supply for SSO customers through this competitive bidding process.

Communications Protocols for Duke Energy Ohio's Competitive Bidding Process AuctionsAttachment E**7. APPENDIX A****CONFIDENTIALITY AGREEMENT**

I acknowledge that I have read and understand the Communications Protocols and obligations regarding treatment of confidential information related to the CBP auctions to procure generation supply for SSO customers of Duke Energy Ohio.

I certify that I have abided by its terms and that I agree to continue to abide by its terms and conditions. I acknowledge that I may be subject to potential injunctive action to enforce this confidentiality agreement, as well as liability from parties participating in the CBP auctions to procure supply for SSO customers of Duke Energy Ohio should I be found in violation of this confidentiality agreement.

Company

Signed by

Date

Please return the signed form to the Auction Manager at:
duke-energyauctionmanager@crai.com
or fax to:

CRA International, Inc.
John Hancock Tower
200 Clarendon Street, T-32
Boston, MA 02116-5092
Phone: 617.425.3365
Fax: 617.425.6574
duke-energyauctionmanager@crai.com
Attn: Robert Lee, Vice President / Auction Manager

MASTER STANDARD SERVICE OFFER (“SSO”)

SUPPLY AGREEMENT

BY AND BETWEEN

DUKE ENERGY OHIO, INC.

AND

EACH SSO SUPPLIER SET FORTH ON ATTACHMENT A HERETO

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MASTER STANDARD SERVICE OFFER (“SSO”) SUPPLY AGREEMENT

This Master Standard Service Offer (“SSO”) Supply Agreement (“Agreement”), dated as of _____, 201_ (“Effective Date”), is by and between Duke Energy Ohio, Inc., an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio (“Duke Energy Ohio”) and each of the suppliers listed on Attachment A severally, but not jointly, (each an “SSO Supplier” and collectively “SSO Suppliers”). Duke Energy Ohio and each SSO Supplier are hereinafter referred to individually as a “Party” or collectively as the “Parties”).

RECITALS

WHEREAS, Duke Energy Ohio is an Ohio public utility that engages, inter alia, in providing SSO Service within its service territory; and

WHEREAS, the PUCO found that it would serve the public interest for Duke Energy Ohio to secure SSO Supply through a competitive bidding process; and

WHEREAS, on _____, 201_, Duke Energy Ohio conducted and completed a successful Solicitation for SSO Supply; and

WHEREAS, each SSO Supplier was one of the winning bidders in the Solicitation for SSO Supply; and

WHEREAS, the PUCO has authorized Duke Energy Ohio to contract with winning bidders for SSO Supply to serve SSO Load in accordance with the terms of this Agreement; and

WHEREAS, each SSO Supplier will satisfy its Capacity obligations under the PJM Agreements associated with its respective SSO Supplier Responsibility Share in accordance with the PJM Agreements, including, without limitation, through participation in the base residual auction and incremental auctions administered by PJM; and

WHEREAS, Duke Energy Ohio and the SSO Suppliers desire to enter into this Agreement setting forth their respective obligations concerning the provision of SSO Supply.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

ARTICLE 1

DEFINITIONS

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

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

“Ancillary Services” has the meaning set forth in the PJM Agreements.

“Bankrupt” means with respect to any entity, that such entity (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.

“Bankruptcy Code” means those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq.

“Billing Period” means hour ending 0100 on the first day of a calendar month through hour ending 2400 on the last day of the applicable calendar month.

“Billing Statement” has the meaning set forth in Section 6.1(a).

“Business Day” means any day except a Saturday, Sunday or a day 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, unless otherwise agreed to by the Parties in writing.

“Capacity” means “Unforced Capacity” as set forth in the PJM Agreements, or any successor measurement of capacity obligation of an LSE as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

“Charge” means any fee, charge, PJM charge, the Energy Share Adjustment if in favor of Duke Energy Ohio, or any other amount that is billable by Duke Energy Ohio to the SSO Supplier under this Agreement.

“Commercial/Industrial Customer” means a Customer taking service under one of Duke Energy Ohio’s non-residential rates (Rate DS, Rate DM, Rate DP, Rate CUR, Rate EH, Rate GSFL, Rate SFL-ADPL, Rate RTP or Rate TS).

“Costs” mean, with respect to the Non-Defaulting Party, all reasonable attorney’s fees, brokerage fees, commissions, PJM charges and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorney’s fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement as between Duke Energy Ohio and the applicable SSO Supplier.

“Credit Limit” means an amount of credit, based on the creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to Section 5.6, granted by Duke Energy Ohio to such SSO Supplier to be applied towards the Total Exposure Amount for such SSO Supplier.

“CRES Supplier” means a Person that is duly certified by the PUCO to offer and to assume the contractual and legal responsibility to provide Standard Service Offer pursuant to retail open access programs approved by the PUCO to Customers who are not SSO Customers of Duke Energy Ohio.

“Cross Default Amount” means an amount equal to five percent (5%) of a Defaulting Party’s or Defaulting Party’s Guarantor’s (as applicable) Tangible Net Worth.

“Customer” means any Person who receives distribution service from Duke Energy Ohio in accordance with the Legal Authorities.

“Default Allocation Assessment” has the meaning set forth in the PJM Agreements.

“Default Damages” means direct damages, calculated in a commercially reasonable manner, that the Non-Defaulting Party incurs as a result of an Event of Default by the Defaulting Party. Default Damages may include: (i) the positive difference (if any) between the price of SSO Supply hereunder and the price at which Duke Energy Ohio or the SSO Supplier is able to purchase or sell (as applicable) SSO Supply (or any components of SSO Supply it is able to purchase or sell) from or to third parties including other SSO Suppliers and PJM; (ii) Emergency Energy charges; (iii) additional transmission or congestion charges incurred to purchase or sell SSO Supply; and (iv) Costs.

“Defaulting Party” has the meaning set forth in Section 7.1.

“Delivery Period” means the Original Delivery Period, unless this Agreement is terminated earlier in accordance with the provisions hereof.

“Delivery Point” means the DEOK Load Zone as defined within PJM.

“DEOK Load Zone” means that set of electrical locations, designated by PJM as Pnode ID number 124076095, determined pursuant to the applicable PJM Tariff, rules, agreements and procedures, representing the aggregate area of consumption for Duke Energy Ohio within PJM and used for the purposes of scheduling, reporting withdrawal volumes, and settling Energy transactions at aggregated load levels, to facilitate Energy market transactions.

“Duke Energy Ohio Indemnified Party” has the meaning set forth in Section 10.1(a).

“Early Termination” has the meaning set forth in Section 2.3.

“Early Termination Date” means, as between Duke Energy Ohio and the applicable SSO Supplier, the date upon which an Early Termination becomes effective as specified in Section 7.2(b).

“Effective Date” has the meaning set forth in the preamble.

“Emergency” means (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (ii) a condition that requires implementation of emergency operations procedures; or (iii) any other condition or situation that Duke Energy Ohio, transmission owner(s) or PJM deems imminently likely to endanger life or property or to affect or impair Duke Energy Ohio’s electrical system or the electrical system(s) of other Person(s) to which Duke Energy Ohio’s electrical system is directly or indirectly connected (a “Connected Entity”). Such a condition or situation may include potential overloading of Duke Energy Ohio’s subtransmission or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either Duke Energy Ohio’s or a Connected Entity’s electrical system, or conditions such that Duke Energy Ohio is unable to accept Energy from the SSO Supplier without jeopardizing Duke Energy Ohio’s electrical system or a Connected Entity’s electrical system.

“Emergency Energy” has the meaning set forth in the PJM Agreements.

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

“Energy Share Adjustment” means for any Billing Period, the monetary amount due to an SSO Supplier or Duke Energy Ohio, as the case may be, in order to reconcile any difference between the Estimated Monthly Energy Share used for the purpose of calculating estimated payments made to such SSO Supplier for a given month and the Final Monthly Energy Share used for calculating the final payments due to the SSO Supplier for such month, as more fully described in Article 6.

“ESP” means an electric security plan approved by the PUCO pursuant to the requirements of R.C.4928.143, for the period beginning July 1, 2015.

“Estimated Monthly Energy Share” means a quantity of Energy expressed in MWh which, for any Billing Period, is the preliminary calculation of the SSO Supplier’s SSO Supplier Responsibility Share.

“Event of Default” has the meaning set forth in Section 7.1.

“Excess Collateral” has the meaning set forth in Section 5.7.

“FERC” means the Federal Energy Regulatory Commission or such succeeding organization.

“Final Monthly Energy Share” means a quantity of Energy expressed in MWh which, for any Billing Period, is the Estimated Monthly Energy Share adjusted for any billing or metering errors found subsequent to the calculation of the Estimated Monthly Energy Share of which PJM is notified prior to the last date on which PJM issues a settlement statement for a previous operating day for the Billing Period.

“Firm Transmission Service” has the meaning ascribed to “Network Integration Transmission Service” under the PJM Agreements. In the event the PJM Agreements are modified such that “Network Integration Transmission Service” is no longer offered, Firm Transmission Service means the type of transmission service offered under the PJM Agreements that is accorded the highest level of priority for scheduling and curtailment purposes.

“Forward Market Prices” means forward market prices for a specific geographic Market Price Hub, as adjusted by Duke Energy Ohio to reflect impact of load shape.

“Gains” means an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any, exclusive of Costs, resulting from an Early Termination.

“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.

“Guarantor” means any Person having the authority and agreeing to guarantee an SSO Supplier’s financial obligations under this Agreement, provided that such party meets Duke Energy Ohio’s creditworthiness requirements for SSO Suppliers.

“Guaranty” means the ICT Guaranty or the Total Exposure Amount Guaranty, as applicable.

“ICR Collateral” has the meaning set forth in Section 5.4(d).

“ICRT” has the meaning set forth in Section 5.3.

“ICT Guaranty” means a guaranty, in substantially the form set forth in Attachment D, provided by a Guarantor in favor of Duke Energy Ohio guaranteeing an SSO Supplier’s financial obligations in connection with ICT.

“Indemnification Losses” has the meaning set forth in Section 10.1(a).

“Indemnified Supplier” has the meaning set forth in Section 10.1(b).

“Independent Credit Requirement or ICR” means an amount per Tranche required as security under Section 5.3, to mitigate the risk to Duke Energy Ohio of Energy price movements between the date of an Early Termination caused by an Event of Default by an SSO Supplier and the date the final calculation of Default Damages owing to Duke Energy Ohio under Section 7.2(c) is made.

“Independent Credit Threshold or ICT” means an amount of credit, based on the creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to

Section 5.4, granted by Duke Energy Ohio to such SSO Supplier to be applied towards the satisfaction of such SSO Supplier's Independent Credit Requirement.

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

"Kilowatt or kW" means a unit of measurement of useful power equivalent to 1,000 watts.

"Kilowatt-hour or kWh" means the equivalent of one kilowatt of electric power used over a period of one hour.

"Legal Authorities" means, generally, those federal and Ohio statutes and administrative rules and regulations that govern the electric utility industry in Ohio.

"Letter of Credit" means a standby irrevocable letter of credit in the form set forth in Attachment E, or in such other form as Duke Energy Ohio deems acceptable in its sole discretion, and in each case conforming to all of the requirements specifically set forth in Section 5.9(b).

"LIBOR" means the rates published daily as the London Inter-Bank Offered Rates for U.S. dollar deposits. For discounting purposes, the rates will be converted into a series of monthly rates representing the equivalent forward LIBOR rate from the valuation date to the month of delivery.

"Lighting Customer" means a Customer taking service under Duke Energy Ohio's lighting rates (Rate SL, Rate SC, Rate NSU, Rate NSP, Rate SE, Rate UOLS, Rate OL or Rate TL).

"Load Serving Entity or LSE" has the meaning set forth in the applicable PJM Agreements.

"Losses" means an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any, exclusive of Costs, resulting from an Early Termination.

"Margin" means, at any time, the amount by which the Total Exposure Amount exceeds the Credit Limit of the SSO Supplier or its Guarantor.

"Margin Call" has the meaning set forth in Section 5.6(e).

"Margin Collateral" has the meaning set forth in Section 5.6(e).

"Mark-to-Market Exposure Amount" means an amount calculated daily for each SSO Supplier reflecting the exposure to Duke Energy Ohio due to fluctuations in market prices for Energy as set forth in Section 5.5.

"Market Price Hub" means a liquid pricing point located within PJM's geographic footprint.

"Minimum Margin Threshold" means \$100,000.

"Minimum Rating" means a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) as defined in Section 5.4(a).

"MW" means megaWatt.

“MWh” means megaWatt hour.

“NERC” means the North American Electric Reliability Corporation or its successor.

“Non-Defaulting Party” means (i) where an SSO Supplier is the Defaulting Party, Duke Energy Ohio; (ii) where Duke Energy Ohio is the Defaulting Party with respect to an Event of Default, the SSO Supplier to which the applicable obligation was owed.

“Ohio Sales and Use Taxes” has the meaning set forth in Section 12.8.

“Original Delivery Period” has the meaning set forth in Attachment A.

“Other SSO Supply Agreement” has the meaning set forth in Section 7.3(c).

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

“Performance Assurance” means collateral in the form of cash, letters of credit, or other security reasonably acceptable to the requesting party.

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

“PJM” means PJM Interconnection, L.L.C. or any successor organization thereto.

“PJM Agreements” means the PJM OATT, PJM Operating Agreement, PJM RAA and any other applicable PJM manuals or documents, or any successor, superseding or amended versions thereof that may take effect from time to time.

“PJM E-Account” means an account obtainable through PJM which provides access to web-based PJM scheduling, settlement, accounting, marketing and other informational and economic systems.

“PJM OATT or PJM Tariff” means the Open Access Transmission Tariff of PJM or the successor, superseding or amended versions of the Open Access Transmission Tariff that may take effect from time to time.

“PJM Operating Agreement” means the Amended and Restated Operating Agreement of PJM or the successor, superseding or amended versions of the Amended and Restated Operating Agreement that may take effect from time to time.

“PJM RAA” means the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region or any successor, superseding or amended versions of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region that may take effect from time to time.

“Price” means, with respect to each SSO Supplier, the price in \$/MWh set forth in Attachment A, resulting from Duke Energy Ohio’s Solicitation for the opportunity to provide SSO Supply. The Price is the basis for financial settlement of SSO Supply supplied by an SSO Supplier for SSO Customers under this Agreement.

“PUCO” means the Public Utilities Commission of Ohio, or any successor thereto.

“Residential Customer” means a Customer taking service under Duke Energy Ohio’s residential rates (Rate RS, Rate ORH, Rate TD, Rate TD-13, Rate RS3P or Rate RSLI).

“Seasonal Billing Factor” means a numerical factor, as set forth in Attachment B, one amount applicable during the summer months of June through September, and one amount applicable during the non-summer months of October through May, applied to the Price in accordance with the provisions of Article 6 and thereby used to adjust Duke Energy Ohio’s payments to SSO Suppliers.

“Settlement Amount” means the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which the Non-Defaulting Party incurs as a result of Early Termination, calculated from the Early Termination Date through the end of the Original Delivery Period. For purposes of calculating the Settlement Amount, the quantity of Energy (and other components of SSO Supply) provided for under this Agreement for the period following the Early Termination Date through the remainder of the Original Delivery Period will be determined by the Non-Defaulting Party in a commercially reasonable manner reflecting estimated SSO Load for un-switched customers as of the Early Termination Date based on the then most recent load switching report filed by Duke Energy Ohio with the PUCO as of the Early Termination Date. The calculation of Settlement Amount with respect to an Early Termination shall exclude Default Damages calculated pursuant to Section 7.3(a).

“Solicitation” means the competitive bidding process by which the counterparty, quantity, pricing and other terms of this Agreement are established.

“Special Contract Customers” means Customers that take retail generation service from Duke Energy Ohio under terms and conditions different than the otherwise applicable tariff.

“Specified Indebtedness” with respect to a Party means as of any date, without duplication, (i) all obligations of such Party for borrowed money, (ii) all indebtedness of such Party for the deferred purchase price of property or services purchased (excluding current accounts payable incurred in the ordinary course of business), (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired, (iv) all indebtedness under leases which shall have been or should be, in accordance with generally accepted accounting principles, recorded as capital leases in respect of which such Party is liable as lessee, (v) the face amount of all outstanding letters of credit issued for the account of such Party (other than letters of credit relating to indebtedness included in indebtedness of such Party pursuant to another clause of this definition) and, without duplication, the unreimbursed amount of all drafts drawn thereunder, (vi) indebtedness secured by any lien on property or assets of such Party, whether or not assumed (but in any event not exceeding the fair market value of the property or asset), (vii) all direct guarantees of indebtedness referred to above of another Party, (viii) all amounts payable in connection with mandatory redemptions or repurchases of preferred stock or member interests or other preferred or priority equity interests and (ix) any obligations of such Party (in the nature of principal or interest) in respect of acceptances or similar obligations issued or created for the account of such Party.

“SSO Customers” means Residential Customers, Commercial/Industrial Customers and Lighting Customers, including Special Contract Customers.

“SSO Load” means the full electricity requirements for SSO Service of SSO Customers.

“SSO Service” means Standard Service Offer service that is not provided by a CRES Supplier.

“SSO Supplier” has the meaning set forth in the preamble.

“SSO Supplier Responsibility Share” means, for each SSO Supplier, the fixed percentage share of the SSO Load for which the SSO Supplier is responsible as set forth in Attachment A.

“SSO Supply” means unbundled Energy, Capacity and Ancillary Services, including, to the extent not expressly assumed by Duke Energy Ohio pursuant to Section 3.2, all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, as measured and reported to PJM, and such other services or products that an SSO Supplier may be required to provide, by PJM or other Governmental Authority, in order to meet the requirements of SSO Service.

