

# Large Filing Separator Sheet

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# **Attachment E**

## **Bidding Rules for Duke Energy Ohio, Inc.'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](mailto:duke-energyauctionmanager@crai.com). The full contact information for the Auction Manager is as follows:

CRA International, Inc.  
200 Clarendon Street, T-9  
Boston, MA 02116-5092  
Phone: 617.425.3365  
Fax: 617.425.6574  
Email: [duke-energyauctionmanager@crai.com](mailto: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 ( $\$60.00 \times 1.0727$ ) for each MWh of SSO Load served in the summer months and \$57.48 ( $\$60.00 \times 0.9580$ ) 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			Credit-Based Tranche Cap Percent [1]
S&P	Moody's	Fitch	
BB+ and above	Ba1 and above	BB+ and above	100%
BB	Ba2	BB	75%
BB-	Ba3	BB-	60%
Below BB-	Below Ba3	Below BB-	45%

[1] Credit-Based Tranche Cap for each auction is equal to the Tranche Cap Percent multiplied by the number of tranches offered

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.



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**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.

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

**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.

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

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

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		10	135
BidderB			50	@ \$72.50				57	22 @ \$78.60 35 @ \$76.10		—	107
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



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

	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

**APPENDIX B — RULES AND PROTOCOLS FOR PARTICIPATION BY ASSOCIATED BIDDERS IN DUKE ENERGY OHIO CBP 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;
- 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.

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.

## **Attachment F**

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

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

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



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

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

Duke Energy Ohio will not communicate with Bidders prior to the selection of winning bids unless required to facilitate the review of financial information and credit documents submitted as part of the qualification process. 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 qualifications.

### **3.4 Part 2 Application Process**

For the Part 2 Application process, the Auction Manager may provide certain eligibility and other information from the Part 2 Applications to Duke Energy Ohio.

### **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 may review the PUCO Consultant's post-auction report in un-redacted, draft form in

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

order to provide comments prior to the final version. Duke Energy Ohio may 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.

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

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

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**

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

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.

## **Attachment G**

# **Glossary for Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions**

## GLOSSARY

**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](http://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.

**MASTER PIPP SUPPLY AGREEMENT**

**BY AND BETWEEN**

**DUKE ENERGY OHIO, INC.**

**AND**

**THE PIPP SUPPLIER SET FORTH ON ATTACHMENT A HERETO**



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## MASTER PIPP SUPPLY AGREEMENT

This Master PIPP Supply Agreement (“Agreement”), dated as of [\_\_\_\_\_, 20\_\_] (“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 the supplier listed on Attachment A (the “PIPP Supplier”). Duke Energy Ohio and the PIPP 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**, R.C. 4928.54 requires the director of development services to aggregate PIPP program customers for SSO Service; and

**WHEREAS**, the PUCO found that it would serve the public interest for Duke Energy Ohio to secure PIPP Supply through a request for proposal (RFP) auction; and

**WHEREAS**, on [\_\_\_\_\_, 20\_\_], Duke Energy Ohio conducted and completed a successful Solicitation for PIPP Supply; and

**WHEREAS**, the PIPP Supplier was the winning bidder in the Solicitation for PIPP Supply; and

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

**WHEREAS**, the PIPP Supplier will satisfy its Capacity obligations under the PJM Agreements associated with its PIPP 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 PIPP Supplier desire to enter into this Agreement setting forth their respective obligations concerning the provision of PIPP 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 PIPP 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 PIPP Supplier.

“Credit Limit” means an amount of credit, based on the creditworthiness of the PIPP Supplier or its Guarantor, if applicable, determined pursuant to Section 5.6, granted by Duke Energy Ohio to the PIPP Supplier to be applied towards the Total Exposure Amount for the PIPP 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. For the avoidance of doubt, CRES Supplier shall exclude the PIPP Supplier under this Agreement.

“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 PIPP Supply hereunder and the price at which Duke Energy Ohio or the PIPP Supplier is able to purchase or sell (as applicable) PIPP Supply (or any components of PIPP Supply it is able to purchase or sell) from or to third parties including PJM; (ii) Emergency Energy charges; (iii) additional transmission or congestion charges incurred to purchase or sell PIPP 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 Residual Aggregate Zone as defined within PJM.

“DEOK Residual Aggregate Zone” means that set of electrical locations, designated by PJM as Pnode ID number 1069452904, 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 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 PIPP 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 the PIPP 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 the PIPP Supplier for a given month and the Final Monthly Energy Share used for calculating the final payments due to the PIPP 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 June 1, 2018.

“Estimated Monthly Energy Share” means a quantity of Energy expressed in MWh which, for any Billing Period, is the preliminary calculation of the PIPP Supplier’s PIPP 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 the PIPP Supplier’s financial obligations under this Agreement, provided that such party meets Duke Energy Ohio’s creditworthiness requirements.

“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).

“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 the PIPP 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 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 the PIPP 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 the PIPP Supplier or its Guarantor, if applicable, determined pursuant to Section 5.4, granted by Duke Energy Ohio to the PIPP Supplier to be applied towards the satisfaction of the PIPP Supplier’s Independent Credit Requirement.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the effective federal funds 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 PIPP 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 the PIPP 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” has the meaning set forth in Section 7.2.

“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 PIPP Supply Agreement” means any other agreement between Duke Energy Ohio and the PIPP Supplier for the provision of PIPP Supply or similar service.

“Other SSO Supply Agreement” means any agreement between Duke Energy Ohio and the PIPP Supplier for the provision of SSO Supply or similar service.

“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.

“PIPP Customers” means Customers that take service under the low income customer assistance program known as the Percentage of Income Payment Plus Program administered by the Ohio Development Services Agency in accordance with R.C. 4928.53.

“PIPP Load” means the full electricity requirements for SSO Service of PIPP Customers.

“PIPP Supplier” has the meaning set forth in the preamble.

“PIPP Supplier Responsibility Share” means the fixed percentage share of the PIPP Load for which the PIPP Supplier is responsible as set forth in Attachment A.

“PIPP 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 the PIPP Supplier may be required to provide, by PJM or other Governmental Authority, in order to meet the requirements of SSO Service for PIPP Customers.

“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 the price in \$/MWh set forth in Attachment A, resulting from Duke Energy Ohio’s Solicitation for the opportunity to provide PIPP Supply. The Price is the basis for financial settlement of PIPP Supply supplied by the PIPP Supplier for PIPP 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 the PIPP Supplier.

“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 PIPP 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 PIPP Load based on the PIPP Load data as of December 31, [ ] as posted by Duke Energy Ohio for purposes of the Solicitation. 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 request for proposal (RFP) auction 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, but excluding PIPP Customers.

“SSO Service” means Standard Service Offer service that is not provided by a CRES Supplier.

“SSO Supply” means unbundled Energy, Capacity and Ancillary Services, including 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 a supplier may be required to provide, by PJM or other Governmental Authority, in order to meet the requirements of SSO Service for SSO Customers. “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 the PIPP 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 PIPP Supply Agreement; and (iii) the amount designated as the “credit exposure” (or similar designation) under any Other PIPP Supply Agreement; less (iv) amounts due to the PIPP 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 the PIPP Supplier’s financial obligation with respect to its Total Exposure Amount.

## **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 PIPP Supply by the PIPP Supplier will commence on [\_\_\_\_\_, 20\_\_] at 12:01 a.m. prevailing Eastern Time and end on [\_\_\_\_\_, 20\_\_].

#### **2.2 Mutual Termination**

Duke Energy Ohio and the PIPP 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 SSO Plan**

Duke Energy Ohio may, in its sole discretion, terminate its ESP due to changes in any Ohio state law that, in any way, relates to or addresses generation supply or Duke Energy Ohio’s obligation as the provider of last resort for all retail electric service customers in its service territory. Upon termination of the ESP, Duke Energy Ohio may terminate this Agreement with respect to any supply not yet delivered under this Agreement. Duke Energy Ohio shall exercise such right of termination by providing written notice to the PIPP Supplier.

#### **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 PIPP Supplier's Obligations to Provide PIPP Supply and Other Obligations**

The PIPP Supplier hereby agrees as follows:

(a) during the Delivery Period, the PIPP Supplier shall sell, deliver and provide PIPP Supply on a firm and continuing basis in order to meet its PIPP Supplier Responsibility Share, in accordance with this Agreement and the PJM Agreements;

(b) (i) except with respect to Capacity, the PIPP Supplier's obligation under Section 3.1(a) will result in physical delivery of PIPP Supply and not financial settlement; (ii) the quantity of PIPP Supply that the PIPP Supplier must deliver will be determined by the requirements of the PIPP Load, which may be different than the amount indicated in the Solicitation; and (iii) this Agreement does not provide for an option by the PIPP Supplier with respect to the quantity of PIPP Supply to be delivered;

(c) in connection with the provision of PIPP Supply at the Delivery Point, the PIPP Supplier shall be responsible for, in proportion to its PIPP Supplier Responsibility Share, all costs and expenses in Attachment F, PJM billing statement line items, identified as the responsibility of the PIPP Supplier, and any other costs and expenses related to transmission and Ancillary Services, unless expressly indicated otherwise in this Agreement;

(d) during the Term, the PIPP Supplier is responsible, at its sole cost and expense, for any changes in PJM products and pricing required for the delivery of its PIPP Supplier Responsibility Share, including all other costs and expenses related to transmission and Ancillary Services in connection with the provision of PIPP Supply in proportion to its PIPP 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) the PIPP Supplier is responsible for all transmission and distribution losses and congestion and imbalance costs incurred to supply its PIPP Supplier Responsibility Share;

(f) the PIPP 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) the PIPP Supplier shall be responsible, and be liable, to PJM for the performance of its LSE obligations associated with the provision of PIPP Supply under this Agreement;

(h) the PIPP 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;

(i) the PIPP Supplier shall deliver PIPP 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; and

(j) The PIPP Supplier shall be solely responsible for any auction revenue rights applicable to the PIPP Load that may be allocated to it. Duke Energy Ohio shall have no obligation to the PIPP Supplier for auction revenue rights or financial transmission revenue rights.

### **3.2 Duke Energy Ohio’s Obligation to Take PIPP Supply and other Obligations**

Duke Energy Ohio hereby agrees as follows:

(a) during the Delivery Period, Duke Energy Ohio shall purchase and accept the PIPP Supply provided by the PIPP Supplier pursuant to Section 3.1 at the Delivery Point and shall make payment to the PIPP 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, Generation Deactivation, and Generation Deactivation Refund;

- 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 PIPP Customers (and the PIPP Supplier will have no responsibility with respect thereto) and (ii) distribution services (and the PIPP Supplier 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**

The PIPP Supplier and Duke Energy Ohio shall work with PJM to establish any PJM E-Accounts necessary for the PIPP Supplier to provide PIPP Supply. The PIPP Supplier may manage its PJM E-Accounts in its sole discretion; provided the PIPP 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 the PIPP Supplier shall obtain and maintain throughout the Delivery Period all regulatory authorizations necessary to perform their respective obligations under this Agreement.

(b) The PIPP 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 PIPP 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 the PIPP Supplier, based on its PIPP Supplier Responsibility Share, for amounts determined, in Duke Energy Ohio's sole discretion, to be properly payable by the PIPP Supplier from the Default Allocation Assessment and the PIPP 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 PIPP Supplier**

(a) In order to meet Duke Energy Ohio's service obligations under Legal Authorities, it is the intent of the Parties that the PIPP Supplier shall be deemed a LSE for the duration of the Delivery Period pursuant to the PJM Agreements and Legal Authorities.

(b) The PIPP Supplier shall maintain its certification, under R.C. 4928.08, as a competitive retail electric service (CRES) provider and its status as an authorized CRES provider in the Duke Energy Ohio service territory for the Term.

### **3.8 Sales for Resale**

All PIPP Supply provided by the PIPP Supplier to Duke Energy Ohio shall be sales for resale, with Duke Energy Ohio reselling such PIPP Supply to PIPP Customers.

### **3.9 Transfer of PJM Charges and Credits**

Duke Energy Ohio and each SSO Supplier agree to use PJM's e-Suite Transfer Tool to transfer certain PJM charges and credits consistent with the terms of this Agreement. Each SSO Supplier agrees that the PJM billing line items set forth on Attachment G hereto shall be transferred to Duke Energy Ohio via PJM's e-Suite Transfer Tool. Duke Energy Ohio shall have the right to modify at any time the billing line items currently listed on Attachment G. Each SSO Supplier shall authorize and approve, via the PJM e-Suite Transfer Tool, a new billing line item transfer or modification of an existing billing line item transfer within ten (10) Business Days of Duke Energy Ohio initiating a new transfer or modifying an existing transfer. Notwithstanding the

provisions of Section 3.2, Duke Energy Ohio shall have no obligation to an SSO Supplier for its failure to timely authorize and approve a PJM billing line item transfer or modification thereto.

## **ARTICLE 4**

### **SCHEDULING, FORECASTING AND INFORMATION SHARING**

#### **4.1 Scheduling**

(a) The PIPP Supplier shall schedule PIPP Supply and make all necessary arrangements for the delivery of PIPP Supply through the PJM Office of Interconnection pursuant to the PJM Agreements.

(b) Duke Energy Ohio will provide to PJM all load schedule information required by PJM for the purpose of calculating the PIPP Supplier's PIPP Supply obligations, including the magnitude of the PIPP Supplier's PIPP Supply obligation, as required by the PJM Office of Interconnection.

#### **4.2 Load Forecasting**

Duke Energy Ohio shall not be required to provide to the PIPP 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 the PIPP Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the the PIPP Supplier 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 PIPP Customers**

The Parties agree and acknowledge that service to PIPP 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. The PIPP 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**

The PIPP Supplier acknowledges and agrees that Duke Energy Ohio may need to act in response to directives by a Governmental Authority that may affect PIPP Supply or PIPP Load. The PIPP 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

The PIPP 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, the PIPP 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, the PIPP 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 PIPP Supplier's website or other public website such as [www.sec.gov](http://www.sec.gov), then this requirement shall be deemed to be satisfied.

#### 5.2 Creditworthiness Determination

Duke Energy Ohio will determine the creditworthiness of the PIPP 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 the PIPP Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by the PIPP Supplier or Guarantor. Duke Energy Ohio may re-evaluate the creditworthiness of the PIPP Supplier or Guarantor from time to time, including whenever it becomes aware of an adverse change in the PIPP Supplier's or Guarantor's credit standing. In addition, the PIPP Supplier may petition Duke Energy Ohio to re-evaluate its creditworthiness whenever an event occurs that the PIPP 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. The PIPP 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 the PIPP Supplier's or Guarantor's creditworthiness or the credit rating of the PIPP Supplier or its Guarantor is insufficient, the PIPP 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") that will be required of the PIPP Supplier under this Agreement will initially be the amount set forth on Attachment C-1 at the inception of the Original Delivery Period and will decline throughout the Term in accordance with the schedule set forth on Attachment C-1.

### **5.4 Independent Credit Threshold**

If the PIPP Supplier qualifies under the following criteria, the PIPP Supplier will be granted an Independent Credit Threshold ("ICT").

(a) If the PIPP Supplier or its Guarantor has been organized under the laws of the United States, the following requirements must be satisfied in order for the PIPP Supplier to be granted an ICT:

i. the PIPP 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 PIPP Supplier or its Guarantor is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the PIPP 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. The maximum level of the ICT will be determined based on the following table:

Credit Rating of the PIPP 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%	\$500,000
BB	Ba2	BB	1%	\$250,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

ii. if the PIPP Supplier has 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 PIPP Supplier will not exceed the amount of the ICT Guaranty. The ICT Guaranty tendered by the PIPP 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 PIPP 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) If the PIPP Supplier or its Guarantor has not been organized under the laws of the United States, the following requirements must be satisfied in order for the PIPP Supplier to be granted an ICT:

i. the PIPP Supplier must supply such evidence of creditworthiness as to

provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for a PIPP Supplier that has been organized under the laws of the United States; or

ii. the Guarantor of the PIPP Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for a Guarantor of a PIPP Supplier that has been organized under the laws of the United States. Duke Energy Ohio may reject a Guarantor that does not meet the creditworthiness requirements.

(c) If the PIPP Supplier or its Guarantor has not been organized under the laws of the United States, the PIPP Supplier or its Guarantor 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 the PIPP Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the PIPP Supplier is organized that (A) the PIPP Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the PIPP Supplier in such foreign jurisdiction and does not violate any local law or the PIPP 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 PIPP Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of the PIPP Supplier that the Person executing this Agreement on behalf of the PIPP Supplier has the authority to execute this Agreement and that the governing board of the PIPP Supplier has approved the execution of this Agreement. Duke Energy Ohio will have full discretion, without liability or recourse to the PIPP Supplier, to evaluate the sufficiency of the documents submitted by the PIPP Supplier; or

ii. for the Guarantor of the PIPP 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 PIPP Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

(d) If the PIPP Supplier does not qualify for an ICT or its 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 PIPP Supply Agreement (the "ICR Collateral") does not meet its aggregate ICR under this Agreement and any Other PIPP Supply Agreement, the PIPP Supplier 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 PIPP Supply Agreement exceeds its ICT.

#### **5.5 Mark-to-Market Credit Exposure Methodology**

To calculate the Mark-to-Market Exposure Amount for the PIPP 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 the PIPP 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 Amount for the PIPP 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 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 PIPP Supplier to cover the Total Exposure Amount:

(a) For the PIPP Supplier 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 where the PIPP Supplier has been organized under the laws of the United States, the PIPP 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 PIPP Supplier is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the PIPP 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. 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 PIPP 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%	\$10,000,000
BBB+	Baa1	BBB+	10%	\$9,000,000
BBB	Baa2	BBB	10%	\$8,000,000
BBB-	Baa3	BBB-	8%	\$7,000,000
BB+	Ba1	BB+	2%	\$2,500,000

BB	Ba2	BB	1%	\$1,500,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

The PIPP 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) If the PIPP Supplier is delivering a Total Exposure Amount Guaranty, in the case where the Guarantor is 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 PIPP Supplier will not exceed the amount of the Total Exposure Amount Guaranty.