“Standard Service Offer” means a market-based standard service offer provided by Duke Energy Ohio under PUCO tariffs of all competitive retail electric services necessary to maintain essential electric service to Customers, including unbundled Energy, Capacity, Ancillary Services and Firm Transmission Service, including all transmission and distribution losses, congestion and imbalance costs associated with the provision of the foregoing services, other obligations or responsibilities currently imposed or that may be imposed by PJM, as required by Section 4928.141 of the Ohio Revised Code.

“Tangible Net Worth” or “TNW” means total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles.

“Taxes” have the meaning set forth in Section 12.8.

“Term” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 7.3(c).

“Total Exposure Amount” means an amount calculated daily for each SSO Supplier reflecting the total credit exposure to Duke Energy Ohio and consisting of the sum of: (i) the Mark-to-Market Exposure Amount arising under this Agreement; (ii) any amount(s) designated as the “mark-to-market exposure amount” (or similar designation) under any Other SSO Supply Agreement; and (iii) the amount designated as the “credit exposure” (or similar designation) under any Other SSO Supply Agreement; less (iv) amounts due to such SSO Supplier pursuant to Section 6.1; provided that in the event the amount calculated for any day is a negative number, it shall be deemed to be zero for such day.

“Total Exposure Amount Guaranty” means a guaranty, in substantially the form set forth in Attachment D, provided by a Guarantor in favor of Duke Energy Ohio guaranteeing an SSO Supplier’s financial obligation with respect to its Total Exposure Amount.

“Tranche” means a fixed percentage share of the SSO Load as determined for the purposes of the Solicitation conducted to procure SSO Supply for the SSO Load.

ARTICLE 2

TERM AND TERMINATION

2.1 Term

The Term of this Agreement shall begin on the Effective Date and extend through and include the end of the Delivery Period (“Term”) unless terminated earlier or extended pursuant to the terms of this Agreement; provided, however, that the provision of SSO Supply by SSO Suppliers will commence on _____, 201_ at 12:01 a.m. prevailing Eastern Time and end on _____, 201_.

2.2 Mutual Termination

Duke Energy Ohio and any SSO Supplier may terminate this Agreement at any time during the Term on such terms and under such conditions as they mutually agree.

2.3 Early Termination

This Agreement may be terminated by a Party prior to the end of the Term due to an occurrence of an Event of Default and the declaration of an Early Termination Date by the Non-Defaulting Party pursuant to Section 7.2 (an “Early Termination”).

2.4 Termination of ESP

In the event Duke Energy Ohio terminates its ESP as of May 31, 2017, Duke Energy Ohio may terminate this Agreement with respect to the portion of the Delivery Period, if any, between June 1, 2017 and May 31, 2018. Duke Energy Ohio shall exercise such right of termination by providing written notice to an SSO Supplier by December 31, 2016. Subject to Section 2.5, upon such a termination, neither Duke Energy Ohio nor such SSO Supplier shall have any obligations under this Agreement with respect to the portion of the Delivery Period, if any, between June 1, 2017 and May 31, 2018.

2.5 Effect of Termination

The applicable provisions of this Agreement shall continue in effect and survive the termination of this Agreement to the extent necessary to provide for final accounting, billing, billing adjustments, resolution of any billing disputes, realization of any collateral or other security, set-off, final payments, or payments pertaining to liability and indemnification obligations arising from acts or events that occurred in connection with this Agreement during the Term.

ARTICLE 3

GENERAL TERMS AND CONDITIONS

3.1 SSO Supplier's Obligations to Provide SSO Supply and Other Obligations

Each SSO Supplier hereby agrees, severally, but not jointly, as follows:

(a) during the Delivery Period, such SSO Supplier shall sell, deliver and provide SSO Supply on a firm and continuing basis in order to meet its SSO Supplier Responsibility Share, in accordance with this Agreement and the PJM Agreements;

(b) (i) except with respect to Capacity, each SSO Supplier's obligation under Section 3.1(a) will result in physical delivery of SSO Supply and not financial settlement; (ii) the quantity of SSO Supply that such SSO Supplier must deliver will be determined by the requirements of the SSO Load, which may be different than the amount indicated in the Solicitation; and (iii) this Agreement does not provide for an option by such SSO Supplier with respect to the quantity of SSO Supply to be delivered;

(c) in connection with the provision of SSO Supply at the Delivery Point, each SSO Supplier shall be responsible for, in proportion to its SSO Supplier Responsibility Share, all costs and expenses in Attachment F, PJM billing statement line items, identified as the responsibility of the SSO Supplier, and any other costs and expenses related to transmission and Ancillary Services, unless expressly indicated otherwise in this Agreement;

(d) during the Term, each SSO Supplier is responsible, at its sole cost and expense, for any changes in PJM products and pricing required for the delivery of its SSO Supplier Responsibility Share, including all other costs and expenses related to transmission and Ancillary Services in connection with the provision of SSO Supply in proportion to its SSO Supplier

Responsibility Share, except for any changes to products or the pricing of such products that are the responsibility of Duke Energy Ohio pursuant to Section 3.2;

(e) each SSO Supplier is responsible for all transmission and distribution losses and congestion and imbalance costs incurred to supply its SSO Supplier Responsibility Share;

(f) each SSO Supplier shall be at all times during the Delivery Period (i) a member in good standing of PJM; (ii) qualified by PJM as a “Market Buyer” and “Market Seller” pursuant to the PJM Agreements, and (iii) qualified as a PJM “Load Serving Entity;”

(g) each SSO Supplier shall be responsible, and be liable, to PJM for the performance of its LSE obligations associated with the provision of SSO Supply under this Agreement;

(h) each SSO Supplier shall have and maintain, throughout the Delivery Period, FERC authorization to make sales of Energy, Capacity, and Ancillary Services at market-based rates within PJM; and

(i) each SSO Supplier shall deliver SSO Supply to the Delivery Point under this Agreement free and clear of any and liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

3.2 Duke Energy Ohio’s Obligation to Take SSO Supply and other Obligations

Duke Energy Ohio hereby agrees as follows:

(a) during the Delivery Period, Duke Energy Ohio shall purchase and accept the SSO Supply provided by an SSO Supplier pursuant to Section 3.1 at the Delivery Point and shall make payment to the SSO Supplier based on the Price;

(b) during the Delivery Period, Duke Energy Ohio shall be a member in good standing of PJM;

(c) during the Delivery Period, Duke Energy Ohio shall be responsible for the provision of Firm Transmission Service from the Delivery Point;

(d) Duke Energy Ohio shall be responsible, at its sole costs and expense, for:

i. charges and credits assessed under, Schedule 1A (Transmission Owner Scheduling, System Control and Dispatch Services), Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Services), “Network Integration Transmission Service (NITS)” under the PJM Agreements, and Schedule 12 (Transmission Enhancement Charge) of the PJM Tariff;

ii. other non-market-based costs, fees or charges imposed on or charged to Duke Energy Ohio by FERC or a regional transmission organization, independent transmission operator, or similar organization approved by FERC; and

iii. such services and schedules as they may be modified or superseded from time to time;

(e) Duke Energy Ohio will be responsible for (i) metering, billing and delivery with respect to SSO Customers (and SSO Suppliers will have no responsibility with respect thereto) and (ii) distribution services (and SSO Suppliers will have no responsibility with respect thereto); and

(f) Duke Energy Ohio shall be responsible, at its sole cost and expense, for the provision of any renewable energy resource requirement as set forth in Ohio Rev. Code Ann. Sections 4928.64 and 4928.65 and regulations promulgated in respect thereto.

3.3 PJM E-Accounts

Each SSO Supplier and Duke Energy Ohio shall work with PJM to establish any PJM E-Accounts necessary for such SSO Supplier to provide SSO Supply. Each SSO Supplier may manage its PJM E-Accounts in its sole discretion; provided such SSO Supplier acts in accordance with the standards set forth in the PJM Agreements.

3.4 Reliability Guidelines

Each Party agrees to adhere to the applicable operating policies, criteria and guidelines of the NERC, PJM, their successors, and any regional and sub-regional requirements.

3.5 Regulatory Authorizations

(a) Duke Energy Ohio and each SSO Supplier shall obtain and maintain throughout the Delivery Period all regulatory authorizations necessary to perform their respective obligations under this Agreement.

(b) Each SSO Supplier shall cooperate in good faith with Duke Energy 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 associated with the provision of SSO Supply before the PUCO, FERC or any other Governmental Authority.

3.6 PJM Member Default Cost Allocation

In the event PJM imposes a Default Allocation Assessment upon Duke Energy Ohio relating to a default during the Term, Duke Energy Ohio may, in its sole discretion, invoice each SSO Supplier, based on its SSO Supplier Responsibility Share, for amounts determined, in Duke Energy Ohio's sole discretion, to be properly payable by such SSO Supplier from the Default Allocation Assessment and each SSO Supplier shall pay such amounts within three (3) Business Days after receipt of such invoice, subject to the dispute resolution procedures set forth in Article 11.

3.7 Status of SSO Supplier

In order to meet Duke Energy Ohio's service obligations under Legal Authorities, it is the intent of the Parties that each SSO Supplier shall be deemed a LSE for the duration of the Delivery Period pursuant to the PJM Agreements and Legal Authorities.

3.8 Sales for Resale

All SSO Supply provided by an SSO Supplier to Duke Energy Ohio shall be sales for resale, with Duke Energy Ohio reselling such SSO Supply to SSO Customers.

3.9 Declaration of Authority

As designated or otherwise required by Duke Energy Ohio, Duke Energy Ohio and each SSO Supplier shall execute a Declaration of Authority, a representative form of which is attached hereto as Attachment G. Duke Energy Ohio shall have the right to modify at any time the Attachment A – Addendum to the Declaration of Authority. In the event Duke Energy Ohio exercises such right to modify the Attachment A – Addendum, each SSO Supplier shall execute an amendment to the Declaration of Authority or a new Declaration of Authority within fifteen (15) Business Days as required by Duke Energy Ohio.

ARTICLE 4

SCHEDULING, FORECASTING AND INFORMATION SHARING

4.1 Scheduling

(a) Each SSO Supplier shall schedule SSO Supply and make all necessary arrangements for the delivery of SSO Supply through the PJM Office of Interconnection pursuant to the PJM Agreements.

(b) Duke Energy Ohio will provide to each SSO Supplier and to PJM all information required by PJM for the purpose of calculating each SSO Supplier's SSO Supply obligations, including the magnitude of each SSO Supplier's SSO Supply obligation, as required by the PJM Office of Interconnection.

4.2 Load Forecasting

Duke Energy Ohio shall not be required to provide to any SSO Supplier any load forecasting services.

4.3 Disconnection and Curtailment by Duke Energy Ohio

Duke Energy Ohio shall have the right, without incurring any liability to any SSO Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the SSO Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever Duke Energy Ohio determines in its discretion acting in good faith that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of Duke Energy Ohio's facilities; or due to any other reason affecting the safe and reliable operation of any of Duke Energy Ohio's or a Customer's facilities, including Emergencies, forced outages or potential overloading of any of Duke Energy Ohio's transmission or distribution circuits, potential damage to the Customer's facilities or any risk of injury to persons, or when Duke Energy Ohio is directed by PJM. Duke Energy Ohio shall not show any preference for any Affiliate in connection with any such disconnection, curtailment or reduction.

4.4 Loss of Service to SSO Customers

The Parties agree and acknowledge that service to SSO Customers may be lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of Duke Energy Ohio affecting the transmission and distribution facilities of Duke Energy Ohio. No Party will have any liability to any other Party for the occurrence of such events. In no event will a loss of service to a Customer affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such loss of service.

4.5 PJM Requirements

The Parties acknowledge and agree that, as members of PJM, each of them is bound by the PJM Agreements and any other operating instructions, policies and procedures set forth by PJM. Each SSO Supplier acknowledges and agrees that it will cooperate with Duke Energy Ohio and PJM as the applicable balancing authority and reliability coordinator so that Duke Energy Ohio will be in compliance with all PJM emergency operations procedures, which include procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction and full interruption of Customer load by either manual or automatic means.

4.6 Compliance with Governmental Directives

Each SSO Supplier acknowledges and agrees that Duke Energy Ohio may need to act in response to directives by a Governmental Authority that may affect SSO Supply or SSO Load. Each SSO Supplier agrees to cooperate fully with Duke Energy Ohio in order to comply with such directives.

ARTICLE 5

CREDIT AND PERFORMANCE SECURITY

5.1 Applicability

Each SSO Supplier agrees that it will meet the creditworthiness standards of this Article 5 at all times during the Term and will inform Duke Energy Ohio immediately of any changes in its credit rating or financial condition. Without limiting the foregoing, each SSO Supplier shall, upon the written request of Duke Energy Ohio, affirmatively demonstrate to Duke Energy Ohio in a manner satisfactory to Duke Energy Ohio its compliance with the creditworthiness standards set forth hereunder. Duke Energy Ohio may establish less restrictive creditworthiness standards under this Article 5 in a non-discriminatory manner.

During the Term, each SSO Supplier or its Guarantor, if applicable, that has been granted an Independent Credit Threshold or a Credit Limit agrees to provide as soon as practicable (i) after the end of each fiscal year, complete annual audited financial statements (including footnotes), and (ii) after the end of each fiscal quarter, complete quarterly unaudited financial statements (including footnotes). If such financial statements are readily and timely available from the SSO Supplier's website or other public website such as www.sec.gov, then this requirement shall be deemed to be satisfied.

5.2 Creditworthiness Determination

Duke Energy Ohio will determine the creditworthiness of an SSO Supplier or its Guarantor, if applicable, whether organized under the laws of the United States or organized under the laws of a foreign jurisdiction, based on its most recent senior unsecured debt rating (or, if unavailable, its corporate or issuer rating). Duke Energy Ohio will have full discretion, without liability or recourse to such SSO Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by such SSO Supplier or Guarantor. Duke Energy Ohio may re-evaluate the creditworthiness of an SSO Supplier or Guarantor from time to time, including whenever it becomes aware of an adverse change in such SSO Supplier's or Guarantor's credit standing. In addition, the SSO Supplier may petition Duke Energy Ohio to re-evaluate its creditworthiness whenever an event occurs that the SSO Supplier reasonably believes would improve the determination made by Duke Energy Ohio of its or its Guarantor's creditworthiness. Duke Energy Ohio's credit re-evaluation must be completed as soon as

practicable, but in no event longer than thirty (30) days after receiving a fully documented request. Duke Energy Ohio shall provide the rationale for its determination of the Credit Limit and any resulting security requirement and such determination shall be deemed final and conclusive. Duke Energy Ohio shall perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. Each SSO Supplier or its Guarantor shall provide unrestricted access to its audited financial statements; however, if audited financial statements are not available, Duke Energy Ohio may specify other types of financial statements that will be accepted. If Duke Energy Ohio determines in its sole discretion that it is unable to adequately assess an SSO Supplier's or Guarantor's creditworthiness or the credit rating of an SSO Supplier or its Guarantor is insufficient, such SSO Supplier shall be required to post ICR Collateral in accordance with Section 5.4(d) and Margin Collateral in accordance with Section 5.7.

5.3 Independent Credit Requirement

The Independent Credit Requirement ("ICR") per Tranche ("ICRT") that will be required of each SSO Supplier under this Agreement will initially be the sum of the amounts set forth on Attachment C-1 at the inception of the Original Delivery Period for each Tranche and will decline throughout the Term in accordance with the schedule set forth on Attachment C-1.

5.4 Independent Credit Threshold

Each SSO Supplier that qualifies under the following criteria will be granted an Independent Credit Threshold ("ICT").

(a) For an SSO Supplier or its Guarantor that has been organized under the laws of the United States, the following requirements must be satisfied in order for such SSO Supplier to be granted an ICT:

i. the SSO Supplier or its Guarantor, as applicable, must (1) be rated by Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's") or Fitch, Inc. ("Fitch"), and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) of at least "BB" from S&P, "Ba2" from Moody's, or "BB" from Fitch (a "Minimum Rating"). If the SSO Supplier or its Guarantor is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the SSO Supplier or its Guarantor is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating

will be used. If the SSO Supplier and an Affiliate(s) are both winning bidders in the Solicitation for the provision of SSO Supply, then the SSO Supplier or its Guarantor, as applicable, and the Affiliate(s) will proportionally share the maximum level of the ICT using the highest rating as determined for the SSO Supplier or its Guarantor, as applicable, and the Affiliate(s). The maximum level of the ICT will be determined based on the following table:

Credit Rating of the SSO Supplier or its Guarantor			Maximum Independent Credit Threshold (calculated as the lesser of the percentage of TNW and the applicable Independent Credit Threshold Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Independent Credit Threshold Cap
A- and above	A3 and above	A- and above	16%	Not applicable
BBB+	Baa1	BBB+	10%	Not applicable
BBB	Baa2	BBB	10%	Not applicable
BBB-	Baa3	BBB-	8%	Not applicable
BB+	Ba1	BB+	2%	\$3,000,000
BB	Ba2	BB	1%	\$1,500,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

ii. for SSO Suppliers having a Guarantor, the maximum level of the ICT that can be granted based on an ICT Guaranty will be determined in accordance with subsection (i) above, with reference to the credit rating of the Guarantor.

The ICT granted to the SSO Supplier will not exceed the amount of the ICT Guaranty. The ICT Guaranty tendered by the SSO Supplier to satisfy the ICT requirement arising under this Section 5.4 shall be a separate guaranty from the Total Exposure Amount Guaranty, if any, tendered by the SSO Supplier to satisfy any requirement for a Credit Limit to cover the Total Exposure Amount arising under Section 5.6; provided, however, that a single Guaranty may be provided if such Guaranty is for an unlimited amount.