(c) If the PIPP Supplier or Guarantor, if applicable, has not been organized under the laws of the United States, the following standards will apply:

i. the PIPP Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for a PIPP Supplier that has been organized under the laws of the United States; or

ii. if the PIPP Supplier is providing a Total Exposure Amount Guaranty, the Guarantor of the PIPP Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for a Guarantor of a PIPP Supplier that has been organized under the laws of the United States. Duke Energy Ohio may reject a Guarantor that does not meet the creditworthiness requirements.

(d) If the PIPP Supplier or its Guarantor have not been organized under the laws of the United States, the PIPP Supplier or its Guarantor must, in addition to all documentation required elsewhere in this Section 5.6, supply the following to Duke Energy Ohio:

i. For the PIPP Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the PIPP Supplier is organized that (A) the PIPP Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the PIPP Supplier in such foreign jurisdiction and does not violate any local law or the PIPP 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 PIPP Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of the PIPP Supplier that the Person executing this Agreement on behalf of the PIPP Supplier has the authority to execute this Agreement and that the governing board of the PIPP Supplier has approved the execution of this Agreement. Duke Energy Ohio will have full discretion, without liability or recourse to the PIPP Supplier, to evaluate the sufficiency of the documents submitted by the PIPP Supplier; or

ii. For the Guarantor of the PIPP 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 PIPP Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

(e) If the PIPP Supplier has a Total Exposure Amount Guaranty, the PIPP 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 PIPP 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 PIPP Supplier to cover Margin (a "Margin Call") but before the PIPP 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 PIPP 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 PIPP Supplier may request a return of Margin Collateral in accordance with Section 5.7. The PIPP 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.

(f) Under no circumstances shall the Credit Limit plus any other credit limit granted to the PIPP Supplier or its Guarantor under any Other PIPP 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 the PIPP Supplier, then Duke Energy Ohio on any Business Day may make a Margin Call of the PIPP 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 PIPP 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 PIPP Supplier in which Duke Energy Ohio has a first priority, perfected security interest to secure the obligations of the PIPP Supplier under this Agreement and any Other PIPP Supply Agreement. For the avoidance of doubt, any ICR Collateral posted pursuant to Section 5.4 shall not constitute Margin Collateral.

If the PIPP Supplier receives a Margin Call from Duke Energy Ohio by 1:00 p.m. prevailing Eastern Time on a Business Day, then the PIPP 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 PIPP 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 PIPP 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 PIPP Supplier upon receipt of a written request from the PIPP Supplier; provided, however, that the PIPP Supplier may not request Excess Collateral until such Excess Collateral exceeds the Minimum Margin Threshold. If the PIPP 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 PIPP 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 PIPP 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 PIPP Supplier agrees in writing to extend such period for returning the Excess Collateral. The PIPP 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 PIPP 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 PIPP 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 the PIPP Supplier is the Defaulting Party or an Early

Termination Date (whether or not the PIPP 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 the PIPP Supplier in the possession of Duke Energy Ohio, whether held in connection with this Agreement or any Other PIPP Supply Agreement, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of the PIPP Supplier; and (ii) draw on any outstanding Letter of Credit provided by the PIPP Supplier. Duke Energy Ohio will apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the PIPP Supplier's obligations under this Agreement and under any Other PIPP Supplier Agreement, and the PIPP 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 the PIPP 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 PIPP 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 PIPP 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 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 or other financial institution reasonably acceptable to Duke Energy Ohio 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 the PIPP Supplier has obtained a Letter of Credit fails to meet the foregoing conditions, the PIPP 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, the PIPP 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 PIPP Supplier hereunder or its Guarantor under the guaranty to Duke Energy Ohio or any of them.

#### **5.10 Reporting; Maintenance of Creditworthiness**

(a) The PIPP Supplier must promptly notify Duke Energy Ohio of any change in its or its Guarantor's credit rating or financial condition. The PIPP 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 PIPP Supplier's ICT or its Credit Limit adversely changes, Duke Energy Ohio will require ICR Collateral or Margin Collateral from the PIPP 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 PIPP 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 (5<sup>th</sup>) day of each calendar month.

**5.12 No Endorsement of PIPP Supplier**

Duke Energy Ohio's determination of the PIPP 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 the PIPP Supplier.

**ARTICLE 6**

**BILLING, PAYMENT AND NETTING**

**6.1 Invoice Statement**

Subject to Section 6.2, Duke Energy Ohio and the PIPP 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 the PIPP Supplier, which will show (i) amounts due to the PIPP 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.

(c) The Billing Statement will be sent to the PIPP Supplier within six (6) Business Days after the end of the Billing Period.

(d) Duke Energy Ohio or the PIPP Supplier, as the case may be, will make payment on or before the twentieth (20<sup>th</sup>) 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 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 PIPP 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.

## **6.2 PJM Billing; Third Party Billing**

(a) Duke Energy Ohio and the PIPP Supplier shall direct PJM to invoice Duke Energy Ohio and the PIPP Supplier for PJM charges and credits relating to the PIPP 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 the PIPP Supplier. However, in the event Duke Energy Ohio authorizes or initiates any such billing adjustment or resettlement, such adjustment or resettlement shall be conducted pursuant to applicable FERC-approved tariffs.

(d) Duke Energy Ohio shall have no obligation to provide meter data to PJM on any interval less than an hourly interval.

(e) Duke Energy Ohio shall have no responsibility for billing between the PIPP Supplier and any other third party. Duke Energy Ohio shall be solely responsible for billing PIPP Customers for PIPP 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 the PIPP 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 PIPP Supply to meet the Defaulting Party's PIPP 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 PIPP Supply Agreement or Other SSO Supply Agreement or by its Guarantor under any guaranty with respect to any Other PIPP Supply Agreement or Other SSO Supply Agreement; and

(k) with respect to the 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 (the “Non-Defaulting Party”) shall have the right to:

(a) immediately suspend performance upon written notice to the Defaulting Party; provided, however, that if the PIPP Supplier is the Non-Defaulting Party, the PIPP 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 the PIPP Supplier is the Non-Defaulting Party, the PIPP 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 PIPP 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 PIPP 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 PIPP 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 PIPP 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 PIPP 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 PIPP Supply Agreements.

The Termination Payment will be due to or due from the Non-Defaulting Party as appropriate; provided, however, that if the PIPP Supplier is the Defaulting Party and the Termination Payment is due to the PIPP 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 the PIPP 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 PIPP 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 PIPP Supplier, Duke Energy Ohio will pay interest at the Interest Rate on the Termination Payment amount being made to the PIPP 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 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 PIPP 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 PIPP Supply Agreement that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations under this Agreement or any Other PIPP 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 PIPP Supply Agreement.

**7.5 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 PIPP Supplier 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 PIPP Supplier Representations and Warranties**

The PIPP 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 PIPP Supply shall pass from the PIPP Supplier to Duke Energy Ohio when the PIPP Supply is delivered to the Delivery Point. As between the Parties, the PIPP Supplier shall be deemed to be in exclusive control and possession of the PIPP Supply prior to and at the Delivery Point, and Duke Energy Ohio shall be deemed to be in exclusive control and possession of the PIPP Supply from the Delivery Point. The PIPP Supplier

warrants that it will deliver the PIPP 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 THE PIPP 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.

## **ARTICLE 10**

### **INDEMNIFICATION**

#### **10.1 Indemnification**

(a) The PIPP 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) 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 PIPP Supplier or its 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 PIPP Supplier or for which the PIPP 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 shall defend, save harmless and indemnify the PIPP 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 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 its 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, 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 PIPP Supplier, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, Duke Energy Ohio may,

without the consent of the PIPP Supplier (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) The PIPP 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, the PIPP 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 CRES Supplier having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of the PIPP Supplier. Under (b)(ii) and (b)(iii) above, the PIPP 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

**PAYMENTS:**

Institution: PNC Bank  
Account No.: 4060078836  
ABA No: 041000124

Contract Administration Manager Contact: Rhonda Johnson  
Email: [ContractAdmin@duke-energy.com](mailto:ContractAdmin@duke-energy.com)  
Phone: (980) 373-2322  
Fax: (980) 373-7595

**INVOICES:**

Attention: Sherry Hardy  
Email: [Sherry.Hardy@duke-energy.com](mailto:Sherry.Hardy@duke-energy.com)  
Fax Number: (980) 373-9748  
Phone Number: (980) 373-8688

**SCHEDULING:**

Attention: Dana Adams  
Email: [Dana.Adams@duke-energy.com](mailto:Dana.Adams@duke-energy.com)  
Fax Number: (704) 382-4014  
Phone Number: (704) 382-6292

**CREDIT:**

Attention: Lewis Camp  
Email: [Reg.Credit@duke-energy.com](mailto:Reg.Credit@duke-energy.com)  
Fax Number: (980) 373-8640  
Phone Number: (704) 382-5903

**To PIPP Supplier:**

The PIPP 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 Section 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 PIPP 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 PIPP Supplier 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 PIPP Supplier, 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 PIPP Supply by the PIPP Supplier under this Agreement (collectively, the "Taxes") will be the liability of the PIPP 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 the PIPP 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 PIPP Supplier on behalf of Duke Energy Ohio, Duke Energy Ohio will defend and indemnify the PIPP Supplier for such Ohio Sales and Use Taxes and will pay to the PIPP Supplier all such Tax amounts upon demand. The PIPP 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 PIPP 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 the PIPP Supplier), the PIPP 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 the PIPP 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.