(b) For an SSO Supplier or its Guarantor that has not been organized under the laws of the United States, the following requirements must be satisfied in order for such SSO Supplier to be granted an ICT:

i. the SSO Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for SSO Suppliers that have been organized under the laws of the United States; or

ii. the Guarantor of an SSO Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for Guarantors of SSO Suppliers that have been organized under the laws of the United States. Duke Energy Ohio may reject such Guarantors that do not meet the creditworthiness requirements.

(c) All SSO Suppliers or Guarantors of SSO Suppliers that have not been organized under the laws of the United States must, in addition to all documentation required elsewhere in this Section 5.4, supply the following to Duke Energy Ohio as a condition of being granted an ICT:

i. for an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the SSO Supplier is organized that (A) the SSO Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the SSO Supplier in such foreign jurisdiction and does not violate any local law or the SSO Supplier's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of this Agreement and the performance by the SSO Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such SSO Supplier that the Person executing this Agreement on behalf of the SSO Supplier has the authority to execute this Agreement and that the governing board of such SSO Supplier has approved the execution of this Agreement. Duke Energy Ohio will have full discretion, without liability or recourse to the SSO Supplier, to evaluate the sufficiency of the documents submitted by the SSO Supplier; or

ii. for the Guarantor of an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is organized that (A) the

Guarantor is duly incorporated and existing in such foreign jurisdiction; (B) the ICT Guaranty is the binding and enforceable obligation of the Guarantor in such foreign jurisdiction and does not violate any local law or the Guarantor's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of the ICT Guaranty and the performance by the Guarantor of its obligations thereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Person executing the ICT Guaranty on behalf of the Guarantor has the authority to execute the ICT Guaranty and that the governing board of such Guarantor has approved the execution of the ICT Guaranty. Duke Energy Ohio will have full discretion, without liability or recourse to the Guarantor or the SSO Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

(d) SSO Suppliers who do not qualify for an ICT or whose ICT plus the amount of any cash or Letter of Credit already posted in accordance with Section 5.9 to satisfy its aggregate ICR under this Agreement and any Other SSO Supply Agreement (the "ICR Collateral") does not meet its aggregate ICR under this Agreement and any Other SSO Supply Agreement, must post ICR Collateral at the time of or prior to the Effective Date to the extent its aggregate ICR under this Agreement and any Other SSO Supply Agreement exceeds its ICT.

5.5 Mark-to-Market Credit Exposure Methodology

To calculate the Mark-to-Market Exposure Amount for each SSO Supplier, the following mark-to-market credit exposure methodology will be used. At the time the Solicitation is completed, the Mark-to-Market Exposure Amount for each SSO Supplier shall be set equal to zero. Subsequently, the differences between the prevailing market prices on a valuation date and the market prices in effect on the date the Solicitation is completed will be used to calculate the Mark-to-Market Exposure Amounts for each SSO Supplier, as described further in Attachment C-2. The total Mark-to-Market Exposure Amount will be equal to the sum of the Mark-to-Market Exposure Amounts for each Billing Period, or portion thereof, remaining during the Original Delivery Period. Forward Market Prices will be determined with reference to publicly available market price quotations obtained by Duke Energy Ohio, as adjusted by Duke Energy

Ohio to more closely approximate the price impact of serving a requirements load which reflects hourly variations due to customer usage patterns. Such adjustment is further described in Attachment C-2. However, if market price quotations are not publicly available, Forward Market Prices will be determined by Duke Energy Ohio using any method which Duke Energy Ohio deems appropriate and which reasonably reflects forward market pricing conditions in PJM. The Mark-to-Market Exposure Amount may also be adjusted on a monthly basis to reflect changes in expected SSO Load by means of a volume adjustment factor, if such changes are material to the result of the calculation. The Mark-to-Market Exposure Amount will be stated on a present value basis by discounting using the then-prevailing LIBOR rate. The methodology for calculation of the Mark-to-Market Exposure Amount is illustrated in the example (using hypothetical numbers) in Attachment C-2.

5.6 Credit Limit

The following criteria constitute Duke Energy Ohio's creditworthiness requirements for the SSO Suppliers to cover the Total Exposure Amount:

(a) For SSO Suppliers to be granted a Credit Limit without delivering a Total Exposure Amount Guaranty or other Performance Assurances acceptable to Duke Energy Ohio, in the case of an SSO Supplier organized under the laws of the United States, the SSO Supplier must (1) be rated by S&P, Moody's or Fitch, and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) equal to the Minimum Rating. If the SSO Supplier is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the SSO Supplier is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. If the SSO Supplier and an Affiliate(s) are both winning bidders in the Solicitation for the provision of SSO Supply, then the SSO Supplier or its Guarantor, as applicable, and the Affiliate(s) will proportionally share the maximum level of the Credit Limit using the highest rating as determined for the SSO Supplier or its Guarantor, as applicable, and the Affiliate(s). The maximum level of the Credit Limit to cover the Total Exposure Amount will be determined based on the following table:

Credit Rating of the SSO Supplier or its Guarantor			Maximum Credit Limit (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap
A- and above	A3 and above	A- and above	16%	\$60,000,000
BBB+	Baa1	BBB+	10%	\$50,000,000
BBB	Baa2	BBB	10%	\$40,000,000
BBB-	Baa3	BBB-	8%	\$30,000,000
BB+	Ba1	BB+	2%	\$5,000,000
BB	Ba2	BB	1%	\$2,500,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

The SSO Supplier will be required to post cash or a Letter of Credit for the Margin due Duke Energy Ohio as set forth in Section 5.7 of this Agreement.

(b) For SSO Suppliers delivering a Total Exposure Amount Guaranty, in the case of a Guarantor organized under the laws of the United States, the maximum level of the Credit Limit to cover the Total Exposure Amount that could be granted based on the Total Exposure Amount Guaranty will be determined in accordance with subsection (a) above, with reference to the credit rating of the Guarantor, except that the Credit Limit granted to the SSO Supplier will not exceed the amount of the Total Exposure Amount Guaranty.

(c) For an SSO Supplier or Guarantor, if applicable, that has not been organized under the laws of the United States, the following standards will apply:

- i. the SSO Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for SSO Suppliers that have been organized under the laws of the United States; or
- ii. if the SSO Supplier is providing a Total Exposure Amount Guaranty, the Guarantor of an SSO Supplier must supply such evidence of creditworthiness as to provide Duke

Energy Ohio with comparable assurances of creditworthiness as applicable above for Guarantors of SSO Suppliers that have been organized under the laws of the United States. Duke Energy Ohio may reject such Guarantors that do not meet the creditworthiness requirements.

(d) All SSO Suppliers or Guarantors of SSO Suppliers, if applicable, that have not been organized under the laws of the United States must, in addition to all documentation required elsewhere in this Section 5.6, supply the following to Duke Energy Ohio:

i. For an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the SSO Supplier is organized that (A) the SSO Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the SSO Supplier in such foreign jurisdiction and does not violate any local law or the SSO Supplier's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of this Agreement and the performance by the SSO Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such SSO Supplier that the Person executing this Agreement on behalf of the SSO Supplier has the authority to execute this Agreement and that the governing board of such SSO Supplier has approved the execution of this Agreement. Duke Energy Ohio will have full discretion, without liability or recourse to the SSO Supplier, to evaluate the sufficiency of the documents submitted by the SSO Supplier; or

ii. For the Guarantor of an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is organized that (A) the Guarantor is duly incorporated and existing in such foreign jurisdiction; (B) the Total Exposure Amount Guaranty is the binding and enforceable obligation of the Guarantor in such foreign jurisdiction and does not violate any local law or the Guarantor's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of the Total Exposure Amount Guaranty and the performance by the Guarantor of its obligations thereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Person executing the Total Exposure Amount Guaranty on behalf of

the Guarantor has the authority to execute the Total Exposure Amount Guaranty and that the governing board of such Guarantor has approved the execution of the Total Exposure Amount Guaranty. Duke Energy Ohio will have full discretion, without liability or recourse to the Guarantor or the SSO Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

(e) For an SSO Supplier with a Total Exposure Amount Guaranty, the SSO Supplier will be granted a Credit Limit up to the amount of the Total Exposure Amount Guaranty, but not exceeding the Credit Limit shown in the table above. The Total Exposure Amount Guaranty shall be provided to Duke Energy Ohio on or prior to the Effective Date, but may be modified in any amended or substitute Total Exposure Amount Guaranty provided to Duke Energy Ohio during the Term. The SSO Supplier, however, may not increase or substitute its Total Exposure Amount Guaranty for the purpose of increasing its applicable Credit Limit during the time period after Duke Energy Ohio has made a demand of the SSO Supplier to cover Margin (a "Margin Call") but before the SSO Supplier has provided Duke Energy Ohio with cash credited to a deposit account of Duke Energy Ohio or a Letter of Credit in accordance with Section 5.9, in each case in an amount equal to the Margin (the "Margin Collateral"). Notwithstanding anything herein to contrary, the SSO Supplier may increase the amount of its Total Exposure Amount Guaranty after satisfying a Margin Call. Upon Duke Energy Ohio's receipt of an amended or substitute Total Exposure Amount Guaranty increasing the amount of the Total Exposure Amount Guaranty, the SSO Supplier may request a return of Margin Collateral in accordance with Section 5.7. The SSO Suppliers will be required to post cash or a Letter of Credit for the Margin due Duke Energy Ohio as set forth in Section 5.7 of this Agreement.

(f) Under no circumstances shall the Credit Limit plus any other credit limit granted to the SSO Supplier or its Guarantor under any Other SSO Supply Agreement exceed the Credit Limit hereunder.

5.7 Posting Margin Collateral and Return of Excess Collateral

If at any time and from time to time during the Delivery Period, Margin exists with respect to an SSO Supplier, then Duke Energy Ohio on any Business Day may make a Margin Call of such SSO Supplier; provided however that Duke Energy Ohio may not make a Margin Call unless the Margin exceeds the Minimum Margin Threshold. Upon receipt of a Margin Call, the applicable SSO Supplier shall provide to Duke Energy Ohio Margin Collateral, which shall

comprise of cash or a Letter of Credit. The Margin Collateral shall be in the amount equal to the Margin less the amount of any Margin Collateral already posted by the SSO Supplier in which Duke Energy Ohio has a first priority, perfected security interest to secure the obligations of the SSO Supplier under this Agreement and any Other SSO Supply Agreement. For the avoidance of doubt, any ICR Collateral posted pursuant to Section 5.4 shall not constitute Margin Collateral.

If an SSO Supplier receives a Margin Call from Duke Energy Ohio by 1:00 p.m. prevailing Eastern Time on a Business Day, then such SSO Supplier shall post Margin Collateral the following Business Day if posting cash and the second Business Day following the Margin Call if posting a Letter of Credit, unless in each case Duke Energy Ohio agrees in writing to extend the period to provide Margin Collateral. If the SSO Supplier receives a Margin Call after 1:00 p.m. prevailing Eastern Time on a Business Day, whether posting cash or a Letter of Credit, then the SSO Supplier must post Margin Collateral on the second Business Day following the Margin Call unless Duke Energy Ohio agrees in writing to extend the period to provide Margin Collateral. Duke Energy Ohio will not unreasonably deny a request for a one-day extension of such period.

Margin Collateral being held by Duke Energy Ohio that is not needed to satisfy the Margin ("Excess Collateral"), will be returned to the SSO Supplier upon receipt of a written request from the SSO Supplier; provided, however, that the SSO Supplier may not request Excess Collateral until such Excess Collateral exceeds the Minimum Margin Threshold. If the SSO Supplier posted cash and notice is received by Duke Energy Ohio by 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the following Business Day and if the SSO Supplier posted cash and notice is received by Duke Energy Ohio after 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the second Business Day following the date of notice. If the SSO Supplier posted a Letter of Credit, the Excess Collateral shall be returned on the next Business Day following the Business Day on which the amendment to the Letter of Credit is received from the issuing bank, unless in each case the SSO Supplier agrees in writing to extend such period for returning the Excess Collateral. The SSO Supplier will not unreasonably deny a request for a one-day extension of the period for returning the Excess Collateral.

5.8 Grant of Security Interest; Remedies

To secure its obligations under this Agreement, the SSO Supplier hereby grants to Duke Energy 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 deposit accounts in the name of Duke Energy Ohio or partially in the name of Duke Energy Ohio or held for the benefit of Duke Energy Ohio and all funds credited to any and all of the foregoing, (ii) all securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash and other tangible property delivered to and held by Duke Energy Ohio (or its agents or custodians) and (iii) all proceeds (as defined in the UCC) of any and all of the foregoing. The SSO Supplier agrees to take such action as reasonably required to create and perfect Duke Energy Ohio's first priority security interest in, and lien on (and right of setoff against), such collateral 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 an Event of Default where an SSO Supplier is the Defaulting Party or an Early Termination Date (whether or not such SSO Supplier was the Defaulting Party), Duke Energy Ohio may do any one or more of the following in any order: (i) exercise any of the rights and remedies of Duke Energy Ohio, including the right to set-off and liquidation, against any and all ICR Collateral, Margin Collateral or other collateral of such SSO Supplier in the possession of Duke Energy Ohio, whether held in connection with this Agreement or any Other SSO Supply Agreement, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of such SSO Supplier; and (ii) draw on any outstanding Letter of Credit provided by such SSO Supplier. Duke Energy Ohio will apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce such SSO Supplier's obligations under this Agreement and under any Other SSO Supplier Agreement, and such SSO Supplier shall remain liable for any amounts owing to Duke Energy Ohio after such application, subject to Duke Energy Ohio's obligation to return any surplus proceeds remaining after all such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit-related security or deposit transfers shall be sent in accordance with Section 12.2.

5.9 Acceptable Forms of Security

At each SSO Supplier's option, the following are deemed to be acceptable for posting Margin Collateral or ICR Collateral, if required:

- (a) Cash credited to a deposit account of Duke Energy Ohio; and
- (b) A Letter of Credit, which shall state that such Letter of Credit will renew automatically for successive one-year or shorter periods, until terminated upon at least ninety (90) days' prior written notice from the issuing financial institution. If Duke Energy Ohio receives notice from the issuing financial institution that the Letter of Credit is being cancelled, the SSO Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the requirements in this Section 5.9. The receipt of the substitute Letter of Credit must be effective as of the cancellation date and delivered to Duke Energy Ohio thirty (30) days before the cancellation date of the original Letter of Credit. If the SSO Supplier fails to supply a substitute Letter of Credit as required, then Duke Energy Ohio will have the right to draw on the existing Letter of Credit and to hold the amount as Margin Collateral or ICR Collateral, as applicable.

The Letter of Credit shall be issued by a U.S. commercial bank or by a U.S. branch of a foreign bank with total assets of at least \$5 billion having a general long-term senior unsecured debt rating of A- or higher as rated by S&P or A3 or higher as rated by Moody's and shall permit presentation at a bank located in the United States of America.

If at any time the bank or other financial institution from which an SSO Supplier has obtained a Letter of Credit fails to meet the foregoing conditions, the SSO Supplier will immediately notify Duke Energy Ohio and, within one (1) Business Day of the failure of the financial institution to meet the required conditions, 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 Duke Energy Ohio. For avoidance of doubt, SSO Supplier may elect to substitute a cash deposit for the Letter of Credit within the time frame specified herein.

Notwithstanding anything in this Agreement to the contrary, Duke Energy Ohio may exercise any rights or claims to any collateral posted, delivered or pledged to them under this Agreement, before, after, concurrently with, or to the exclusion of, any other collateral posted, delivered or pledged prior to applying any cash collateral against, or making a drawing under any

letter of credit in respect of, any liabilities of the SSO Supplier hereunder or its Guarantor under the guaranty to Duke Energy Ohio or any of them.

5.10 Reporting; Maintenance of Creditworthiness

(a) Each SSO Supplier must promptly notify Duke Energy Ohio of any change in its or its Guarantor's credit rating or financial condition. The SSO Supplier or Guarantor must also furnish evidence of an acceptable credit rating or financial condition upon the request of Duke Energy Ohio.

(b) If the lowest credit rating (whether corporate or issuer rating or unsecured senior debt rating) used to determine the SSO Supplier's ICT or its Credit Limit adversely changes, Duke Energy Ohio will require ICR Collateral or Margin Collateral from such SSO Supplier in accordance with Sections 5.4, 5.6 and 5.7. The additional security must be in a form acceptable to Duke Energy Ohio, as specified in Section 5.9.

5.11 Interest on Cash Held by Companies

Duke Energy Ohio will pay simple interest calculated at the lower of the Interest Rate or 6% per annum on all cash held by Duke Energy Ohio pursuant to this Agreement. If applicable, each Billing Period the SSO Supplier will prepare a statement of interest amounts due from Duke Energy Ohio. The statement will be sent to Duke Energy Ohio within three (3) Business Days after the end of the Billing Period via overnight mail or other expeditious means. Duke Energy Ohio will make interest payments on the first Business Day after the fifth (5th) day of each calendar month.

5.12 No Endorsement of SSO Supplier

Duke Energy Ohio's determination of an SSO Supplier's creditworthiness pursuant to the process set forth in this Article 5 will not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of such SSO Supplier. Duke Energy Ohio will treat all SSO Suppliers in a non-discriminatory manner and shall provide no preference to any SSO Supplier.

ARTICLE 6

BILLING, PAYMENT AND NETTING

6.1 Invoice Statement

Subject to Section 6.2, Duke Energy Ohio and each SSO Supplier shall pay all amounts due to each other hereunder in accordance with the following provisions:

(a) For each Billing Period, Duke Energy Ohio will prepare and provide an invoice to each SSO Supplier, which will show (i) amounts due to the SSO Supplier equal to the Price multiplied by the applicable Seasonal Billing Factor multiplied by the Estimated Monthly Energy Share, (ii) the Energy Share Adjustment from such Billing Period, if any, and (iii) all Charges due to Duke Energy Ohio incurred during the Billing Period (the "Billing Statement").

(b) Duke Energy Ohio will determine the total amount payable by one Party to the other Party by netting the aggregate amounts due and owing to one Party against the aggregate amounts due and owing to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed. For any amounts due and owing Duke Energy Ohio, Duke Energy Ohio will specify in each Billing Statement how the amounts will be allocated among the SSO Suppliers. In the case of the Energy Share Adjustment, the allocation will be based on the respective SSO Loads of Duke Energy Ohio.

(c) The Billing Statement will be sent to each SSO Supplier within six (6) Business Days after the end of the Billing Period.

(d) Duke Energy Ohio or the SSO Supplier, as the case may be, will make payment on or before the twentieth (20th) day of each calendar month. If such day falls on a Saturday, Sunday or any other day which is a legal holiday or a day on which banking institutions are closed, payment will be due the following Business Day. All such payments shall be made by electronic transfer to an account designated in writing by each respective Party.

(e) All payments shall be subject to adjustment for any arithmetic errors, computation errors, or other errors, provided that the errors become known within one (1) year of the earlier of (i) the end of the Term or (ii) the Early Termination Date.

(f) Overdue payments shall accrue interest at the Interest Rate from, and including, the due date, but excluding date of payment.

(g) If a good faith dispute arises between Duke Energy Ohio and the SSO Supplier regarding a Billing Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Billing Statement, if any, no later than the due date and shall present the dispute in

writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the date of the Billing Statement in dispute. Billing Statement disputes must be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11. Upon resolution of a Billing Statement dispute, any payments made to either Party will include interest at the Interest Rate on the payment payable from the date that notice of a Billing Statement dispute was received by the non-disputing Party.

(h) Notwithstanding anything to the contrary contained in this Section 6.1, the determination of the allocation among SSO Suppliers of amounts due and owing to Duke Energy Ohio, as set forth in a Billing Statement, will be final and binding, absent manifest error.

6.2 PJM Billing; Third Party Billing

(a) Duke Energy Ohio and each SSO Supplier shall direct PJM to invoice Duke Energy Ohio and such SSO Supplier for PJM charges and credits relating to such SSO Supplier's and Duke Energy Ohio's rights and obligations under this Agreement. If PJM is unable to invoice charges or credits in accordance with the foregoing sentence, Duke Energy Ohio shall rectify such PJM invoice discrepancy in the Billing Statement sent pursuant to Section 6.1.

(b) The Parties agree that the PJM invoice may change from time to time. Allocation of any charges that are reflected in a PJM invoice that are not included on or are inconsistent with Attachment F will be determined pursuant to Sections 3.1(c), 3.1(d), 3.1(e), 3.2(d) and 12.6.

(c) Duke Energy Ohio shall have no obligation to authorize or initiate a billing adjustment or resettlement under PJM rules, regulations, or agreements for any SSO Supplier. However, in the event Duke Energy Ohio authorizes or initiates any such billing adjustment or resettlement, each SSO Supplier hereby consents to such billing adjustment or resettlement.

(d) Duke Energy Ohio shall have no responsibility for billing between an SSO Supplier and any other third party. Duke Energy Ohio shall be solely responsible for billing SSO Customers for SSO Supply.

ARTICLE 7

BREACH AND DEFAULT

7.1 Events of Default

An “Event of Default” shall mean with respect to a Party (the “Defaulting Party”) the occurrence of any of the following:

(a) the failure of the Defaulting Party to make, when due, any payment required pursuant to this Agreement (including under Section 6.2) if such failure is not remedied within two (2) Business Days after receipt of written notice of non-payment, and provided the payment is not the subject of a good faith dispute as described in Section 6.1;

(b) any representation or warranty made by the Defaulting Party herein is false or misleading in any material respect when made;

(c) the failure of the Defaulting Party to perform any material obligation set forth in this Agreement (other than events that are otherwise specifically covered in this Article 7 as a separate Event of Default) if such failure is not remedied within two (2) Business Days after written notice;

(d) the Defaulting Party becomes Bankrupt;

(e) with respect to an SSO Supplier, the failure of the Defaulting Party to provide Margin Collateral, or with respect to Duke Energy Ohio, the failure of the Defaulting Party to return Excess Collateral, in each case pursuant to Section 5.7;

(f) failure of the Defaulting Party to comply with its obligations pursuant to Article 5 (except to the extent constituting a separate Event of Default under Section 7.1(e)) if such failure is not remedied within three (3) Business Days after receipt of written notice of such failure;

(g) the failure of the Defaulting Party to comply with the requirements of Sections 3.1(f), 3.1(g), 3.1(h) and 3.5, as applicable, if such failure is not remedied within three (3) Business Days of such failure;

(h) PJM has declared the Defaulting Party to be in default of any provision of any PJM Agreement, which default prevents the Defaulting Party’s performance hereunder, if such failure is not remedied within three (3) Business Days after written notice;

(i) PJM holds Duke Energy Ohio responsible for the provision of all or any portion of SSO Supply to meet the Defaulting Party’s SSO Supplier Responsibility Share under this Agreement;

(j) the occurrence and continuation of: (i) a default, event of default or other similar condition or event in respect of the Defaulting Party or its Guarantor, if applicable, under one or more agreements or instruments, individually or collectively, relating to Specified Indebtedness

in an aggregate amount of not less than the applicable Cross Default Amount, which results in such Specified Indebtedness becoming immediately due and payable; (ii) a default by the Defaulting Party or its Guarantor, if applicable, in making on the due date therefor one or more payments in respect of any obligation under contract or at law, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount; or (iii) a default, event of default or other similar condition or event by the Defaulting Party under any Other SSO Supply Agreement or by its Guarantor under any guaranty with respect to any Other SSO Supply Agreement; and

(k) with respect to a Defaulting Party's Guarantor, if any, (i) any representation or warranty made by such Guarantor in connection with this Agreement or any related Guaranty is intentionally or unintentionally false or misleading in any material respect when made or when deemed made or repeated; (ii) the failure of such Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement and such failure is not remedied within three (3) Business Days after written notice; (iii) the failure of such Guarantor's Guaranty to be in full force and effect (other than in accordance with its terms) prior to the satisfaction of all obligations of the Defaulting Party under this Agreement without the written consent of Duke Energy Ohio; (iv) such Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty; or (v) such Guarantor becomes Bankrupt.

7.2 Remedies Upon an Event of Default

If an Event of Default shall have occurred and be continuing, the Non-Defaulting Party shall have the right to:

(a) immediately suspend performance upon written notice to the Defaulting Party; provided, however, that if an SSO Supplier is the Non-Defaulting Party, such SSO Supplier may only suspend performance if the default of the Defaulting Party constitutes an Event of Default under Sections 7.1(a) or (d);

(b) declare an Early Termination and designate by written notice an Early Termination Date which shall be no earlier than the day such designation notice is effective and no later than twenty (20) calendar days after such notice is effective; provided, however, that if an SSO Supplier is the Non-Defaulting Party, such SSO Supplier may only declare an Early

Termination if the default of the Defaulting Party constitutes an Event of Default under Section 7.1(a) or (d);

(c) calculate and receive from the Defaulting Party payment for any Default Damages which the Non-Defaulting Party incurs as of the date of the event giving rise to the Event of Default, until the earlier of; (i) the Early Termination Date (if applicable); (ii) the date the Event of Default has been cured by the Defaulting Party; or (iii) the date the Non-Defaulting Party waives such Event of Default;

(d) withhold any payments due to the Defaulting Party under this Agreement as a set-off against any Default Damages, or Termination Payment, as applicable, the Defaulting Party is entitled to receive;

(e) draw down, liquidate, set-off against, or demand payment under, any Guaranty, ICR Collateral and Margin Collateral; and

(f) exercise any other remedies at law or in equity.

7.3 Default Damages; Settlement Amount; Termination Payment

(a) **Default Damages.** Subject to Section 7.3(e), the Defaulting Party shall pay Default Damages on or before three (3) Business Days after receipt of an invoice therefor. The invoice shall include a written statement explaining in reasonable detail the calculation of such amount. Neither Party will be liable for Default Damages if this Agreement is terminated by a Governmental Authority.

(b) **Settlement Amount.** If the Non-Defaulting Party has declared an Early Termination Date pursuant to Section 7.2(b), the Non-Defaulting Party shall have the right to (i) accelerate all amounts owing between the Defaulting Party and the Non-Defaulting Party and to liquidate and terminate the undertakings set forth in this Agreement as between the Defaulting Party and the Non-Defaulting Party; and (ii) withhold any payments due to the Defaulting Party under this Agreement pending payment of the Termination Payment. The Non-Defaulting Party will calculate, in a commercially reasonable manner, the Settlement Amount with respect to the Defaulting Party's obligations under the Agreement and shall net the Settlement Amount in the manner provided for in Section 7.3(c).

(c) **Termination Payment.** The Non-Defaulting Party will calculate a single payment (the "Termination Payment") by netting out (i) the sum of the Settlement Amount under

this Agreement payable to the Defaulting Party, plus (a) similar settlement amounts payable to the Defaulting Party under any other agreements between Duke Energy Ohio and the applicable SSO Supplier for the provision of SSO Supply or similar service (each, an "Other SSO Supply Agreement") being terminated due to the event giving rise to the Event of Default plus, (b) at the option of the Non-Defaulting Party, any Performance Assurance then available to the Non-Defaulting Party under this Agreement or Other SSO Supply Agreements and actually received, liquidated and retained by the Non-Defaulting Party, plus (c) any or all other amounts due to the Defaulting Party under this Agreement and, at the option of the Non-Defaulting Party, Other SSO Supply Agreements, and (ii) the sum of the Settlement Amount under this Agreement payable to the Non-Defaulting Party, plus (a) similar settlement amounts payable to the Non-Defaulting Party under any Other SSO Supply Agreement being terminated due to the event giving rise to the Event of Default plus, (b) at the option of the Non-Defaulting Party, any Performance Assurance then available to the Defaulting Party under this Agreement or Other SSO Supply Agreements and actually received, liquidated and retained by the Defaulting Party, plus (c) any or all other amounts due to the Non-Defaulting Party under this Agreement and, at the option of the Non-Defaulting Party, Other SSO Supply Agreements.

The Termination Payment will be due to or due from the Non-Defaulting Party as appropriate; provided, however, that if an SSO Supplier is the Defaulting Party and the Termination Payment is due to such SSO Supplier, Duke Energy Ohio will be entitled to retain a reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as a security for additional amounts that may be determined to be due and owing by such SSO Supplier as Default Damages; and further provided that any previously attached security interest of Duke Energy Ohio in such retained amounts will continue. If the Termination Payment has been retained by Duke Energy Ohio as security for additional amounts that may be determined to be due and owing by the SSO Supplier, and if, upon making a final determination of Default Damages and payment therefor, the Termination Payment, or any portion thereof, is to be made to the SSO Supplier, Duke Energy Ohio will pay interest at the Interest Rate on the Termination Payment amount being made to the SSO Supplier for the period of such retention.

(d) **Notice of Termination Payment.** As soon as practicable after calculation of the Termination Payment, notice must be given by the Non-Defaulting Party to the Defaulting Party

of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Subject to Section 7.3(e), the Termination Payment must be made by the Party that owes it within three (3) Business Days after such notice is received by the Defaulting Party.

(e) **Disputes With Respect to Default Damages or Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Default Damages or Termination Payment, in whole or in part, the Defaulting Party must, within three (3) Business Days of receipt of the Non-Defaulting Party's calculation of the Default Damages or Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Any dispute under this Section 7.3(e) shall be subject to the dispute resolution procedures in Article 11; provided, however, that if the Default Damages or Termination Payment is due from the Defaulting Party, the Defaulting Party must first provide Performance Assurance to the Non-Defaulting Party in an amount equal to the Default Damages or Termination Payment, as the case may be.

7.4 SSO Supplier Right to Assume

If an SSO Supplier defaults in its obligations hereunder resulting in the exercise of the right of Early Termination by Duke Energy Ohio with respect to such SSO Supplier, then Duke Energy Ohio, subject to Legal Authorities, may offer all of the non-defaulting SSO Suppliers the right to assume under this Agreement additional Tranches of SSO Load, subject to further compliance with the creditworthiness provisions of Article 5. If more than one SSO Supplier is interested in assuming the additional Tranches of SSO Load and the Parties are unable to agree on an allocation of such additional Tranches, then Duke Energy Ohio shall utilize a blind lottery process to determine which SSO Suppliers shall serve the additional Tranches of SSO Load. The provision of any such offer by Duke Energy Ohio to non-defaulting SSO Suppliers shall indicate the duration of the offer and the manner of acceptance thereof. Following the assumption by one or more SSO Suppliers of additional Tranches hereunder, such SSO Supplier(s) and Duke Energy Ohio shall execute an amendment to this Agreement modifying Attachment A to reflect the revised SSO Supplier Responsibility Share of the non-defaulting SSO Supplier(s) accepting such offer. An SSO Supplier will not suffer any prejudice under this Agreement or otherwise

arising from its election to decline an offer to assume additional Tranches upon the default of another SSO Supplier.

7.5 Setoff of Payment Obligations of the Non-Defaulting Party

Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any Other SSO Supply Agreement will be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any Other SSO Supply Agreement that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations under this Agreement or any Other SSO Supply Agreement that are unsecured, but which are guaranteed by a Guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any Other SSO Supply Agreement.

7.6 Preservation of Rights of Non-Defaulting Party

The rights of the Non-Defaulting Party under this Agreement, including Sections 7.2, 7.3 and 7.5, will be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

8.1 Duke Energy Ohio's Representations and Warranties

Duke Energy Ohio hereby represents and warrants to the SSO Suppliers as follows:

- (a) it is an electric utility corporation duly organized, validly existing and in good standing under the laws of the State of Ohio;
- (b) it has all requisite power and authority necessary for it to enter into and to legally perform its obligations under this Agreement and any other documentation relating to this Agreement;
- (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents,

any contracts to which it is a party or any law, rule, regulation, order or similar provision of any Governmental Authority;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitute its legally valid and binding obligation enforceable against it in accordance with its terms;

(e) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings, including before a Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement;

(f) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement;

(g) it is acting for its own account, has made its own independent decision to enter into this Agreement, is not relying upon the advice or recommendations of any other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement;

(h) at the commencement of the Original Delivery Period, it has obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement; and

(i) 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.

8.2 SSO Supplier Representations and Warranties

Each SSO Supplier hereby represents and warrants to Duke Energy Ohio as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and, if organized outside the State of Ohio, is qualified to conduct its business and is in good standing in Ohio;

(b) it has all regulatory authorizations and all requisite power and authority necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement;

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

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

(e) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

(f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings, including before a Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement;

(g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement, is not relying upon the advice or recommendations of Duke Energy Ohio in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement;

(i) at the commencement of the Original Delivery Period, it (i) has obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement; (ii) is a member in good standing with PJM; (iii) is qualified by PJM as a "Market Buyer" and "Market Seller" pursuant to the PJM Agreements; (iv) is qualified as a PJM "Load Serving Entity;" and (v) has duly obtained all FERC authorization necessary or desirable to make sales of Energy, Capacity, and Ancillary Services at market-based rates within PJM; and

(j) 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.

ARTICLE 9

RISK OF LOSS; LIMITATION OF LIABILITY

9.1 Risk of Loss

Title and risk of loss with respect to the SSO Supply shall pass from each SSO Supplier to Duke Energy Ohio when the SSO Supply is delivered to the Delivery Point. As between the Parties, each SSO Supplier shall be deemed to be in exclusive control and possession of the SSO Supply prior to and at the Delivery Point, and Duke Energy Ohio shall be deemed to be in exclusive control and possession of the SSO Supply from the Delivery Point. Each SSO Supplier warrants that it will deliver the SSO Supply to Duke Energy Ohio at the Delivery Point free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point.

9.2 Limitation of Liability

EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING ARTICLE 10, AS BETWEEN DUKE ENERGY OHIO AND EACH SSO SUPPLIER, EACH PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES INCURRED AS A RESULT OF A PARTY'S FAILURE TO COMPLY WITH THIS AGREEMENT. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NO PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, ARISING OUT OF SUCH PARTY'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NOTHING HEREIN SHALL IMPOSE ANY OBLIGATION OR LIABILITY FROM ONE SSO SUPPLIER TO ANY OTHER SSO SUPPLIER, EXCEPT AS PROVIDED IN ARTICLE 10.