The PIPP Supplier will have the right, upon reasonable notice, to inspect (at the sole cost and expense of the PIPP 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 the PIPP 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 the PIPP Supplier only insofar as they relate to Energy delivered by the PIPP 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:

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.

“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.

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.

“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.

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.

The word “or” will have the inclusive meaning represented by the phrase “and/or.”

“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

[PIPP SUPPLIER SIGNATURE APPEARS ON SUCCEEDING PAGE]

[PIPP SUPPLIER]

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

Name:

Title

**ATTACHMENTS**

- A            PIPP Supplier Responsibility Share**
- B            Seasonal Billing Factor**
- C            Credit Examples**
- D            Form of Guaranty**
- E            Form of PIPP Supplier Letter of Credit**
- F            Sample PJM Invoice**
- G            Billing Line Item Transfers**

ATTACHMENT A

PIPP SUPPLIER RESPONSIBILITY SHARE

PIPP Supplier	Price (\$MWh)	PIPP Supplier Responsibility Share Percentage (%)
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_____	_____/MWh	_____%
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Original Delivery Period: [\_\_\_\_\_, 20\_\_] through [\_\_\_\_\_, 20\_\_].

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:

[PIPP 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

Inception through May 2018	\$3,000,000
Jun-18	\$3,000,000
Jul-18	\$3,000,000
Aug-18	\$3,000,000
Sep-18	\$2,000,000
Oct-18	\$2,000,000
Nov-18	\$2,000,000
Dec-18	\$2,000,000
Jan-19	\$1,200,000
Feb-19	\$1,200,000
Mar-19	\$1,200,000
Apr-19	\$1,200,000
May-19	\$1,200,000

## 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 Amount for the PIPP 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 PIPP Load;
2. The expected Off-Peak PIPP Load;
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 expected PIPP Load for each month will be determined by multiplying (i) the historical usage for each month of PIPP Customers served by Duke Energy Ohio averaged over a recent three-year period (“Historical Actual Usage”) by (ii) the PIPP Supplier Responsibility Share. The expected PIPP 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.

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 at the time of each future RFP auction.

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.

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, compared to the Forward Market Prices prevailing on the closing day of the Solicitation. Table C-1 shows the calculation of the Mark-to-Market Exposure Amount using hypothetical Forward Market Prices and other assumptions for a 12-month Original Delivery Period from June [ ] through May [ ].

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 PIPP Load. The result is then multiplied by the relevant Price Adjustment Factors, as determined by Duke Energy Ohio, 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.

Table C-1

Market Valuation (Prior to Start of Delivery Period)

[VALUES ARE FOR ILLUSTRATION ONLY]

		Change in Forward Market Price (a)		Expected Volumes (b)		Price Adjustment Factor (c)		Mkt Value \$000 (d)
		On-Peak Market Price \$/MWh	Off-Peak Market Price \$/MWh	On-Peak MWh	Off-Peak MWh	On-Peak	Off-Peak	
Jun-18	\$	1.11	\$ 0.80	19,786	20,419	1.0254	1.0414	\$ 40
Jul-18	\$	0.38	\$ 0.46	16,979	19,002	1.0388	1.0577	\$ 16
Aug-18	\$	1.80	\$ 0.77	13,316	13,344	1.0379	1.0663	\$ 36
Sep-18	\$	1.78	\$ 1.51	10,888	11,251	1.0809	1.0721	\$ 39
Oct-18	\$	3.39	\$ 2.11	14,689	12,596	1.0125	1.0344	\$ 78
Nov-18	\$	3.27	\$ 2.31	17,331	14,860	0.9943	1.0120	\$ 91
Dec-18	\$	3.15	\$ 2.31	16,716	15,517	1.0106	1.0301	\$ 90
Jan-19	\$	3.25	\$ 2.25	16,467	14,406	1.0867	1.0851	\$ 93
Feb-19	\$	3.29	\$ 2.50	11,184	10,916	1.0709	1.0856	\$ 69
Mar-19	\$	3.40	\$ 2.25	10,208	11,936	1.0880	1.0900	\$ 67
Apr-19	\$	3.64	\$ 2.34	16,557	15,965	1.0086	1.0363	\$ 100
May-19	\$	2.50	\$ 1.18	19,979	21,286	1.0036	1.0188	\$ 76
								<b>\$ 795</b>
NPV of Mkt Value (e)								<b>\$ 747</b>

(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 PIPP Load derived from Historical  
Actual Usage

(c): Price Adjustment Factor as published by Duke Energy Ohio for each 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

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 PIPP Supply Agreement (each individually and collectively, the "Agreement") with \_\_\_\_\_, a \_\_\_\_\_ [corporation] (the "PIPP 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 PIPP 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 PIPP Supplier to Duke Energy Ohio arising out of the Agreement in connection with PIPP 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 PIPP 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 PIPP 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 PIPP 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 PIPP 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 PIPP Supplier; all demands whatsoever, except as noted in Section 1 hereof; and any right to require a proceeding first against the PIPP Supplier.

4. **Effect of Amendments.** Guarantor agrees that Duke Energy Ohio and the PIPP 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 the PIPP 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:

Duke Energy Ohio, Inc.  
550 South Tryon Street, DEC40C  
Charlotte, NC 28202  
Facsimile No.:  
Attention: Chief Risk Officer

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 PIPP 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 PIPP 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 PIPP 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 PIPP 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 PIPP

Supplier to Duke Energy Ohio arising out of the Agreement in connection with PIPP 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 PIPP 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 standby Letter of Credit (this "Letter of Credit") for the account of \_\_\_\_\_ (the "Applicant"), in the aggregate amount of \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ (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.
3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (prevailing Eastern Time<sup>1</sup>) on such Business Day to \_\_\_\_\_ (Bank), \_\_\_\_\_ (address), the following documents appropriately completed and signed by an authorized representative of the Beneficiary: (i) a notice in the form of Annex 1 hereto, and (ii) your draft in the form of Annex 2 hereto.
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.

<sup>1</sup> 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.

5. We hereby agree to honor your drawing made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified and to the account directed 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 the requisite documents 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 documents is made after 11:00 A.M. (prevailing Eastern time) on any Business Day pursuant to Paragraph 3 hereof.

6. We shall have a reasonable amount of time, not to exceed three (3) Business Days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, that in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.

7. This Letter of Credit will automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the maximum amount available to be made hereunder; (ii) the date we issue a new letter of credit in exchange for this Letter of Credit in accordance with Paragraph 4 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:

“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 PIPP Supply Agreement” shall mean that certain Master PIPP 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 International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 ("ISP98"). 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 ISP98, 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. Presentation to us of documents under this Letter of Credit includes presentation in person, by certified or overnight mail or by fax. Presentation by fax must be made to fax number \_\_\_\_\_ and confirmed by telephone to \_\_\_\_\_.

14. 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 representative 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 representative 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.

1. 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 PIPP 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 PIPP 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

<b>PJM Billing Statement Line Items</b>		
<b>ID #</b>	<b>Resp.</b>	<b>CHARGES</b>
1000	PIPP 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	PIPP S	Direct Assignment Facilities
1120	PIPP S	Other Supporting Facilities
1130	PIPP S	Firm Point-to-Point Transmission Service
1133	PIPP S	Firm Point-to-Point Transmission Service Resale
1140	PIPP S	Non-Firm Point-to-Point Transmission Service
1143	PIPP S	Non-Firm Point-to-Point Transmission Service Resale
1200	PIPP S	Day-ahead Spot Market Energy
1205	PIPP S	Balancing Spot Market Energy
1210	PIPP S	Day-ahead Transmission Congestion
1215	PIPP S	Balancing Transmission Congestion
1218	PIPP S	Planning Period Congestion Uplift
1220	PIPP S	Day-ahead Transmission Losses
1225	PIPP S	Balancing Transmission Losses
1230	PIPP S	Inadvertent Interchange
1240	PIPP S	Day-ahead Economic Load Response
1241	PIPP S	Real-time Economic Load Response
1242	EDC	Day-Ahead Load Response Charge Allocation
1243	EDC	Real-Time Load Response Charge Allocation