ARTICLE 10

INDEMNIFICATION

10.1 Indemnification

(a) Each SSO Supplier shall defend, save harmless and indemnify Duke Energy Ohio and its Affiliates, shareholders, managers, directors, officers, employees and agents (collectively, the "Duke Energy Ohio Indemnified Party") against and from any and all of the following incurred by the Duke Energy Ohio Indemnified Party solely as a result of a third party claim

(including PJM and each other SSO Supplier) against the Duke Energy Ohio Indemnified Party: loss, liability, damage, claim, cost, charge, demand or expense (including reasonable attorneys' fees) (collectively "Indemnification Losses") for injury or death to persons and damage to property including a Party's employees or any third party to the extent (i) caused by any act or omission (or alleged act or omission) of the SSO Suppliers or their respective Affiliates, managers, directors, officers, employees and agents and (ii) such Indemnification Losses arise out of or are in any manner connected with the performance of this Agreement by the SSO Suppliers or for which the SSO Supplier assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the Indemnification Losses were caused wholly or in part by the gross negligence or willful misconduct of Duke Energy Ohio. Duke Energy Ohio may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) Duke Energy Ohio and each SSO Supplier shall defend, save harmless and indemnify each other SSO Supplier and its Affiliates, shareholders, managers, directors, officers, employees and agents (the "Indemnified Supplier") against and from any and all of the following incurred by the Indemnified Supplier solely as a result of a third party claim (including another SSO Supplier) against the Indemnified Supplier: Indemnification Losses for injury or death to persons and damage to property including a Party's employees or any third party to the extent (i) caused by any act or omission (or alleged act or omission) of Duke Energy Ohio or such SSO Supplier or their respective Affiliates, managers, directors, officers, employees and agents, and (ii) such Indemnification Losses arise out of or are in any manner connected with the performance of this Agreement by Duke Energy Ohio or such SSO Supplier or for which the SSO Supplier assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the Indemnification Losses were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified Supplier. The Indemnified Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) Any Party that receives notice of any claim, action, or proceeding for which it may seek indemnification under this Section shall promptly notify the indemnitor in writing; provided, however, that the failure to so notify the indemnitor shall not relieve the indemnitor of liability hereunder except to the extent that the defense of such claim, action, or proceeding is

prejudiced by the failure to give the notice. The indemnitee shall cooperate fully with the indemnitor in connection with any such litigation or proceeding the defense of which the indemnitor has assumed. No indemnitee may consent to entry of any judgment or enter into any settlement of any claim, action, or proceeding that would give rise to any liability of the indemnitor hereunder without the indemnitor's prior written consent, which consent may not be unreasonably withheld or delayed. If the indemnitor assumes the defense of the claim, action, or proceeding, no compromise or settlement of such claim, action, or proceeding may be effected by the indemnitor without the indemnitee's consent unless (i) there is no finding or admission of any violation of law or the rights of any Person and no effect on any other claims, actions, or proceedings that may be made against the indemnitee and (ii) the sole relief provided is monetary damages and such damages and the associated costs of suit and attorneys' fees are paid in full by the indemnitor.

ARTICLE 11

DISPUTE RESOLUTION

11.1 Informal Dispute Resolution

If a dispute arises between the Parties relating to this Agreement, a Party shall give the other Party written notice of a dispute which has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within five (5) days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within ten (10) days after delivery of the initial notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. If, within twenty (20) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, then either Party may pursue any remedies available at law or in equity as set forth below.

11.2 Formal Dispute Resolution

After the requirements of Section 11.1 have been satisfied, all disputes between the Parties, except where this Agreement requires otherwise, shall be submitted to an Ohio State court of competent jurisdiction or to a federal court of competent jurisdiction situated in the State of Ohio, which courts shall have exclusive jurisdiction to settle disputes arising under or related to this Agreement.

11.3 Recourse to Agencies or Courts of Competent Jurisdiction

Notwithstanding Section 11.2, nothing in this Agreement shall restrict the rights of a Party to file a complaint with the FERC under relevant provisions of the Federal Power Act or with the PUCO under relevant provisions of the Legal Authorities. The Parties' agreement under this Section 11.3 is without prejudice to any Party's right to contest jurisdiction of the FERC or PUCO to which a complaint is brought.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Assignment

(a) Duke Energy Ohio may not assign this Agreement or its rights or obligations hereunder without the prior written consent of the applicable SSO Suppliers, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, Duke Energy Ohio may, without the consent of the SSO Suppliers (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to any Person having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of Duke Energy Ohio. Under (a)(ii) and (a)(iii) above, Duke Energy Ohio shall be relieved of its obligations upon the assignment and assumption of the assignee, except for those obligations which have arisen prior to the date of assignment.

(b) An SSO Supplier may not assign this Agreement or any rights or obligations hereunder without the prior written consent of Duke Energy Ohio, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, an SSO Supplier may, without the consent of Duke Energy Ohio (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or

other financial arrangements; (ii) transfer or assign this Agreement to any Person having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of such SSO Supplier. Under (b)(ii) and (b)(iii) above, the assigning SSO Supplier shall be relieved of its obligations upon (x) the assignment and assumption of this Agreement by the assignee and (y) the assignee's satisfaction of the credit requirements set forth in Article 5, except for those obligations which have arisen prior to the date of assignment.

12.2 Notices

All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received by the earlier of actual receipt or three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received by the earlier of actual receipt or two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 12.2.

To Duke Energy Ohio:

NOTICES & CORRESPONDENCE:

Duke Energy Ohio
526 S. Church Street, EC02F
Charlotte, NC 28202
Attn: Contract Administration Manager

Contract Administration Manager Contact: Rhonda Johnson
Email: Rhonda.Johnson@duke-energy.com
Phone: (980) 373-2322
Fax: (980) 373-9908

INVOICES:

Attention: Sherry Hardy

PAYMENTS:

Institution: PNC Bank
Account No.: 4000600813
ABA No: 041000124

SCHEDULING:

Attention: Dina Atkins

Email: Sherry.Hardy@duke-energy.com
Fax Number: (980) 373-8721
Phone Number: (980) 373-8688

Email: Dina.Atkins@duke-energy.com
Fax Number: (704) 382-4014
Phone Number: (980) 373-3785

CREDIT:

Attention: Lewis Camp
Email: Lewis.Camp@duke-energy.com
Fax Number: (980) 373-8640
Phone Number: (704) 382-5903

To SSO Supplier:

Each SSO Supplier's notification information is set forth on Attachment A.

12.3 General

This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersedes all prior communications and proposals (oral or written). This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable Governmental Authority or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only.

12.4 Governing Law

To the extent not subject to the jurisdiction of FERC, this Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Ohio, without regard to principles of conflicts of law.

12.5 Standard of Review

Except as provided in Sections 7.4 and 12.6, this Agreement shall not be amended, modified, terminated, discharged or supplanted nor any provision hereof waived, unless mutually agreed in writing by the Parties. Except as provided in Section 12.6, 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 written agreement of the Parties to change any provisions. Other than as expressly permitted in this Agreement, the standard of review for any changes proposed by a Party, a non-party, or the FERC, acting *sua sponte*, shall be the “public interest” application of the “just and reasonable” 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) (the “*Mobile-Sierra*” doctrine), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*.

12.6 PJM Agreement Modifications

(a) If the PJM Agreements are amended or modified so that any term, schedule or section reference herein to such agreement is changed, such term, schedule or section reference herein shall be deemed automatically (and without any further action by the Parties) to refer to the new term, schedule or section of the PJM Agreements.

(b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, the Parties shall cooperate to make the conforming changes to this Agreement.

12.7 Confidentiality

(a) The Parties shall hold in confidence any information disclosed by one Party to the other Party in connection with negotiation of or performance under this Agreement unless (i) required, pursuant to any applicable court order, administrative order, statute, regulation or other official order by any government or any agency or department thereof, to disclose; (ii) such information is already in the possession of the receiving party at the time of disclosure, as evidenced by the receiving party’s written documentation; (iii) such information becomes subsequently available to the receiving party on a non-confidential basis from a source not known or reasonably suspected by the receiving party to be bound by a confidentiality agreement

or secrecy obligation owed to the disclosing party; and (iv) such information is or becomes generally available to the public other than as a result of a breach of this Agreement.

(b) In the event of disclosure pursuant to Section 12.7(a)(i), Duke Energy Ohio will attempt to notify the SSO Supplier in advance of such disclosure. However, neither Duke Energy Ohio nor its employees, lenders, counsel, accountants, advisors or agents, will be responsible to the SSO Suppliers for any such disclosure and Duke Energy Ohio reserves the right to communicate publicly to third parties any and all information and data submitted as part of this Agreement or Solicitation in any proceedings before FERC, the PUCO and any other regulatory body and the courts, without the prior consent of, or notice to the SSO Suppliers, if Duke Energy Ohio deems such disclosure necessary.

(c) A Party may disclose information and documents provided in connection with this Agreement to its employees, lenders, counsel, accountants, advisors, or utility regulators who have a need to know such information and have agreed to keep such terms confidential.

(d) The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

12.8 Taxes

All present and future federal, state, municipal and other taxes imposed by any taxing authority by reason of the provision of SSO Supply by an SSO Supplier under this Agreement (collectively, the "Taxes") will be the liability of the SSO Supplier, except for Ohio sales and use taxes imposed under Ohio Rev. Code Ann. Tit. 57, Chapters 5739, 5740 and 5741 (the "Ohio Sales and Use Taxes"), which will be Duke Energy Ohio's responsibility. Should an SSO Supplier be required to remit any Ohio Sales and Use Taxes directly to the applicable taxing authority, other than Ohio Sales and Use Taxes previously collected by the SSO Supplier on behalf of Duke Energy Ohio, Duke Energy Ohio will defend and indemnify the SSO Supplier for such Ohio Sales and Use Taxes and will pay to the SSO Supplier all such Tax amounts upon demand. Each SSO Supplier shall pay all Taxes (other than Ohio Sales and Use 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 affected SSO Supplier will, if requested, provide Duke Energy Ohio with valid tax exemption certificates. Should Duke Energy Ohio be required to remit any Taxes directly to any applicable taxing authority (other than Ohio Sales and

Use Taxes and other Taxes previously collected by Duke Energy Ohio directly from an SSO Supplier), the SSO Supplier will defend and indemnify Duke Energy Ohio and will pay Duke Energy 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 the reporting of (i) any Taxes payable by an SSO Supplier; (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.

12.9 Record Retention

Each Party will retain for a period of two (2) years following the expiration of the Term necessary records so as to permit the Parties to confirm the accuracy of any statement, charge or computation made pursuant to this Agreement; provided that, if a Party provides notice within two (2) years of the expiration of the Term that it disputes the validity of any payments or quantity of Energy delivered, the Parties agree that they will retain all records related to such dispute until the dispute is resolved pursuant to Article 11.

Each SSO Supplier will have the right, upon reasonable notice, to inspect (at the sole cost and expense of such SSO Supplier) the books and records retained by Duke Energy Ohio only insofar as they relate to payments due and owing, or owed and paid, to such SSO Supplier. Such inspection must take place during regular business hours. Duke Energy Ohio will have the right, upon reasonable notice, to inspect (at the sole cost and expense of Duke Energy Ohio) the books and records retained by such SSO Supplier only insofar as they relate to Energy delivered by such SSO Supplier. Such inspection must take place during regular business hours.

12.10 Rules as to Usage

Except as otherwise expressly provided herein, the following rules shall apply to the usage of terms in this Agreement:

(a) The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(b) “Include,” “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.

(c) Any law defined or referred to above means such law as from time to time amended, modified or supplemented, including by succession of comparable successor law.

(d) “Hereof,” “herein,” “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to “Article,” “Section,” or another subdivision or to an attachment are, unless the context otherwise requires, to the relevant article, section, subsection or subdivision of or an attachment to such agreement or instrument. If such reference in this Agreement to “Article,” “Section,” or other subdivision does not specify an agreement or document, such reference refers to an article, section or other subdivision of this Agreement. All references to exhibits or schedules in any agreement or instrument that is governed by this Agreement are to exhibits or schedules attached to such instrument or agreement.

(e) All titles and headings used herein are for convenience and references purposes only, and shall not be applicable in construing or interpreting obligations under this Agreement.

(f) The word “or” will have the inclusive meaning represented by the phrase “and/or.”

(g) “Shall” and “will” have equal force and effect.

12.11 Counterparts

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which will constitute one instrument. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf) or tagged image format (.tif), and the Parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

[Signatures appear on next pages]

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.

DUKE ENERGY OHIO, INC.

By_____

Name: James P. Henning

Title: President

[SSO SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

[SSO SUPPLIER]

By: _____

Name:

Title

ATTACHMENTS

- A SSO Supplier Responsibility Share
- B Seasonal Billing Factor
- C Credit Examples
- D Form of Guaranty
- E Form of SSO Supplier Letter of Credit
- F Sample PJM Invoice
- G Representative Form of PJM Delegation of Authority

ATTACHMENT A

SSO SUPPLIER RESPONSIBILITY SHARE

SSO Supplier	Price (\$MWh)	SSO Supplier Responsibility Share Percentage (%)	No. of Tranches
_____	_____/MWh	_____%	_____

Original Delivery Period: _____, 201_ through _____, 201_.

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:

Article 5 Notices:

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

[SSO SUPPLIER]

By: _____

Name:

Title:

ATTACHMENT B

SEASONAL BILLING FACTOR

The Seasonal Billing Factors are as follows:

June 1 through September 30	
October 1 through December 31 and January 1 through May 31	

ATTACHMENT C-1

INDEPENDENT CREDIT REQUIREMENT PER TRANCHE

<u>Month</u>	<u>12-Month Procurement (\$/Tranche)</u>	<u>24-Month Procurement (\$/Tranche)</u>	<u>36-Month Procurement (\$/Tranche)</u>
Inception through May 2015	\$200,000	\$400,000	\$600,000
June 2015	\$150,000	\$325,000	\$525,000
July 2015	\$150,000	\$325,000	\$525,000
August 2015	\$150,000	\$325,000	\$525,000
September 2015	\$100,000	\$250,000	\$450,000
October 2015	\$100,000	\$250,000	\$450,000
November 2015	\$100,000	\$250,000	\$450,000
December 2015	\$100,000	\$250,000	\$450,000
January 2016	\$50,000	\$200,000	\$400,000
February 2016	\$50,000	\$200,000	\$400,000
March 2016	\$50,000	\$200,000	\$400,000
April 2016	\$50,000	\$200,000	\$400,000
May 2016	\$50,000	\$200,000	\$400,000
June 2016		\$150,000	\$325,000
July 2016		\$150,000	\$325,000
August 2016		\$150,000	\$325,000
September 2016		\$100,000	\$250,000
October 2016		\$100,000	\$250,000
November 2016		\$100,000	\$250,000
December 2016		\$100,000	\$250,000
January 2017		\$50,000	\$200,000

February 2017		\$50,000	\$200,000
March 2017		\$50,000	\$200,000
April 2017		\$50,000	\$200,000
May 2017		\$50,000	\$200,000
June 2017			\$150,000
July 2017			\$150,000
August 2017			\$150,000
September 2017			\$100,000
October 2017			\$100,000
November 2017			\$100,000
December 2017			\$100,000
January 2018			\$50,000
February 2018			\$50,000
March 2018			\$50,000
April 2018			\$50,000
May 2018			\$50,000

ATTACHMENT C-2

EXAMPLE MARK-TO-MARKET EXPOSURE AMOUNT CALCULATION

The following is an illustration of the methodology Duke Energy Ohio will use to determine the Mark-to-Market Exposure Amounts for each SSO Supplier.

Prior to the scheduled date of the Solicitation, the following parameters will be determined by Duke Energy Ohio, based on the then most currently available information:

1. The expected On-Peak SSO Load per Tranche;
2. The expected Off-Peak SSO Load per Tranche;
3. On-Peak Price Adjustment Factors; and
4. Off-Peak Price Adjustment Factors.

For purposes of the Mark-to-Market Exposure Amount calculation, "On-Peak" means the hours between 7:00 a.m. and 11:00 p.m. prevailing Eastern Time on Monday through Friday, excluding NERC holidays. "Off-Peak" means any hours that are not considered On-Peak.

The SSO Load for each month will be calculated by multiplying (i) the number of customers then being provided generation service by Duke Energy Ohio (the "Un-Switched Customers") by (ii) the historical monthly average usage per customer derived from data including only the Un-Switched Customers served by Duke Energy Ohio over a recent three-year period ("Historical Actual Usage"). The SSO Load will be calculated separately for each major rate class and then summed to determine the total SSO Load. The total SSO Load will then be separated into On-Peak and Off-Peak components (consistent with the definitions cited above), still on a monthly basis, based on the Historical Actual Usage for all customer classes combined. The SSO Load per Tranche (On-Peak and Off-Peak) will be equal to 1% of the total SSO Load calculated for each component.

A set of monthly On-Peak Price Adjustment Factors and Off-Peak Price Adjustment Factors will be developed using historical PJM day-ahead hourly prices applied to hourly usage derived from Historical Actual Usage on the Duke Energy Ohio system. The purpose of the Price Adjustment Factors is to restate the quoted Forward Market Prices, which are based on fixed block volumes of MWhs, to more closely approximate the price impact of serving a

requirements load which reflects hourly variations due to customer usage patterns. The Price Adjustment Factors are anticipated to be recalculated as of each future auction date and applied to all then existing SSO Agreements.

Duke Energy Ohio will determine the prevailing On-Peak Forward Market Prices and Off-Peak Forward Market Prices as of the closing day of the Solicitation for each month during the Delivery Period with reference to publicly available market price quotations obtained by Duke Energy Ohio. To the extent that quoted Forward Market Prices are not available on a monthly basis, monthly Forward Market Prices will be determined by Duke Energy Ohio with reference to publicly available market price data. Notwithstanding the foregoing, if market price data for Forward Market Prices is not available, Forward Market Prices will be determined by Duke Energy Ohio using any method which Duke Energy Ohio deems appropriate and which reasonably reflects forward market pricing conditions in PJM.

The Forward Market Prices prevailing on the closing day of the Solicitation are used as a basis for calculating the Mark-to-Market Exposure Amount. After the completion of the Solicitation, Duke Energy Ohio will calculate the Mark-to-Market Exposure Amount using the then prevailing Forward Market Prices as of any valuation date. Table C-1 shows the calculation of the Mark-to-Market Exposure Amount for a single Tranche using hypothetical Forward Market Prices and other assumptions for a 12-month Original Delivery Period from June 2015 through May 2016.