1245	PIPP S	Emergency Load Response
1250	PIPP S	Meter Error Correction
1260	PIPP S	Emergency Energy
1301	PIPP S	PJM Scheduling, System Control and Dispatch Service - Control Area Administration
1302	PIPP S	PJM Scheduling, System Control and Dispatch Service - FTR Administration
1303	PIPP S	PJM Scheduling, System Control and Dispatch Service - Market Support
1304	PIPP S	PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration
1305	PIPP S	PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.
1306	PIPP S	PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center
1307	PIPP S	PJM Scheduling, System Control and Dispatch Service - Market Support Offset
1308	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration
1309	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration
1310	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Market Support
1311	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration
1312	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.
1313	PIPP S	PJM Settlement, Inc.
1314	PIPP S	Market Monitoring Unit (MMU) Funding
1315	PIPP S	FERC Annual Charge Recovery
1316	PIPP S	Organization of PJM States, Inc. (OPSI) Funding
1317	PIPP S	North American Electric Reliability Corporation (NERC)
1318	PIPP S	Reliability First Corporation (RFC)
1320	EDC	<b>Transmission Owner Scheduling, System Control and Dispatch Service</b>
1330	EDC	<b>Reactive Supply and Voltage Control from Generation and Other Sources Service</b>
1340	PIPP S	Regulation and Frequency Response Service
1350	PIPP S	Energy Imbalance Service
1360	PIPP S	Synchronized Reserve
1365	PIPP S	Day-ahead Scheduling Reserve
1370	PIPP S	Day-ahead Operating Reserve
1371	PIPP S	Day-ahead Operating Reserve for Load Response
1375	PIPP S	Balancing Operating Reserve
1376	PIPP S	Balancing Operating Reserve for Load Response
1377	PIPP S	Synchronous Condensing
1378	PIPP S	Reactive Services
1380	PIPP S	Black Start Service
1400	PIPP S	Load Reconciliation for Spot Market Energy
1410	PIPP S	Load Reconciliation for Transmission Congestion
1420	PIPP S	Load Reconciliation for Transmission Losses
1430	PIPP S	Load Reconciliation for Inadvertent Interchange
1440	PIPP S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service
1441	PIPP S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund
1442	PIPP S	Load Reconciliation for Schedule 9-6 - Advanced Second Control Center
1444	PIPP S	Load Reconciliation for Market Monitoring Unit (MMU) Funding

1445	PIPP S	Load Reconciliation for FERC Annual Charge Recovery
1446	PIPP S	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding
1447	PIPP S	Load Reconciliation for North American Electric Reliability Corporation (NERC)
1448	PIPP S	Load Reconciliation for Reliability First Corporation (RFC)
<b>1450</b>	<b>EDC</b>	<b>Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service</b>
1460	PIPP S	Load Reconciliation for Regulation and Frequency Response Service
1470	PIPP S	Load Reconciliation for Synchronized Reserve
1475	PIPP S	Load Reconciliation for Day-ahead Scheduling Reserve
1478	PIPP S	Load Reconciliation for Balancing Operating Reserve
1480	PIPP S	Load Reconciliation for Synchronous Condensing
1490	PIPP S	Load Reconciliation for Reactive Services
1500	PIPP 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	N/A	FRR LSE Reliability
1687	N/A	FRR LSE Schedule 9-5
1688	N/A	FRR LSE Schedule 9-6
1920	PIPP S	Station Power
<b>1930</b>	<b>EDC</b>	<b>Generation Deactivation</b>
<b>1932</b>	<b>EDC</b>	<b>Generation Deactivation Refund</b>
1980	PIPP S	Miscellaneous Bilateral
1995	PIPP S	PJM Annual Membership Fee
1999	PIPP S	PJM Customer Payment Default

<b>PJM Credits</b>		
<b>ID#</b>	<b>Resp.</b>	<b>CREDITS</b>
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	PIPP S	Internal Firm Point-to-Point Transmission Service
2133	PIPP S	Firm Point-to-Point Transmission Service Resale
<b>2140</b>	<b>EDC</b>	<b>Non-Firm Point-to-Point Transmission Service</b>
2142	PIPP S	Internal Non-Firm Point-to-Point Transmission Service
2143	PIPP S	Non-Firm Point-to-Point Transmission Service Resale
2210	PIPP S	Transmission Congestion
2217	PIPP S	Planning Period Excess Congestion
2218	PIPP S	Planning Period Congestion Uplift
2220	PIPP 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
<b>2320</b>	<b>EDC</b>	<b>Transmission Owner Scheduling, System Control and Dispatch Service</b>
<b>2330</b>	<b>EDC</b>	<b>Reactive Supply and Voltage Control from Generation and Other Sources Service</b>
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	PIPP S	Load Reconciliation for Transmission Losses
2500	PIPP S	Financial Transmission Rights Auction
2510	PIPP 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	N/A	<b>FRR LSE Schedule 9-5</b>
2688	N/A	<b>FRR LSE Schedule 9-6</b>
2930	EDC	<b>Generation Deactivation</b>
2932	EDC	<b>Generation Deactivation Refund</b>
2980	PIPP S	Miscellaneous Bilateral

## ATTACHMENT G

## BILLING LINE ITEM TRANSFERS

<b><u>Billing Line Item Number</u></b>	<b><u>Billing Line Item</u></b>
1100	Network Integration Transmission Service
1108	Transmission Enhancement
1109	Midwest ISO Transmission Expansion Plan Assessment
1115	Transmission Enhancement Settlement
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

# **Attachment I**

## **PIPP Supplier Application Duke Energy Ohio, Inc.'s Percentage of Income Plan ("PIPP") RFP**

## **PIPP SUPPLIER APPLICATION Duke Energy Ohio, Inc.'s PIPP RFP**

### **INSTRUCTIONS**

This document is the PIPP Supplier 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 PIPP Supply Agreement.

### **PIPP SUPPLIER APPLICATION SUBMISSION**

To become Registered Bidders for the PIPP RFP, Applicants must submit the following through the PIPP RFP online portal by the PIPP Supplier Application Due Date:

- 1. PDF Application Form:** One (1) scanned copy of the PIPP Supplier Application document with valid signatures, notarized signatures where applicable, and the name of the Applicant on every page;
- 3. Supporting Documentation:** One (1) copy of required financial statements and other requested documents supporting the Application as specified in Appendix A; and
- 4. Changes to Credit Documents (Optional):** Any suggested modifications to the templates for the Pre-Bid Letter of Credit, the Letter of Intent to Provide a Guaranty, the Letter of Reference, the SSO Supplier Letter of Credit, or the Form of Guaranty ("Credit Documents") must be provided to the PIPP RFP Manager in an electronic, red-lined version.

Inquiries may be directed to the PIPP RFP Manager by email at [Duke-EnergyPIPPRFPManager@crai.com](mailto:Duke-EnergyPIPPRFPManager@crai.com). Inquiries also can be made through the Information Website.

***The completed PIPP Supplier Application and modifications to the Credit Documents MUST be received by the PIPP RFP Manager no later than 12:00 p.m. noon prevailing Eastern Time on the PIPP Supplier Application due date as posted in the timeline on the Information Website.***



## **CONFIDENTIALITY OF PIPP SUPPLIER APPLICATION SUBMISSIONS**

All Applicants are required to comply with the Communications Protocols.

Confidentiality requirements specific to the PIPP Supplier Application are reiterated below.

## **CONFIDENTIALITY OF CREDIT INFORMATION**

***Any information and materials that you submit in this PIPP Supplier Application may be provided on a confidential basis to the PIPP RFP Manager Team and the Public Utilities Commission of Ohio ("PUCO" or "Commission") and their representatives. Information that you provide in this PIPP Supplier 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.***

### **PIPP SUPPLIER APPLICATION Duke Energy Ohio, Inc.'s PIPP RFP**

---

This PIPP Supplier Application is the application form to become a Registered Bidder in Duke Energy Ohio's PIPP RFP. Only certified CRES Suppliers in the Duke Energy Ohio service area will be allowed to participate in the RFP.

#### **I. Background Information**

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

#### **II. Confirmation of Receipt**

**Online delivery:** Once your PIPP Supplier Application is submitted online through the PIPP RFP online portal, an email will be sent to the Authorized Representative and Delegate to confirm receipt of the completed online application.

### **III. Incomplete Applications**

If your PIPP Supplier Application is incomplete or requires clarification, the PIPP RFP 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 PIPP Supplier 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 PIPP Supplier Application may be rejected and you may be unable to participate in the RFP. All corrections to remedy deficiencies within an Applicant's PIPP Supplier Application must be sent via email. The Authorized Representative needs to sign and date next to the correction(s) to the PIPP Supplier Application and send to the PIPP RFP Manager by email to [Duke-EnergyPIPPRFPManager@crai.com](mailto:Duke-EnergyPIPPRFPManager@crai.com).

### **IV. Late Applications**

PIPP Supplier Applications received after the stated deadline will NOT be accepted under any circumstances.

### **V. Notification to Registered Bidders**

If you become a Registered Bidder for the RFP, the PIPP RFP Manager will send a Notification to Registered Bidder to your Authorized Representative by email after the PIPP Supplier Application Due Date.