As shown on Table C-1, the difference between the then-prevailing On-Peak and Off-Peak Forward Market Prices as of the valuation date and the prices in effect as of the closing day of the Solicitation is multiplied by the most recently calculated expected On-Peak and Off-Peak SSO Load per Tranche. (For SSO Suppliers serving multiple Tranches, these values would be adjusted accordingly.) The result is then multiplied by the relevant Price Adjustment Factors, as determined by Duke Energy Ohio in its most recent solicitation, and then summed to calculate the Mark-to-Market Exposure Amount on an undiscounted basis.

For simplicity, the discounting of the Mark-to-Market Exposure Amount is not shown in detail on Table C-1. The final Mark-to-Market Exposure Amount is determined by stating the values on a present value basis as of the determination date by discounting the calculated values

at the then prevailing LIBOR rate applicable to each Delivery Month, and then multiplying by the Volume Adjustment Factor.

The Volume Adjustment Factor will be determined by recalculating the SSO Load per Tranche reflecting the then current number of Un-Switched Customers and Historical Actual Usage (by major rate class) and calculating the ratio of the current SSO Load per Tranche to the previous SSO Load per Tranche. The value for Un-Switched Customers is anticipated to be updated on a monthly basis and the value of Historical Actual Usage is anticipated to be updated in conjunction with each successive auction of SSO Load, but not less than once each calendar year.

Table C-1

Market Valuation (Prior to Start of Delivery Period)

[VALUES ARE FOR ILLUSTRATION ONLY]

Change in Forward Market Price (a)									
	On-Peak Market Price \$/MWh		Off-Peak Market Price \$/MWh		Tranche Volumes (b)		Price Adjustment Factor (c)		Mkt Value \$000 (d)
			On-Peak MWh	Off-Peak MWh	On-Peak	Off-Peak	On-Peak	Off-Peak	Undiscounted
Jun-14	\$	1.11	\$	0.80	2,384	2,084	1.0697	1.0670	\$ 5
Jul-14	\$	0.38	\$	0.46	2,911	2,679	1.0899	1.0808	\$ 3
Aug-14	\$	1.80	\$	0.77	2,948	2,329	1.0576	1.0701	\$ 8
Sep-14	\$	1.78	\$	1.51	1,907	1,836	1.0508	1.0439	\$ 6
Oct-14	\$	3.39	\$	2.11	1,662	1,644	1.0065	1.0215	\$ 9
Nov-14	\$	3.27	\$	2.31	1,826	1,856	1.0088	1.0168	\$ 10
Dec-14	\$	3.15	\$	2.31	2,281	2,411	1.0159	1.0174	\$ 13
Jan-15	\$	3.25	\$	2.25	2,321	2,485	1.0181	1.0217	\$ 13
Feb-15	\$	3.29	\$	2.50	2,089	2,112	1.0133	1.0180	\$ 12
Mar-15	\$	3.40	\$	2.25	1,928	1,944	1.0102	1.0249	\$ 11
Apr-15	\$	3.64	\$	2.34	1,631	1,624	1.0032	1.0207	\$ 10
May-15	\$	2.50	\$	1.18	1,930	1,818	1.0326	1.0571	\$ 7
									\$ 108
NPV of Mkt Value (e)									\$ 106
Volume Adjustment Factor (f)									\$ 0.9102
Market Value for Total Exposure Amount									\$ 96

(a): On-Peak and Off-Peak Forward Market Prices as of valuation date
less On-Peak and Off-Peak Forward Market Prices as of auction date

(b): Expected On-Peak and Off-Peak SSO Load per Tranche derived
from Historical Actual Usage and number of Un-Switched Customers
calculated per Attachment C-2 in most recent auction

(c): Price Adjustment Factor calculated per Attachment C-2 in most
recent auction

(d): Sum of (a) x (b) x (c) for On-Peak and Off-peak

(e): Market Value discounted to valuation date based on LIBOR
forward interest rates

(f): Volume Adjustment Factor is determined by applying the Historical
Actual Usage per customer class to the most recently available
number of customers per class (excluding PIPP) to derive the ratio
of updated load to previously calculated load

ATTACHMENT D
FORM OF GUARANTY
[ICT / TOTAL EXPOSURE AMOUNT] GUARANTY OF

_____ [Guarantor]

This Guaranty, dated as of _____, 201_, is made by _____, a _____ [corporation] (the "Guarantor"), for the benefit of Duke Energy Ohio, Inc., an Ohio corporation ("Duke Energy Ohio"). Capitalized terms used herein but not defined herein shall have the meaning given such terms in the Agreement (as defined below).

WHEREAS, Duke Energy Ohio has entered into or will be entering into one or more Master Standard Service Offer Supply Agreements (each individually and collectively, the "Agreement") with _____, a _____ [corporation] (the "SSO Supplier"), which may involve the extension of credit by Duke Energy Ohio. Guarantor hereby acknowledges that it will receive a direct or indirect benefit from the business transactions between the SSO Supplier and Duke Energy Ohio and the making of this Guaranty.

NOW, THEREFORE, in consideration of, and as an inducement for, Duke Energy Ohio entering into the Agreement, the Guarantor hereby covenants and agrees as follows:

1. **Guaranty.** The Guarantor hereby unconditionally and absolutely guarantees to Duke Energy Ohio the prompt payment when due, subject to any applicable grace period and upon demand in writing from Duke Energy Ohio, of any and all amounts payable by the SSO Supplier to Duke Energy Ohio arising out of the Agreement in connection with SSO Supplier's [ICT / Total Exposure Amount] (the "Obligations"). Notwithstanding the aggregate amount of the Obligations at any time or from time to time payable by the SSO Supplier to Duke Energy Ohio, the liability of the Guarantor to Duke Energy Ohio shall not exceed _____ U.S. Dollars (\$_____).

2. **Nature of Guaranty.** The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the SSO Supplier under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Duke Energy Ohio concerning any provisions of the Agreement; the rendering of any judgment against the SSO Supplier or any action to enforce the same; any failure by Duke Energy Ohio to take any steps necessary to preserve its rights to any security or collateral for the Obligations; the release of all or any portion of any collateral by Duke Energy Ohio; or any failure by Duke Energy Ohio to perfect or to keep perfected its security interest or lien in any portion of any collateral.

This Guaranty is one of payment and not of collection. This Guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment guaranteed

hereunder, in whole or in part, is rescinded or must otherwise be returned by Duke Energy Ohio upon the insolvency, bankruptcy or reorganization of the SSO Supplier or otherwise, all as though such payment had not been made.

3. **Waivers.** The Guarantor hereby expressly waives notice of acceptance of this Guaranty; notice of any Obligation to which this Guaranty may apply or of any security therefor; diligence; presentment; protest; notice of protest, acceleration, and dishonor; filing of claims with a court in the event of insolvency or bankruptcy of the SSO Supplier; all demands whatsoever, except as noted in Section 1 hereof; and any right to require a proceeding first against the SSO Supplier.

4. **Effect of Amendments.** Guarantor agrees that Duke Energy Ohio and SSO Supplier may modify or amend any or all of the Agreement and that Duke Energy Ohio may, according to the Agreement, delay or extend the date on which any performance must be made under the Agreement, or release SSO Supplier from the obligation to so perform or waive any right thereunder, all without notice to or further assent by Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by Duke Energy Ohio.

5. **Termination.** This Guaranty is intended to be and shall be construed to be a continuing, absolute and unconditional guaranty, and shall remain in full force and effect until all Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to Duke Energy Ohio, which termination shall be effective only upon receipt by Duke Energy Ohio of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to Duke Energy Ohio. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Obligations existing prior to the time the expiration or termination is effective, which Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

6. **Notices.** All notices and other communications about this Guaranty must be in writing, must be given by facsimile, hand delivery or overnight courier service and must be addressed or directed to the respective parties as follows:

If to Duke Energy Ohio, to:

Facsimile No.: _____

Attn.: _____

If to the Guarantor, to:

Facsimile No.: _____
Attn.: _____

Notices are effective when actually received by the party to which they are given, as evidenced by facsimile transmission report, written acknowledgment or affidavit of hand delivery or courier receipt.

7. **Representations and Warranties.** The Guarantor represents and warrants to Duke Energy Ohio as of the date hereof that:

- a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b) The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c) All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may

be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

8. **Certification.** The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement.

9. **Setoffs and Counterclaims.** Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which the SSO Supplier is or may be entitled arising from or out of the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the SSO Supplier.

10. **Subrogation.** The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Obligations, the Guarantor shall be subrogated to the rights of Duke Energy Ohio against the SSO Supplier, and Duke Energy Ohio agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. **Expenses.** The Guarantor hereby agrees to pay on demand all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Duke Energy Ohio's counsel) in any way relating to the enforcement or protection of the rights of Duke Energy Ohio hereunder; provided that the Guarantor shall not be liable for any expenses of Duke Energy Ohio if no payment under this Guaranty is due.

12. **Assignment.** This Guaranty shall be binding upon the Guarantor and upon its permitted successors and assigns, and shall inure to the benefit of Duke Energy Ohio and its permitted successors and assigns and shall apply to all successors and assigns of the SSO Supplier. The Guarantor may not assign this Guaranty nor delegate its duties or rights hereunder without the prior express written consent of Duke Energy Ohio. Duke Energy Ohio may assign this Guaranty in accordance with the terms of the Agreement.

13. **Amendments.** No term or provision of this Guaranty shall be amended, modified, altered, waived, or supplemented except in a writing signed by the parties hereto, except that Guarantor may amend this Guaranty without Duke Energy Ohio's consent if the amendment only increases the dollar amount stated in Section 1 to which liability of the Guarantor to Duke Energy Ohio shall not exceed, provided that Guarantor deliver such amendment to Duke Energy Ohio on or before the effective date of such amendment..

14. **Choice of Law and Venue.** The Guarantor and Duke Energy Ohio hereby agree that this Guaranty shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to principles of conflicts of law.

15. **Waiver of Jury Trial.** The Guarantor and Duke Energy Ohio, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

16. **Miscellaneous.** This Guaranty is the entire and only agreement between the Guarantor and Duke Energy Ohio with respect to the guarantee of amounts payable by the SSO Supplier to Duke Energy Ohio arising out of the Agreement in connection with SSO Supplier's [ICT / Total Exposure Amount]. All representations, warranties, agreements, or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its [corporate] name by its duly authorized representative as of the date first above written.

[GUARANTOR]

By:_____

Its:_____

ATTACHMENT E
FORM OF SSO SUPPLIER LETTER OF CREDIT

_____ (Date)

Letter of Credit No. _____

To: Duke Energy Ohio, Inc. ("Beneficiary")
550 South Tryon Street (DEC40C)
Charlotte, NC 28202
Attention: Chief Risk Officer

1. We hereby establish in your favor this irrevocable transferable 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 _____ (location) 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:

- (a) upon an Event of Default with respect to the Applicant under the Master Standard Service Offer Supply Agreement; or
- (b) in the event the Applicant has failed to supply a substitute letter of credit thirty (30) days prior to the expiration of this Letter of Credit as required by the Master Standard Service Offer Supply 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 Time¹) on such Business Day to _____ (Bank), _____ (address), (i) a notice in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary.

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 banks 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 hereof, 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 hereof.

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

¹ If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a business day should be adjusted accordingly.

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 hereof; 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 the 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 Letter of Credit for such additional one (1) year period.

8. As used herein:

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

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

“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.

“Master Standard Service Offer Supply Agreement” shall mean that certain Master Standard Service Offer Supply Agreement between the Applicant and the Beneficiary, dated _____

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 banking charges, 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 the minimum long-term senior unsecured debt rating of “A-” from Standard & Poor’s Rating Services or “A3” from Moody’s Investors Service, Inc.

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. Drafts showing amounts in excess of amounts available under this Letter of Credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this Letter of Credit.

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 _____ (as per Applicant's instructions). 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 the Beneficiary.

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 \$_____, inasmuch as (choose one of the following by placing an "X" on the line preceding the statement):

_____ (a) An Event of Default has occurred with respect to the Applicant under the Master Standard Service Offer Supply Agreement;

_____ (b) The Applicant has failed to supply a substitute letter of credit thirty (30) days prior to the expiration of this Letter of Credit as required by the Master Standard Service Offer Supply Agreement.

3. The amount to be received by Duke Energy Ohio, Inc. is \$_____.
4. 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,

Duke Energy Ohio, Inc.

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: Duke Energy Ohio, Inc.

\$ _____

For credit to the account of _____.

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

(Bank)

(Address)

Duke Energy Ohio, Inc.

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:

Each of 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's Address]

Very truly yours,

Duke Energy Ohio, Inc.

By: _____

Name:

Title:

Date:

Agreed and Accepted

(Bank)

By: _____

Title:

Date:

APPLICANT NAME

By: _____

Name:

Title:

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.

Duke Energy Ohio, Inc.

By: _____

Name:

Title:

Date:

cc: _____ (Applicant Name)

Annex 5 to Letter of Credit

NOTICE OF EXTENSION
OF LETTER OF CREDIT NO. _____

_____, 20__

To: Duke Energy Ohio, Inc.
550 South Tryon Street (DEC40C)
Charlotte, NC 28202
Attention: Chief Risk Officer

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,

BANK _____

By: _____

Name:

Title:

Date:

Duke Energy Ohio, Inc.

By: _____

Name:

Title:

Date:

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,

Duke Energy Ohio, Inc.

By: _____

Name:

Title:

Date:

The above signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

(Name of authenticating party)

(Authorized signature of authenticating party)

Name

Title

ATTACHMENT F
SAMPLE PJM INVOICE

PJM Billing Statement Line Items		
ID #	Resp.	CHARGES
1000	SSO S	Amount Due for Interest on Past Due Charges
1100	EDC	Network Integration Transmission Service
1108	EDC	Transmission Enhancement
1109	EDC	Midcontinent ISO Transmission Expansion Plan Assessment
1110	SSO S	Direct Assignment Facilities
1120	SSO S	Other Supporting Facilities
1130	SSO S	Firm Point-to-Point Transmission Service
1133	SSO S	Firm Point-to-Point Transmission Service Resale
1140	SSO S	Non-Firm Point-to-Point Transmission Service
1143	SSO S	Non-Firm Point-to-Point Transmission Service Resale
1200	SSO S	Day-ahead Spot Market Energy
1205	SSO S	Balancing Spot Market Energy
1210	SSO S	Day-ahead Transmission Congestion
1215	SSO S	Balancing Transmission Congestion
1218	SSO S	Planning Period Congestion Uplift
1220	SSO S	Day-ahead Transmission Losses
1225	SSO S	Balancing Transmission Losses
1230	SSO S	Inadvertent Interchange
1240	SSO S	Day-ahead Economic Load Response
1241	SSO S	Real-time Economic Load Response
1242	EDC	Day-Ahead Load Response Charge Allocation
1243	EDC	Real-Time Load Response Charge Allocation

1245	SSO S	Emergency Load Response
1250	SSO S	Meter Error Correction
1260	SSO S	Emergency Energy
1301	SSO S	PJM Scheduling, System Control and Dispatch Service - Control Area Administration
1302	SSO S	PJM Scheduling, System Control and Dispatch Service - FTR Administration
1303	SSO S	PJM Scheduling, System Control and Dispatch Service - Market Support
1304	SSO S	PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration
1305	SSO S	PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.
1306	SSO S	PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center
1307	SSO S	PJM Scheduling, System Control and Dispatch Service - Market Support Offset
1308	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration
1309	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration
1310	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Market Support
1311	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration
1312	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.
1313	SSO S	PJM Settlement, Inc.
1314	SSO S	Market Monitoring Unit (MMU) Funding
1315	SSO S	FERC Annual Charge Recovery
1316	SSO S	Organization of PJM States, Inc. (OPSI) Funding
1317	SSO S	North American Electric Reliability Corporation (NERC)
1318	SSO S	Reliability First Corporation (RFC)
1320	EDC	Transmission Owner Scheduling, System Control and Dispatch Service
1330	EDC	Reactive Supply and Voltage Control from Generation and Other Sources Service
1340	SSO S	Regulation and Frequency Response Service
1350	SSO S	Energy Imbalance Service
1360	SSO S	Synchronized Reserve
1365	SSO S	Day-ahead Scheduling Reserve
1370	SSO S	Day-ahead Operating Reserve
1371	SSO S	Day-ahead Operating Reserve for Load Response
1375	SSO S	Balancing Operating Reserve
1376	SSO S	Balancing Operating Reserve for Load Response
1377	SSO S	Synchronous Condensing
1378	SSO S	Reactive Services
1380	SSO S	Black Start Service
1400	SSO S	Load Reconciliation for Spot Market Energy
1410	SSO S	Load Reconciliation for Transmission Congestion
1420	SSO S	Load Reconciliation for Transmission Losses
1430	SSO S	Load Reconciliation for Inadvertent Interchange
1440	SSO S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service
1441	SSO S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund
1442	SSO S	Load Reconciliation for Schedule 9-6 - Advanced Second Control Center
1444	SSO S	Load Reconciliation for Market Monitoring Unit (MMU) Funding