**PIPP SUPPLIER 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. PIPP RFP?**If yes, indicate the most recent RFP date (month, year):*

## 1.2 Authorized Representative

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

The Applicant hereby acknowledges that any notification or other communication given by the PIPP RFP Manager to the Applicant with respect to the PIPP Supplier 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 RFP, and (ii) to represent the Applicant for purposes of this PIPP Supplier Application. I further certify that I will be responsible for all Confidential Information regarding the RFP 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

***The person designated in this section by the Applicant is the Delegate. The PIPP RFP 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

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

***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 PIPP Supply Agreement, and the provisions of the Communications Protocols pertaining to bidders in the RFP.

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 PIPP Supplier Application, I agree to notify the PIPP RFP Manager. I designate \_\_\_\_\_ to act as the Authorized Representative of the Applicant in the RFP 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

**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*

**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



**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 RFP.

***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*

**1.6 General Requirements to Participate in the RFP**

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 PIPP 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 PIPP 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 PIPP 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

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

***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.***

## 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				

- 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:
- 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 PIPP Supply Agreement will become the binding obligation of the Applicant in the jurisdiction in which it has been incorporated or otherwise formed.
  - 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 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 PIPP Supplier Application.

Further, if such Applicants become PIPP Suppliers, they will be required to submit additional documents as detailed in Article 5 of the Master PIPP Supply Agreement, including:

- A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the PIPP Supplier is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the PIPP Supplier in the jurisdiction in which it has been incorporated or otherwise formed;

- The sworn certificate of the corporate secretary (or similar officer) of such PIPP Supplier that the person executing the Agreement on behalf of the PIPP Supplier has the authority to execute the Agreement and that the governing board of such PIPP Supplier has approved the execution of the Agreement; and
- The sworn certificate of the corporate secretary (or similar officer) of such PIPP Supplier that the PIPP Supplier has been authorized by its governing board to enter into agreements of the same type as the Master PIPP Supply Agreement.

**Is the Applicant and/or its parent:**

	Applicant		Parent	
	Yes	No	Yes	No
Operating under federal bankruptcy laws or bankruptcy laws in any jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Subject to pending litigation or regulatory proceedings (in state court, or in federal court, or from regulatory agencies, or in any other jurisdiction) which could materially impact the Applicant's and/or parent's financial condition?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Subject to collection lawsuits or outstanding judgments that could impact solvency?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

***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.***

**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 a PIPP 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***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 RFP.

***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 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		

- 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 PIPP Supplier Application.

Further, if an Applicant with such a Guarantor becomes an PIPP Supplier, the Guarantor will be required to submit additional documents as detailed in Article 5 of the Master PIPP 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.

**Is the Guarantor and/or its parent (if applicable):**

	Guarantor		Parent	
	Yes	No	Yes	No
Operating under federal bankruptcy laws or bankruptcy laws in any jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Subject to pending litigation or regulatory proceedings (in state court, or in federal court, or from regulatory agencies, or in any other jurisdiction) which could materially impact the Guarantor's and/or parent's financial condition?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Subject to collection lawsuits or outstanding judgments that could impact solvency?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

***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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## 1.9 Additional Certifications

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

- a) Please certify that you are a certified CRES Supplier in the Duke Energy Ohio service area.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date



## 1.10 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 RFP or pertaining to bidding in the RFP. Please also provide the names of the other parties to the bidding agreement or other arrangement.

Note: All parties involved in a bidding agreement, a joint venture, a bidding consortium, or other arrangements for purposes of participating in the RFP must be certified CRES Suppliers who have applied to serve customers within the Duke Energy Ohio service area. Any party that is not a certified CRES Supplier in the Duke service area is not allowed to participate in this RFP, whether they are acting independently or as part of an arrangement with a CRES Supplier.

Other parties to the arrangement:

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☐ Bidding Agreement

☐ Bidding Consortium

☐ Joint Venture

☐ 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:

---

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

### **1.11 Justification of Omissions**

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

---



## 1.12 Pre-Bid Security

All Applicants will be required to submit pre-bid security for an amount equal to \$250,000. Applicants may also be required to post additional pre-bid security. If required, this amount will be equal to \$500,000. The amount of pre-bid security required will be based on the credit information provided in Section 1.7 or Section 1.8 of this PIPP Supplier Application.

NOTE: Stand-alone investment-grade companies with a sufficient Independent Credit Threshold (ICT) to cover the amount of additional Pre-Bid Security 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.

After your PIPP Supplier Application has been reviewed and approved by the PIPP RFP Manager, your Authorized Representative will be sent a notification including the amount of pre-bid security that is required in order to participate in the PIPP RFP. While proposed changed to credit documents are due by the PIPP Supplier Application Due Date, pre-bid security and additional pre-bid security will be due at a later date.

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.

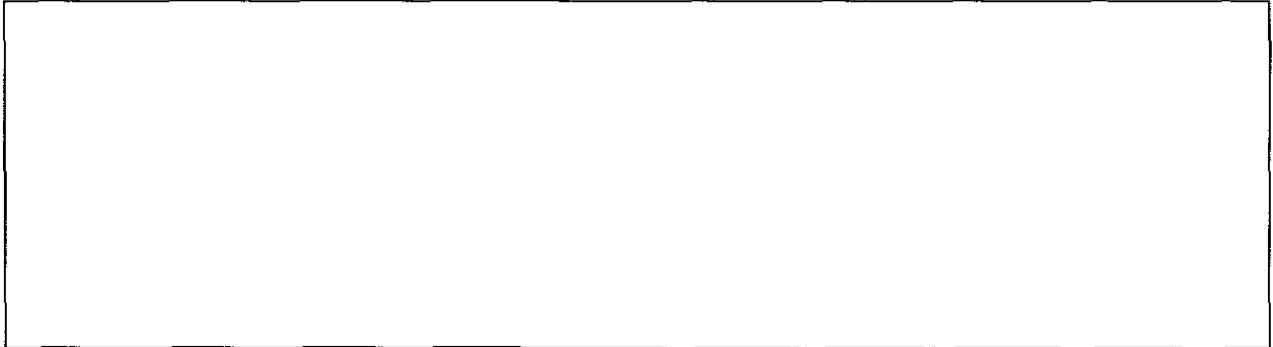
Please check here ☐ if you plan to submit a cash deposit as Pre-Bid Security.

Please check here ☐ if you plan to submit a Letter of Credit as Pre-Bid Security.

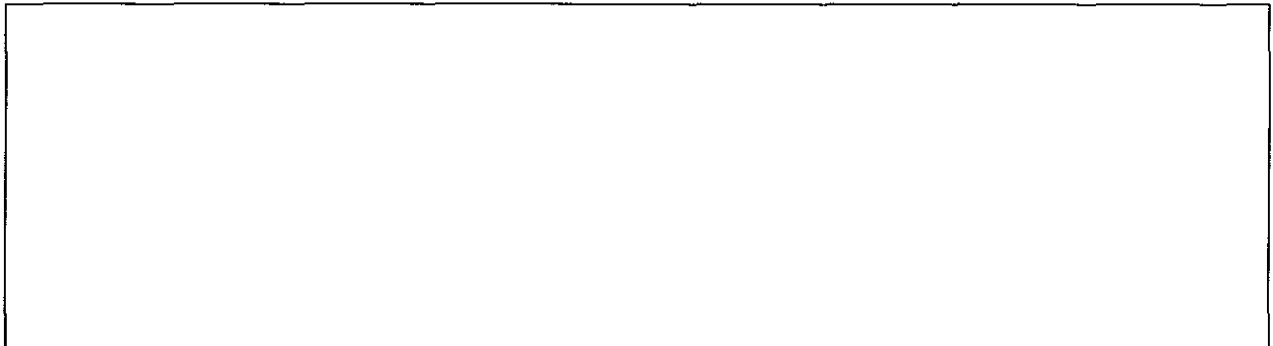
Please check here ☐ if you plan to submit a Letter of Intent to Provide a Guaranty from the named Guarantor on the PIPP Supplier Application Forms [Section 1.8] as additional Pre-Bid Security.

Please check here ☐ if you plan to submit a Letter of Reference from a bank as additional Pre-Bid Security.

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



If you plan to submit 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.



[illegible]



- (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 PIPP Service, and that (i) would require the disclosure of any Confidential Information (Confidential Information relative to the bidding strategy or Confidential Information regarding the RFP) 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 RFP) 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 RFP. Notwithstanding the above, you may, during negotiations prior to the RFP for contractual arrangements for power to serve PIPP Load were you to be a winner at the RFP, 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

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 certified CRES Supplier in the Duke Energy Ohio service area.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

If unable to make certification (5) requested above please name the other certified CRES Supplier(s) in the Duke Energy Ohio service area and the nature of the Confidential Information.

- (6) Please certify that you will not disclose Confidential Information relative to your bidding strategy except to bidders that were explicitly named in your PIPP Supplier Application as parties with whom you have entered into a Bidding Agreement, Joint Venture for the purpose of bidding in the RFP, or Bidding Consortium or other arrangement pertaining to bidding in the RFP, 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 RFP, or Bidding Consortium, or other arrangement pertaining to the RFP, no party has agreed to defray any of the costs of participating in the RFP, including the cost of preparing the bid, the cost of any financial guarantees, the cost to be paid upon winning, and any other participation cost.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

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

--

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

--

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

- (9) Please certify that you will not disclose any Confidential Information regarding the RFP 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 RFP 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 PIPP RFP Manager that contain Confidential Information regarding the RFP within five (5) days of the close of the bidding, or earlier if so instructed by the PIPP RFP Manager.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

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



#### **1.14 Ongoing Obligations**

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

- Section 11 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 PIPP Supplier Applications. Such sanctions can include, but are not limited to, termination of the Master PIPP 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 PIPP RFP Manager will make a recommendation on a possible sanction.