1445	SSO S	Load Reconciliation for FERC Annual Charge Recovery
1446	SSO S	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding
1447	SSO S	Load Reconciliation for North American Electric Reliability Corporation (NERC)
1448	SSO S	Load Reconciliation for Reliability First Corporation (RFC)
1450	EDC	Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service
1460	SSO S	Load Reconciliation for Regulation and Frequency Response Service
1470	SSO S	Load Reconciliation for Synchronized Reserve
1475	SSO S	Load Reconciliation for Day-ahead Scheduling Reserve
1478	SSO S	Load Reconciliation for Balancing Operating Reserve
1480	SSO S	Load Reconciliation for Synchronous Condensing
1490	SSO S	Load Reconciliation for Reactive Services
1500	SSO S	Financial Transmission Rights Auction
1600	N/A	RPM Auction
1610	N/A	Locational Reliability
1650	N/A	Auction Specific MW Capacity Transaction
1660	N/A	Demand Resource and ILR Compliance Penalty
1661	N/A	Capacity Resource Deficiency
1662	N/A	Generation Resource Rating Test Failure
1663	N/A	Qualifying Transmission Upgrade Compliance Penalty
1664	N/A	Peak Season Maintenance Compliance Penalty
1665	N/A	Peak-Hour Period Availability
1666	N/A	Load Management Test Failure
1670	SSO S	FRR LSE Reliability
1687	SSO S	FRR LSE Schedule 9-5
1688	SSO S	FRR LSE Schedule 9-6
1920	SSO S	Station Power
1930	EDC	Generation Deactivation
1932	EDC	Generation Deactivation Refund
1980	SSO S	Miscellaneous Bilateral
1995	SSO S	PJM Annual Membership Fee
1999	SSO S	PJM Customer Payment Default

PJM Credits		
ID#	Resp.	CREDITS
2100	TO	Network Integration Transmission Service
2106	TO	Non-Zone Network Integration Transmission Service
2108	TO	Transmission Enhancement
2109	TO	Midcontinent ISO Transmission Expansion Plan Assessment
2110	TO	Direct Assignment Facilities
2120	TO	Other Supporting Facilities
2130	TO	Firm Point-to-Point Transmission Service
2132	SSO S	Internal Firm Point-to-Point Transmission Service
2133	SSO S	Firm Point-to-Point Transmission Service Resale
2140	EDC	Non-Firm Point-to-Point Transmission Service
2142	SSO S	Internal Non-Firm Point-to-Point Transmission Service
2143	SSO S	Non-Firm Point-to-Point Transmission Service Resale
2210	SSO S	Transmission Congestion
2217	SSO S	Planning Period Excess Congestion
2218	SSO S	Planning Period Congestion Uplift
2220	SSO S	Transmission Losses
2240	N/A	Day-ahead Economic Load Response
2241	N/A	Real-time Economic Load Response
2245	N/A	Emergency Load Response
2260	N/A	Emergency Energy
2320	EDC	Transmission Owner Scheduling, System Control and Dispatch Service
2330	EDC	Reactive Supply and Voltage Control from Generation and Other Sources Service
2340	N/A	Regulation and Frequency Response Service
2350	N/A	Energy Imbalance Service
2360	N/A	Synchronized Reserve
2365	N/A	Day-ahead Scheduling Reserve
2370	N/A	Day-ahead Operating Reserve
2371	N/A	Day-ahead Operating Reserve for Load Response
2375	N/A	Balancing Operating Reserve
2376	N/A	Balancing Operating Reserve for Load Response
2377	N/A	Synchronous Condensing
2378	N/A	Reactive Services
2380	N/A	Black Start Service
2420	SSO S	Load Reconciliation for Transmission Losses
2500	SSO S	Financial Transmission Rights Auction
2510	SSO S	Auction Revenue Rights
2600	N/A	RPM Auction
2620	N/A	Interruptible Load for Reliability
2630	N/A	Capacity Transfer Rights
2640	N/A	Incremental Capacity Transfer Rights
2650	N/A	Non-Unit Specific Capacity Transaction
2660	N/A	Demand Resource and ILR Compliance Penalty
2661	N/A	Capacity Resource Deficiency

2662	N/A	Generation Resource Rating Test Failure
2663	N/A	Qualifying Transmission Upgrade Compliance Penalty
2664	N/A	Peak Season Maintenance Compliance Penalty
2665	N/A	Peak-Hour Period Availability
2666	N/A	Load Management Test Failure
2687	EDC	FRR LSE Schedule 9-5
2688	EDC	FRR LSE Schedule 9-6
2930	EDC	Generation Deactivation
2932	EDC	Generation Deactivation Refund
2980	SSO S	Miscellaneous Bilateral

ATTACHMENT G

REPRESENTATIVE FORM OF PJM DELEGATION OF AUTHORITY

DECLARATION OF AUTHORITY

This Declaration of Authority ("Declaration") is made this ____ day of _____, 20____ by the following:

PRINCIPAL: _____ ("Principal")

AGENT: _____ Duke Energy Ohio, Inc. _____ ("Agent").

RECITALS

WHEREAS, PJM is a Regional Transmission Organization ("RTO") subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC");

WHEREAS, PJM Settlement, Inc ("PJM Settlement") is a Pennsylvania Non-Profit Corporation, incorporated for the purpose of providing billing and settlement functions and credit and risk management functions for PJM. References to "PJM" in this Declaration are intended to apply to PJM and/or PJM Settlement, as appropriate, with regard to their respective functions.

WHEREAS, PJM and PJM Settlement administer centralized markets that clear various electric energy and energy-related products among multiple buyers and sellers;

WHEREAS, PJM additionally exercises operational control over its members' transmission facilities whereby PJM provides open-access transmission service and control area functions, including economic dispatch and emergency response to ensure reliability;

WHEREAS, Principal is a PJM Member and seeks to obtain, or is obtaining, services provided or administered by PJM, seeks to participate, or is participating in, markets administered by PJM, or seeks to engage in, or is engaging in, operations that use or affect the integrated transmission system operated by PJM;

WHEREAS, such activities or contemplated activities by Principal and Agent are governed by rights and obligations established by or under the PJM Open Access Transmission Tariff ("Tariff"), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), the Reliability Assurance Agreement Among Load-serving Entities in the MAAC Control Zone ("RAA"), and other

agreements, manuals, and practices of PJM (the Tariff, the Operating Agreement, the RAA, and such other agreements manuals, and practices of PJM, the "PJM Agreements"); and

WHEREAS, Principal and Agent desire to declare to PJM their respective authorities concerning such rights and obligations, intend that PJM rely upon such declaration, and acknowledge that PJM may rely upon such declaration to its detriment.

DECLARATION

NOW, THEREFORE, acknowledging that PJM will rely on the truth, accuracy and completeness of the declarations made below, Principal and Agent, as identified below, make the following declarations:

1. Exclusivity of Agent's Authority.

Pursuant to a binding, legally enforceable agreement, Principal has authorized Agent to act for Principal with respect to certain rights and responsibilities as specified in Section 2 of this Declaration ("the Authorized Rights and Responsibilities"). With respect to the Authorized Rights and Responsibilities, Agent is authorized to communicate and transact with PJM as Principal's sole and exclusive agent, and PJM is authorized to communicate and transact directly and exclusively with Agent as Principal's agent. With respect to Authorized Rights and Responsibilities, Principal will abide by any direction issued by PJM to Agent.

2. Specification of Authorized Rights and Responsibilities.

In the following parts (a) through (h), Principal and Agent specify the rights and responsibilities with respect to which Agent is authorized to act for Principal. Specification shall be effective only if both Principal and Agent have placed the initials of their authorized representatives in the space provided for each applicable right or responsibility from among the options provided below:

(a) Load Server Responsibilities.

_____ Agent is authorized to satisfy Principal's obligations as a Load-Serving Entity under the RAA, including, without limitation, its obligations to provide Unforced Capacity, submit capacity plans, provide or arrange for Capacity Resources, satisfy Accounted-for Obligations and Peak Season Maintenance Obligations, comply with any capacity audits, make payment of all deficiency, data submission, and emergency procedure charges incurred, coordinate planning and operation of Capacity Resources with other parties; and develop and submit planned outage schedules.

_____ Agent is authorized to satisfy Principal's obligations under the Tariff, RAA and to provide or arrange for transmission service to its loads; provide or arrange for sufficient reactive capability, voltage control facilities, and black start capability for service to its loads; submit firm transmission service schedules, and designate Network Resources and other points of receipt and delivery for transmission service. Agent is authorized to request changes to the transmission service required for service to Principal's loads, and to enter into, on Principal's behalf, any feasibility, system impact, facilities study, or other agreements required to process such request for a change in service.

_____ Agent is authorized to satisfy Principal's rights and obligations under the Tariff and Operating Agreement to submit bids on, obtain, administer, and receive payments or credits for Financial Transmission Rights and Auction Revenue Rights with respect to service to Principal's loads.

_____ Agent is authorized to provide data required by PJM with respect to service to Principal's loads, including, but not limited to, data required for coordination of operations, accounting for all interchange transactions, preparation of required reports and maintenance schedules, and analysis of system disturbances.

_____ Agent is authorized to provide the facilities and personnel required to coordinate operations with PJM and other PJM Members.

(b) Electric Distributor Responsibilities.

_____ Agent is authorized to satisfy Principal's rights and obligations as an Electric Distributor under the Operating Agreement, including, but not limited to, assuring the continued compatibility of its local energy management, monitoring, and telecommunications systems with PJM's technical requirements; providing or arranging for the services of a 24-hour local control center to coordinate with PJM; providing to PJM all system, accounting, customer tracking, load forecasting, and other data necessary or appropriate to implement or administer the Operating Agreement, RAA; shedding connected load, initiating active load management programs, and taking such other coordination actions as may be necessary in accordance with PJM's directions in Emergencies; maintaining or arranging for a portion of its connected load to be subject to control by automatic underfrequency, under-voltage, or other load-shedding devices; and complying with the underfrequency relay obligations and charges specified in the Operating Agreement.

(c) Generator Responsibilities.

_____ Agent is authorized to operate the Principal's generation resources in all events, including, but not limited to, in the event of Emergencies, and shall operate such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

_____ Agent is authorized to ensure that the required portion of Principal's Capacity Resources have the ability to go from a shutdown condition to an operating condition and start delivering power without assistance from the power system.

- Or -

_____ Agent is authorized to direct the operation of Principal's generation resources by relaying PJM's instructions to the resource in all events, including, but not limited to, in the event of Emergencies, and shall direct such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

_____ Agent is authorized to communicate with PJM in all matters concerning the provision of capacity, energy, or ancillary services from Principal's generation resources, including, without limitation, information required in connection with Capacity Resources, dispatch of any unit, provision of reactive power, regulation, synchronous condensing, spinning or other reserves, establishment or maintenance of a unit as a Black-Start Unit, satisfaction of must-run obligations, and costs or revenue requirements for any product or service offered by any such unit.

_____ Agent is authorized to provide information on outages of Principal's generation facilities, whether planned, forced, or for maintenance, and to coordinate such outages with PJM

_____ Agent is authorized to act on behalf of Principal with respect to Principal's rights and obligations under any Feasibility Study, System Impact Study, or Facilities Study Agreements.

_____ Agent is authorized to act on behalf of Principal with respect to Principal's rights and obligations under any Construction Service Agreements.

_____ Agent is authorized to act on behalf of Principal with respect to Principal's rights and obligations under any Interconnection Service Agreements.

_____ Agent is authorized to receive from PJM historic and real time data collected by PJM from, or provided to PJM by, Principal with respect to Principal's generation resources.

_____ Agent is authorized to act on behalf of Principal for the following specific unit(s) in Principal primary and subaccounts:

Resource Name:

Resource ID:

(d) Market Buyer/Market Seller Responsibilities.

_____ Agent is authorized to satisfy Principal's rights and obligations as a Market Buyer or Market Seller under the Operating Agreement, including, but not limited to, arranging for a Market Operations Center capable of real-time communication with PJM during normal and Emergency conditions; reporting to PJM sources of energy available for operation; providing to PJM scheduling and other information, including, but not limited to, maintenance and other anticipated outages of generation or transmission facilities, scheduling and related information on bilateral transactions and self-scheduled resources, and implementation of active load management, interruption of load, and other load reduction measures; obtaining Spot Market Backup for bilateral transactions; submitting to PJM binding offers to purchase or sell energy and ancillary services in compliance with all applicable Offer Data specifications; responding to PJM's directives to start, shut down or change output levels of generation units, or change scheduled voltages or reactive output levels; responding to PJM's directives to schedule delivery or change delivery schedules for external resources; and following PJM's directions to take actions to prevent, manage, alleviate or end an Emergency.

(e) Billing and Payment Responsibilities.

_____ In connection with all rights and responsibilities specified by Principal and Agent in any of subparts (a) through (d) of this Section, or as specified in the attached Addendum, Agent shall be billed for, and shall make payment to PJM for, all charges, penalties, costs and fees. (If this option is not specified, PJM will issue billings to, and collect amounts due from, Principal.)

_____ In connection with all rights and responsibilities specified by Principal and Agent above, Agent is entitled to receive from PJM in Agent's account all credits, revenues, distributions, and disbursements. (If this option is not specified, PJM will pay such amounts to Principal.)

(f) General Membership Responsibilities.

_____ Agent is authorized to participate and vote in all PJM committees, working groups, and other stakeholder bodies on Principal's behalf.

_____ Agent is authorized to participate on Principal's behalf in the regional transmission expansion planning process.

_____ Agent is authorized to provide information or otherwise cooperate on Principal's behalf in connection with any investigation or request for information by PJM or the PJM Market Monitoring Unit in accordance with the Operating Agreement and Attachment M to the Tariff. (If this option is specified, PJM and the PJM Market Monitoring Unit shall have the right to request and obtain such information from Agent and/or Principal.)

_____ Agent shall be billed for, and shall make payment of, Principal's costs of membership in PJM, including payment of the Membership fee, and payment of any other general assessments on the PJM members, including, but not limited to, amounts assessed as a consequence of defaults by other Members.

(g) Additional Responsibilities.

_____ Agent has been Authorized other rights and responsibilities of Principal as specified on Attachment "A" to this Declaration.

(h) Limitation on Responsibilities.

_____ The rights and responsibilities specified in parts (a) through (f) above apply to a limited portion of Principal's facilities or loads located in the PJM Region, as specified on Attachment "B" to this Declaration, and to no other facilities or loads of Principal.

3. Continuing Responsibilities and Liabilities of Principal.

3.1 The Authorized Rights and Responsibilities are the only rights and responsibilities under the PJM Agreements for which Agent is authorized to act for Principal, and Principal retains all rights and responsibilities under the PJM Agreements not specified by Principal and Agent in Section 2.

3.2 With respect to the Authorized Rights and Responsibilities, and notwithstanding any other provision of this Agreement, Principal shall remain liable to PJM for all amounts due or to become due to PJM under the PJM Agreements, and Agent's authorization to make payment of any such amounts hereunder (if specified in Section 2) shall not release Principal from liability for any financial obligations to PJM not satisfied by Agent.

4. Reliance and Indemnity, Duty to Inform, Liability Waiver, and Rules of Construction.

4.1 Principal and Agent each recognizes, accepts and intends that PJM will rely, upon on the truth, accuracy and completeness of the declarations herein in matters including but not limited to creditworthiness and in assuring compliance with the PJM Agreements. Principal and Agent each recognizes and accepts that PJM or its members may suffer losses and damages if any declaration is or becomes untrue, inaccurate or incomplete, and each agrees to indemnify PJM for any such losses and damages.

4.2 Principal and Agent each has a continuing duty to notify PJM if and when any declaration herein ceases to be truthful, accurate or complete. Until such time as PJM receives written notification of any change to any declaration, in accordance with the terms contained herein, PJM shall be entitled to rely perpetually on this Declaration as governing its relationship with Principal and Agent as to the subject matter of this Declaration. Written notice of changes to the declarations contained herein must be provided by Principal (PJM Member) to PJM at least thirty days in advance of their effectiveness. If Agent is also a PJM Member, then both parties will be required to provide thirty days prior written notification in order for such changes to be effective. Such notification is required for changes to the declarations and responsibilities contained herein and/or termination of this Declaration. Upon

such termination, all rights, responsibilities and accounts will revert back to the original status quo prevailing before the Declaration became effective. Should less than thirty days notice be provided, PJM shall use its best efforts to accommodate and process the declarations herein, but all attempts should be made to provide such notice.

4.3 Nothing in this Declaration shall be construed to create or give rise to any liability on the part of PJM and Principal and Agent expressly waive any claims that may arise against PJM under this Declaration. This Declaration shall not be construed to modify any of the PJM Agreements and in the event of conflict between this Declaration and a PJM Agreement, the applicable PJM Agreement shall control.

4.4 Capitalized terms used herein that are not defined herein have the meanings given in the PJM Agreements, as applicable.

4.5 The Recitals are hereby incorporated into the body of this Declaration.

IN WITNESS WHEREOF, Principal and Agent execute this Declaration to be effective as of the date written above or upon receipt of a fully executed original by PJM, whichever date is later.

PRINCIPAL:

Signature: _____

Name: _____

Title: _____

Company Name: _____

AGENT:

Signature: _____

Name: James P. Henning

Title: State President-OH/KY

Company Name: Duke Energy Ohio, Inc.

DECLARATION OF AUTHORITY

Attachment A – Addendum

PRINCIPAL:

AGENT: Duke Energy Ohio, Inc.

Duration of Agreement:

Effective Starting Date:

Note: Principal or Agent is required to provide PJM thirty days' written notice of intent to terminate this Agreement. Upon termination, all accounts will revert back to their original status.