**1.15 Justification of Omissions**

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

**Appendix A – Enclosures to the PIPP Supplier Application**

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

☐ A copy of the completed PIPP Supplier Application with valid signatures and valid 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 PIPP 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 PIPP 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]*

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]
- ☐ 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 1.12]

**Appendix B – Proposed Modifications to Credit Documents (Optional)**

The standard forms of the Pre-Bid Security Letter of Credit, Supplier Letter of Credit, Letter of Reference, Letter of Intent to Provide a Guaranty, and Form of Guaranty are acceptable to Duke Energy Ohio and will be posted to the Information Website. However, an Applicant has the option to submit a draft of proposed modifications to each of the Credit Documents clearly identifying proposed changes in an electronic, redlined version. The draft Credit Document(s) can be submitted through the PIPP RFP online portal, or by email to [Duke-EnergyPIPPRFPManager@crai.com](mailto:Duke-EnergyPIPPRFPManager@crai.com) by the PIPP Supplier Application Due Date.

Duke Energy Ohio will assess, in its sole and exclusive discretion, whether such modifications are acceptable. The draft Credit Document(s) will be reviewed in accordance with the following process:

- Upon receipt of the PIPP Supplier Application, the PIPP RFP Manager will redact the draft Credit Document(s) to remove any information identifying the Applicant. The PIPP RFP 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 PIPP RFP Manager of its decision no later than seven (7) Business Days following the PIPP Supplier Application Due Date.
- Upon receipt of the Duke Energy Ohio's' decision, the PIPP RFP Manager will notify the Applicant of Duke Energy Ohio's decision. Duke Energy Ohio's decision will either state:
  - The draft Credit Document is acceptable to Duke Energy Ohio in the form in which it was submitted.
  - The draft Credit Document 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 PIPP RFP Manager will set forth the required changes.
  - The draft Credit Document is not acceptable to Duke Energy Ohio.
- If specific changes are required to the draft Credit Document, the Applicant will be required to resubmit the draft Credit Document with changes identified by Duke Energy Ohio on the Business Day following the Business Day during which the PIPP RFP Manager notified the Applicant of the Duke Energy Ohio's decision. No later than three (3) Business Days after the Applicant's resubmission, the PIPP RFP Manager will notify the Applicant of Duke Energy Ohio's final decision.

***End of PIPP Supplier Application***

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**Sample****Pre-Bid Security - Letter of Credit**

\_\_\_\_\_ [Date]

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

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio")  
550 South Tryon Street (DEC40C)  
Charlotte, NC 28202  
Attention: Chief Risk Officer

1. We hereby establish in your favor this irrevocable standby Letter of Credit (this "Letter of Credit") for the account of \_\_\_\_\_ ("the Bidder"), in the amount of \$\_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ [location] and expiring on \_\_\_\_\_ [date] which is 60 calendar days from date of issuance, unless terminated earlier in accordance with the provisions hereof or otherwise extended.
2. This Letter of Credit is issued at the request of the Bidder, 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 11 hereof. This Letter of Credit may be drawn by presenting a certificate from you stating that the Bidder:
  - a) "has made a material omission or misrepresentation in the PIPP Supplier Application submitted by the Bidder to participate in Duke Energy Ohio's PIPP RFP Process for purposes of procuring supply under the Master PIPP Supply Agreement"; or
  - b) "has violated the bidding rules for Duke Energy Ohio's PIPP RFP Process for purposes of procuring supply under the Master PIPP Supply Agreement"; or
  - c) "has a winning bid in Duke Energy Ohio's PIPP RFP Process for purposes of procuring supply under the Master PIPP Supply Agreement and has failed to execute the Master PIPP Supply Agreement within three (3) business days of the closing of the Solicitation (as defined in the Master PIPP Supply Agreement)"; or
  - d) "has a winning bid in Duke Energy Ohio's PIPP RFP Process for purposes of procuring supply under the Master PIPP Supply Agreement and has failed to meet the creditworthiness requirements of the Master PIPP Supply Agreement within three (3) business days of the closing of the Solicitation (as defined in the Master PIPP 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 Time<sup>1</sup>) on such Business Day to \_\_\_\_\_ [bank],  
\_\_\_\_\_ [address], the following documents appropriately  
completed and signed by an authorized representative of Duke Energy Ohio: (i) a notice in  
the form of Annex 1 hereto, and (ii) your draft in the form of Annex 2 hereto.

4. We hereby agree to honor your drawing made in compliance with the terms and conditions of this Letter of Credit by transferring in immediately available funds the amount specified and to the account directed in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 PM (prevailing Eastern Time) on the date of such drawing if delivery of the requisite documents is made prior to 11:00 AM (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 documents is made on or after 11:00 AM (prevailing Eastern Time) on any Business Day pursuant to Paragraph 3 hereof.
5. We shall have a reasonable amount of time, not to exceed three (3) Business Days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly. 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, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
6. This Letter of Credit shall automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you and payment by us of the drawings in an amount equal to the maximum amount available to be made hereunder, (ii) the date we receive from you a Certificate of Expiration in the form of Annex 3 hereto, or (iii) the above-stated expiration date hereof.
7. As used herein, "Business Day" means 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.
8. This Letter of Credit is not transferable, and except as otherwise expressly stated herein, is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 ("ISP98"). All banking charges are for the account of the Bidder. This Letter of Credit shall, as to matters not governed by the ISP98, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.
9. 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 3 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.

---

<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time, all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly.



10. 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.
11. 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.
12. Presentation to us of documents under this Letter of Credit includes presentation in person, by certified or overnight mail or by fax. Presentation by fax must be made to fax number \_\_\_\_\_ and confirmed by telephone to our Standby Letter of Credit Unit at \_\_\_\_\_.
13. This original Letter of Credit has been sent to the PIPP RFP Manager for Duke Energy Ohio's PIPP RFP Process:

Attn: Robert Lee, Vice President  
CRA International, Inc.  
200 Clarendon Street, T-9  
Boston, MA 02116-5092  
Phone: 617-425-3365

We understand that the PIPP RFP Manager holds the Letter of Credit for the benefit of Duke Energy Ohio. The aggregate amount paid to Duke Energy Ohio during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an authorized representative of Duke Energy Ohio. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an authorized representative of Duke Energy Ohio.

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 the Bidder has \_\_\_\_\_ (state reason from conditions (a) – (d) of Paragraph 2).

3. The amount to be received by Duke Energy Ohio 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 pursuant to Paragraph 4]

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

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: \_\_\_\_\_ [Bidder]

**Sample Letter of Intent to Provide a Guaranty**

\_\_\_\_\_ [Date]

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio")

Ladies and Gentlemen:

We have been asked to provide a financial guaranty on behalf of \_\_\_\_\_ ("Bidder") should Bidder become a PIPP Supplier pursuant to its bid in Duke Energy Ohio's PIPP RFP Process for purposes of procuring supply under the Master PIPP Supply Agreement.

Our relationship with Bidder is that of \_\_\_\_\_ [parent, affiliate, etc.]. Our senior unsecured debt rating meets the Minimum Rating as defined in the Master PIPP Supply Agreement.

We have confidence in Bidder's management and in its project development, implementation and operational capabilities.

Should there be no material change in affairs, we would consider providing a financial guaranty on behalf of Bidder, such that our liability does not exceed \$\_\_\_\_\_ [amount]. We understand that this amount would be in excess of the amount of any guaranty that we have provided on behalf of Bidder. This letter, however, should not and cannot be taken as an indication of financing commitment of any kind whatsoever, or an absolute commitment to provide a financial guaranty.

Please feel free to call us if you require any additional information.

Sincerely,

\_\_\_\_\_  
Authorized signature  
[Guarantor]  
[name] [title]

Ladies and Gentlemen:

We \_\_\_\_\_ [Bidder] certify that we have obtained this letter of intent in good faith, and that we know of no action on our part that would significantly impair \_\_\_\_\_ [Guarantor]'s assessment or its ability to provide us with the support described above.

\_\_\_\_\_  
Authorized signature  
[Bidder]  
[name] [title]

**Samples for Letter of Reference**

**SAMPLE 1**

\_\_\_\_\_ [Date]

Letter of Reference No. \_\_\_\_\_

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio")

Ladies and Gentlemen:

We \_\_\_\_\_ ("the Bank") are currently the agent on a \$\_\_\_\_\_ [amount] revolving credit facility to \_\_\_\_\_ ("Bidder"). At this time, there is sufficient unused availability under the credit facility to issue a letter of credit in the amount of \$\_\_\_\_\_ [amount] on behalf of Bidder in support of its bid in Duke Energy Ohio's PIPP RFP Process for purposes of procuring supply under the Master PIPP Supply Agreement.