PJM Billing Line Items – Transfer

Principal and Agent agree the PJM Settlement, Inc., ("PJM Settlement") shall transfer all of the following charges directly related to Principal's retail load obligations from the Principal's account(s) to the Agent's account as of the date specified above:

<u>Billing Line Item Number</u>	<u>Billing Line Item</u>
1100	Network Integration Transmission Service
1108	Transmission Enhancement
1109	Midwest ISO Transmission Expansion Plan Assessment
1242	Day-Ahead Load Response Charge Allocation
1243	Real-Time Load Response Charge Allocation
1320	Transmission Owner Scheduling, System Control and Dispatch Service
1330	Reactive Supply and Voltage Control from Generation and Other Sources Service
1450	Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service
1930	Generation Deactivation
1932	Generation Deactivation Refund
2108	Transmission Enhancement
2140	Non-Firm Point-to-Point Transmission Service

PJM Accounts/Subaccounts

<u>Role</u>	<u>Account Long Name</u>	<u>Account Short Name</u>	<u>Org ID</u>
Principal			
Agent	Duke Energy Ohio, Inc. (EDC)	DEOEDC	22829

Attachment G

Glossary for Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions

In the event of a conflict between this Glossary and the Master SSO Supply Agreement with respect to the definitions provided, the definitions included in the Master SSO Supply Agreement shall control.

This Glossary applies to the competitive bidding process (CBP) auctions for Duke Energy Ohio, Inc. (Duke Energy Ohio) to procure supply for the provision of Standard Service Offer supply (SSO Supply) for customers that take retail generation service from Duke Energy Ohio. Some terms contained in this Glossary may also be defined in the Master Standard Service Offer Supply Agreement (Master SSO Supply Agreement). When there is a conflict between this Glossary and the Master SSO Supply Agreement, the Master SSO Supply Agreement will take precedence.

Advisor means a person or persons who will be advising or assisting the Qualified Bidder with respect to bidding strategy, estimation of the value of any Tranche, or estimation of the risks associated with any Tranche.

Affiliate has the meaning set forth in the prevailing Master SSO Supply Agreement.

Alternate Guaranty Form has the meaning set forth in Part 1 Application.

Ancillary Services has the meaning set forth in the PJM Agreements.

Announced Price means the price of a Product in effect during a bidding round of the auction.

Applicant means a Party that has submitted or indicated that it is going to submit a Part 1 Application.

Applicant's Legal Representative in Ohio means legal counsel or a representative agent who has an address in Ohio and is authorized and agrees to accept service of process on the Applicant's behalf.

Application Website means the website through which a bidder submits the online Part 1 Form, the online Part 2 Form, and any required attachments. Bidders will be provided logon credentials for the application website upon submitting an expression of interest to the Auction Manager.

Associated and Association mean a Qualified Bidder is associated with another Qualified Bidder if the two Bidders have ties that could allow them to act in concert or that could prevent them from competing actively against each other. If two Qualified Bidders are Associated, then there is an Association between them.

Auction Manager means CRA International, Inc. d/b/a Charles River Associates (CRA) team working on this CBP.

Auction Software means the suite of tools available on the Bidding Website during a live auction.

Authorized Delegate (Delegate) means the Person authorized by the Applicant to be the point of contact for the Auction Manager when so designated by the Authorized Representative.

Authorized Representative means a designated person who is authorized to represent the Applicant in the CBP. The Authorized Representative must ensure that only authorized persons act on behalf of the Applicant in the CBP and is responsible for ensuring that no Confidential Information is disclosed improperly.

Backup Bidding Fax Number means any telephone number provided to Registered Bidders for use in submitting a bid by fax in the event of a complication with access to the Bidding Website.

Bidder means any party that may become a Qualified Bidder in the CBP or that submit bids in the CBP.

Bidding Agreement means an arrangement involving joint or coordinated bidding with any other Party.

Bidding Consortium means a group of separate businesses or business people joining together to submit joint bids in the auction.

Bidding Website means the secure Website used by Registered Bidders to participate in the CBP auction. The URL address for the Bidding Website will be provided to Registered Bidders.

Business Day has the meaning set forth in the prevailing Master SSO Supply Agreement.

Capacity has the meaning set forth in the prevailing Master SSO Supply Agreement.

CBP means Competitive Bidding Process.

Charge has the meaning set forth in the prevailing Master SSO Supply Agreement.

Commission (PUCO) means the Public Utilities Commission of Ohio.

Company means Duke Energy Ohio.

Competitive Retail Electric Service Supplier (CRES Supplier) means a Person that is duly certified by the PUCO to offer and to assume the contractual and legal responsibility to provide Standard Service Offer pursuant to retail open access programs approved by the PUCO to Customers who are not SSO Customers of the Company.

Confidential Information means two types of information. Confidential information relative to bidding strategy means information relating to a Bidder's bid, written or oral, which if it were to be made public or known to another Bidder would be likely to have an effect on any of the bids

that another Bidder would be willing to submit in the CBP. Confidential information regarding the CBP means information, written or oral, that is not released publicly by the PUCO or the Auction Manager and that a Bidder acquires as a result of participating in the CBP, which if it were to be made public could impair the integrity of the current or future CBPs, impair the ability of the Company to hold future CBPs, harm consumers, or injure Bidders or Applicants.

Confirmed Bid means a bid submitted by a Bidder that is confirmed by the Bidding Website. A bid submitted by a Bidder is confirmed only if the Bidder receives a unique confirmation ID and time-stamp by the Bidding Website server. If the Bidder submits a bid but fails to complete the last step to confirm the bid, that bid will not be considered a Confirmed Bid.

Contingency Plan means in the event that fewer Tranches than a Product's Tranche Target are purchased in the auction, the Company will implement a Contingency Plan for the unfilled Tranches.

Costs has the meaning set forth in the prevailing Master SSO Supply Agreement.

Credit-Based Tranche Cap means the maximum possible Initial Eligibility for a Qualified Bidder based on its credit rating.

Credit Documents means Letter of Credit, Letter of Intent to Provide a Guaranty, Letter of Reference, or any other credit support document.

Credit Limit has the meaning set forth in the prevailing Master SSO Supply Agreement.

Credit Representative means the Applicant's designated in-house Credit Representative who can answer questions or provide information about the Applicant's credit with respect to the requirements for the CBP.

Customer has the meaning set forth in the prevailing Master SSO Supply Agreement.

Day(s) means to Business Day(s), unless noted otherwise.

Default Bid: A bidder with positive eligibility that does not submit a bid in a round is assigned a default bid. A default bid consists of the minimum number of tranches that the bidder could have bid for each product.

Defaulting Party has the meaning set forth in Section 7.1 of the Master SSO Supply Agreement.

Delegate (Authorized Delegate) means a Person authorized by the Applicant to be the point of contact for the Auction Manager when so designated by the Authorized Representative.

Delivery Period has the meaning set forth in the prevailing Master SSO Supply Agreement.

Effective Date has the meaning set forth in the preamble of the Master SSO Supply Agreement.

Eligibility means the maximum number of Tranches a Bidder can bid across all Products in a bidding round. From round to round, a Bidder's Eligibility cannot increase; it can only stay the same or decrease.

Energy has the meaning set forth in the prevailing Master SSO Supply Agreement.

FERC has the meaning set forth in the prevailing Master SSO Supply Agreement.

Full Requirements Service includes Energy, Capacity, market-based transmission service and market-based transmission ancillaries, and any other LSE service or other service as may be required by PJM to serve the SSO Load of Duke Energy Ohio.

Goodwill means an intangible asset that is the amount by which the purchase price of an acquired entity exceeds its net tangible asset value.

Governmental Authority has the meaning set forth in the prevailing Master SSO Supply Agreement.

Guarantor has the meaning set forth in the prevailing Master SSO Supply Agreement.

Guaranty has the meaning set forth in the prevailing Master SSO Supply Agreement.

Help Desk means the resource available to provide technical assistance during a live auction.

ICR Collateral has the meaning set forth in the prevailing Master SSO Supply Agreement.

ICRT has the meaning set forth in Section 5.3 of the Master SSO Supply Agreement.

ICT Guaranty has the meaning set forth in the prevailing Master SSO Supply Agreement.

Independent Credit Requirement (ICR) has the meaning set forth in the prevailing Master SSO Supply Agreement.

Independent Credit Threshold (ICT) has the meaning set forth in the prevailing Master SSO Supply Agreement.

Indicative Offer means a Qualified Bidder's Indicative Offer that specifies two (2) numbers of Tranches for each Product in the auction. For each Product, the first number represents the number of Tranches that the Qualified Bidder is willing to serve at the Minimum Starting Price for the Product and the second number represents the number of Tranches that the Qualified Bidder is willing to serve at the Maximum Starting Price for the Product.

Information Website means www.duke-energyohiocbp.com which is the Website that will be the primary online source of information about the CBP auctions.

Initial Eligibility means Bidder's Eligibility for round 1 of the auction.

Joint Venture means an enterprise entered into by two or more people for profit with the purpose of bidding in the CBP. A Joint Venture has most of the elements of a partnership, such as shared management, the power of each venture to bind the others in the business, division of profits, and joint responsibility for losses. However, unlike a partnership, a Joint Venture anticipates a specific area of activity and/or period of operation, so after the purpose is completed, bills are paid, profits (or losses) are divided, and the Joint Venture is terminated.

Kilowatt (kW) has the meaning set forth in the prevailing Master SSO Supply Agreement.

Kilowatt-hour (kWh) has the meaning set forth in the prevailing Master SSO Supply Agreement.

Legal Representative means legal counsel or a representative agent who is authorized and agrees to accept service of process on the Applicant's behalf; must have an address in Ohio.

Letter of Credit has the meaning set forth in the prevailing Master SSO Supply Agreement.

Letter of Intent to Provide a Guaranty means a document that may be issued by Qualified Bidder's Guarantor during the Part 2 Application process. The letter indicates that an ICT Guaranty will be provided once the Master SSO Supply Agreement is signed.

Letter of Reference means a document that may be issued by a Qualified Bidder's bank during the Part 2 Application process. The letter specifies the amount of revolving credit provided to the Bidder by the bank. The letter also states that there is sufficient unused availability to issue a Letter of Credit for the amount indicated in the Bidder's Part 2 Application.

Load Serving Entity (LSE) has the meaning set forth in the applicable PJM Agreements.

Master Standard Service Offer Supply Agreement (Master SSO Supply Agreement or Agreement) means the standard contract that will be used by the winning Bidders and Duke Energy Ohio.

Maximum Starting Price: The Maximum Starting Price is the maximum Announced Price for a Product that can be set for round 1.

Megawatt (MW) means one thousand Kilowatts.

Megawatt-hour (MWh) means one Megawatt of electric power used over a period of one hour.

Minimum Starting Price: The Minimum Starting Price is the minimum Announced Price for a Product that can be set for round 1.

NERC has the meaning set forth in the prevailing Master SSO Supply Agreement.

Network Integrated Transmission Services (NITS) has the meaning set forth in the applicable PJM Agreements.

Notification of Qualification means the notification sent by the Auction Manager to an Applicant once the Applicant becomes a Qualified Bidder. The Notification is in the format set forth in the Part 1 Application.

Notification to Registered Bidders means the notification sent by the Auction Manager to the Qualified Bidder once the Qualified Bidder becomes a Registered Bidder. The Notification is in the format set forth in Part 2 Application.

Over-Subscribed: means supply for a Product (*i.e.*, the number of Tranches bid) is greater than the Product's Tranche Target.

Part 1 Application means the first of the two parts of the application process for prospective Bidders to participate in the CBP.

Part 1 Application Due Date means the date specified in the timeline on the Information Website.

Part 2 Application means the second of the two parts of the application process for prospective Bidders to participate in the CBP.

Part 2 Application Due Date means the date specified in the timeline on the Information Website.

Party has the meaning set forth in the prevailing Master SSO Supply Agreement.

Person PJM has the meaning set forth in the prevailing Master SSO Supply Agreement.

PJM Agreements has the meaning set forth in the prevailing Master SSO Supply Agreement.

PJM Control Area means the control area recognized by NERC as the PJM Control Area.

PJM E-Account has the meaning set forth in the prevailing Master SSO Supply Agreement.

PJM OATT (PJM Tariff) has the meaning set forth in the prevailing Master SSO Supply Agreement.

PJM Operating Agreement has the meaning set forth in the prevailing Master SSO Supply Agreement.

Pre-Bid Security means the Pre-Bid Security posted by each Qualified Bidder sufficient for its Indicative Offer. Pre-Bid Security to be posted by a Qualified Bidder included in its Part 2 Application consists of cash or a Letter of Credit and, if necessary, a Letter of Reference and/or a Letter of Intent to provide a Guaranty. A Qualified Bidder in the CBP is notified upon qualification whether a Letter of Reference or a Letter of Intent to provide a Guaranty is required.

Price Decrement means the reduction in the Announced Price for a given Product from one round to the next round of the auction.

Product means the SSO Load of Duke Energy Ohio for the Delivery Period, as determined by the PUCO.

PUCO has the meaning set forth in the prevailing Master SSO Supply Agreement.

PUCO Consultant means any firm and/or individual(s) retained by the PUCO for purposes of assisting the PUCO or PUCO Staff.

Qualified Bidder means a Party that has successfully completed a Part 1 Application.

Registered Bidder means a Party that has successfully completed a Part 2 Application.

Registered User means a Party that has registered through the Information Website to receive information about the CBP.

Service Territory means the geographic areas of the State of Ohio in which the Company serves Customers.

Solicitation means the Competitive Bidding Process by which the counterparty, quantity, pricing and other terms of the Master SSO supply Agreement are established.

Special Contract Customers has the meaning set forth in the prevailing Master SSO Supply Agreement.

SSO Customers has the meaning set forth in the prevailing Master SSO Supply Agreement.

SSO Load has the meaning set forth in the prevailing Master SSO Supply Agreement.

SSO Service has the meaning set forth in the prevailing Master SSO Supply Agreement.

SSO Supplier has the meaning set forth in the prevailing Master SSO Supply Agreement.

SSO Supplier Responsibility Share has the meaning set forth in the prevailing Master SSO Supply Agreement.

SSO Supply has the meaning set forth in the prevailing Master SSO Supply Agreement.

Standard Service Offer has the meaning set forth in the prevailing Master SSO Supply Agreement.

Starting Price means the announced price for a product in effect for round 1 of the auction for the product.

Subscribed means a Product is subscribed if supply (*i.e.*, the number of Tranches bid) is equal to the Product's Tranche Target.

Summer Factor: To determine the \$/MWh price to be paid to an SSO Supplier during June 1 through August 31 for a Tranche won by the SSO Supplier, the Winning Price of the Tranche is multiplied by the Summer Factor.

Term has the meaning set forth in Section 2.1 of the Master SSO Supply Agreement.

Total Initial Eligibility means the sum across all Registered Bidders of the indicative offers at the maximum starting price.

Tranche has the meaning set forth in the prevailing Master SSO Supply Agreement.

Tranche Size means the fixed percentage of SSO load assigned to each tranche.

Tranche Target means the number of Tranches for a Product intended to be procured for the Product in the auction.

UCC means the Uniform Commercial Code.

Under-Subscribed means a product is under-subscribed if supply (*i.e.*, the number of Tranches bid) is less than the Product's Tranche Target.

Winning Bidder means a Registered Bidder that has won Tranches in the auction.

Winning Price means for a Product is the price to be paid to each Winning Bidder having won one or more Tranches for the Product.

Winter Factor: To determine the \$/MWh price to be paid to an SSO Supplier during January 1 through May 30 and September 1 through December 31 for a Tranche won by the SSO Supplier, the Winning Price of the Tranche is multiplied by the Winter Factor.

Notice to Parties in Previous SSO Proceeding

May 29, 2014

VIA ELECTRONIC MAIL

To: Parties of Record

In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service, Case No. 11-3549-EL-SSO, et al.

Re: *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service Case No. 14-841-EL-SSO, et al.*

Dear Parties of Record:

Pursuant to R.C. 4901:1-35-04(A), this letter will serve as notification that, on this date, Duke Energy Ohio, Inc., has filed an application for approval, by the Public Utilities Commission of Ohio (Commission), of a new standard service offer. A copy of the application and all waiver requests are available through the Duke Energy Ohio website at www.duke-energy.com and through the PUCO website at www.puc.state.oh.us. Copies of the filing are also available at Duke Energy Ohio's main business office located at 139 E. Fourth Street, Cincinnati, Ohio 45202 or at the Commission offices at 180 Broad Street, Columbus, Ohio 43215.

Should you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

Amy B. Spiller
Deputy General Counsel

cc: Parties of Record

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing letter Notice of Filing of Duke Energy Ohio was served on the following parties this 29th day of May, 2014, by regular U. S. Mail, overnight delivery, or electronic delivery.

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Proposed Notice for Newspaper Publication

Pursuant to O.A.C. 4901:1-35-04(B)

LEGAL NOTICE

Duke Energy Ohio, Inc., has filed with the Public Utilities Commission of Ohio (PUCO) Case No. 14-841-EL-SSO, *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service, et al.* In this proceeding, the Commission will consider Duke Energy Ohio's request for approval of its new Electric Security Plan (ESP), which includes its standard service offer (SSO), effective from June 1, 2015, through May 31, 2018. The ESP includes provisions regarding the acquisition and pricing of capacity and energy to serve SSO customers through a series of auctions and other matters.

It is anticipated that overall rates for all customer classes under the proposed ESP will remain approximately the same as they are currently. Duke Energy Ohio proposes to recover other costs through riders during the ESP period; however, those costs and the subsequent rate impacts are not known at this time.

Any person may request to become a party to the proceeding.

Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puc.state.oh.us>, clicking on the link to the Docketing Information System, and entering Case No. 14-841-EL-SSO, or contacting the Commission's call center at 1-800-686-7826.