We have had a relationship with Bidder since \_\_\_\_\_ [date]. Our relationship with Bidder remains in good standing.

We certify that we, the Bank, satisfy the minimum senior unsecured debt rating of "A-" from Standard & Poor's or "A3" from Moody's.

Please feel free to call us if you require any additional information.

Sincerely,

\_\_\_\_\_  
Authorized signature

Bank

[name] [title]

Ladies and Gentlemen:

We \_\_\_\_\_ [Bidder] certify that we have obtained this letter of reference in good faith, and that we know of no action on our part that would significantly alter the unused availability under the credit facility mentioned above, or otherwise impair \_\_\_\_\_ [Bank]'s ability to provide us with the support described above.

\_\_\_\_\_  
Authorized signature

Bidder

[name] [title]

**SAMPLE 2**

\_\_\_\_\_ [Date]

Letter of Reference No. \_\_\_\_\_

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio")

Ladies and Gentlemen:

We \_\_\_\_\_ ("the Bank") are currently the agent on the credit agreements to \_\_\_\_\_ ("Bidder"). Bidder has \$\_\_\_\_\_ [amount] of unused credit facilities at our bank available for borrowing under the terms and conditions of these credit agreements. Such a loan could be used as a cash deposit in support of Bidder's bid in Duke Energy Ohio's PIPP RFP Process for purposes of procuring supply under the Master PIPP Supply Agreement.

We have had a relationship with Bidder since \_\_\_\_\_ [date]. Our relationship with Bidder remains in good standing.

We certify that we, the Bank, satisfy the minimum senior unsecured debt rating of "A-" from Standard & Poor's or "A3" from Moody's.

Please feel free to call us if you require any additional information.

Sincerely,

\_\_\_\_\_  
Authorized signature

[Bank]

[name] [title]

Ladies and Gentlemen:

We \_\_\_\_\_ [Bidder] certify that we have obtained this letter of reference in good faith, and that we know of no action on our part that would significantly alter the amount of unused credit facilities mentioned above, or otherwise impair \_\_\_\_\_ [Bank]'s ability to provide us with the support described above.

\_\_\_\_\_  
Authorized signature

[Bidder]

[name] [title]



**SAMPLE 3**

\_\_\_\_\_ [Date]

Letter of Reference No. \_\_\_\_\_

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio")

Ladies and Gentlemen:

We have been asked to provide a letter of reference on behalf of \_\_\_\_\_ ("Bidder") relative to its intentions to bid in Duke Energy Ohio's PIPP RFP Process for purposes of procuring supply under the Master PIPP Supply Agreement.

Our relationship with Bidder has been extensive and has included involvement in a credit facility for \$ \_\_\_\_\_ [amount] with aggregate lending commitments in excess of \$ \_\_\_\_\_ [amount].

Should there be no material change in affairs, we would consider extending a letter of credit to Bidder in an amount not to exceed \$ \_\_\_\_\_ [amount]. This letter, however, should not and cannot be taken as an indication of financing commitment or guaranty of any kind whatsoever, or an absolute commitment to provide any other services.

We certify that we \_\_\_\_\_ ("Bank") satisfy the minimum senior unsecured debt rating of "A-" from Standard & Poor's or "A3" from Moody's.

Please feel free to call us if you require any additional information.

Sincerely,

\_\_\_\_\_  
Authorized signature

[Bank]

[name] [title]

Ladies and Gentlemen:

We \_\_\_\_\_ [Bidder] certify that we have obtained this letter of reference in good faith, and that we know of no action on our part that would significantly impair \_\_\_\_\_ [Bank]'s assessment or its ability to provide us with the support described above.

\_\_\_\_\_  
Authorized signature

[Bidder]

[name] [title]

**Attachment J**

**Bidding Rules for  
Duke Energy Ohio, Inc.’s  
Percentage of Income Payment Plan  
(“PIPP”) Request for Proposals (“RFP”)**

**Bidding Rules for Duke Energy Ohio's PIPP RFP****Table of Contents**

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**Bidding Rules for Duke Energy Ohio's PIPP RFP****1. INTRODUCTION**

These Bidding Rules apply to the requests for proposals for Duke Energy Ohio (hereafter referred to as "Duke" or "DEO") to procure competitive retail electric service for percentage of income payment plan ("PIPP") program customers of Duke Energy Ohio.

In addition to this document, participants also need to be familiar with other documents for the RFPs including the Master Percentage of Income Payment Plan Supply Agreement ("Master PIPP Supply Agreement"), the PIPP Supplier Application, the Communications Protocols, and the Glossary. Participants also should visit the Information Website regularly for up-to-date information including information specific to each RFP.

The URL for the Information Website is <http://www.Duke-EnergyOhioPIPP-RFP.com> (not case-sensitive). It contains relevant data, the schedule and key dates for participating in the RFP process, frequently asked questions, and other information.

Unless noted otherwise, each RFP will procure one product (for "PIPP Load"), and there will be at most one winning bidder in each RFP. The winning bidder wins the right to serve the entire PIPP Load up for bid in the RFP.

Unless noted otherwise, all capitalized terms in this document are defined in the Glossary or Master PIPP Supply Agreement available on the Information Website.

If there are any inconsistencies between this document and the prevailing Master PIPP Supply Agreement, the prevailing Master PIPP Supply Agreement governs.

Unless noted otherwise, "days" in this document refer to business days and times refer to prevailing Eastern Time.

Any examples in this document are illustrative only.

These Bidding Rules may be modified from time to time by the PIPP RFP Manager in order to:

- (i) facilitate a more competitive process,
- (ii) make any necessary corrections and/or clarifications,
- (iii) account for any change in the products to be procured,
- (iv) conform to any change in state or federal law or rule, and
- (v) apply any change deemed necessary at the discretion of the PIPP RFP Manager.

Such modifications will be carried out in consultation with Duke Energy Ohio and will be posted to the Information Website without prior consent from the Public Utilities Commission of Ohio ("PUCO" or "Commission") or any past, current, or prospective bidder.

**1.1. PIPP RFP Manager**

The PIPP RFP Manager is CRA International, Inc. d/b/a Charles River Associates, Inc. The PIPP RFP Manager can be contacted by sending an email to [Duke-EnergyPIPP-RFPManager@crai.com](mailto:Duke-EnergyPIPP-RFPManager@crai.com).

The full contact information for the PIPP RFP Manager is as follows:

**Bidding Rules for Duke Energy Ohio's PIPP RFP**

Attn: Robert Lee, Vice President / DEO PIPP RFP Manager  
CRA International, Inc.  
200 Clarendon Street, T-9  
Boston, MA 02116-5092  
Phone: 617.425.3384  
[Duke-EnergyPIPP-RFPManager@crai.com](mailto:Duke-EnergyPIPP-RFPManager@crai.com)

**2. PRODUCT BEING PROCURED AND OBLIGATIONS OF A WINNING BIDDER**

This section summarizes the common elements of the products to be procured in the RFPs as well as the related obligations of a winning bidder. The Information Website provides details about the product to be procured in a specific RFP. The Master PIPP Supply Agreement (or Glossary) defines terms and provides details of the obligations of a winning bidder. The product to be procured is Full Requirements Service to serve the PIPP Load of Duke Energy Ohio.

A winning bidder will assume all responsibilities of a PJM Load Serving Entity ("LSE") and will be responsible for supplying all obligations associated with Full Requirements Service. Full Requirements Service includes 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, and any other LSE service or other service as may be required by PJM and Section 4928.141 of the Ohio Revised Code to serve the PIPP Load of Duke Energy Ohio.

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

**3. SINGLE WINNING BIDDER**

The intent of the PIPP RFP is to select a single winning bidder — the PIPP Supplier — for the entire PIPP Load in the RFP.

**4. PRIOR TO THE OPEN OF THE BIDDING PERIOD****4.1. Information Provided to Bidders**

Duke Energy Ohio will make available certain information to prospective bidders prior to the start of the bidder application process. This information will be posted on the Information Website.

**4.1.1. Data**

Duke Energy Ohio will provide:

- Historical shopping and non-shopping SSO load data for the most recent three-year period available
- Historical hourly load data for total retail load and PIPP Load
- Historical switching statistics and historical load profiles
- PLC NSPL data

Bidding Rules for Duke Energy Ohio's PIPP RFP

- Information on the calculation of the Benchmark price for the RFP

#### 4.1.2. Product Size

Prior to the Application Due Date, the PIP RFP Manager will announce the approximate, nominal MW measure of the product in the PIPP RFP.

#### 4.2. Qualification Process

During the qualification process, prospective bidders apply to become Registered Bidders in the PIPP RFP. During the qualification process the prospective bidders are required to provide financial information, make a number of certifications, and provide pre-bid security.

Prospective bidders will be required to:

- By the Application Due Date, submit a completed PIPP Supplier Application from a person with the power to bind the bidder.
- Agree to comply with all rules of the RFP.
- Agree that if they become winning bidders, they will execute the Master PIPP Supply Agreement with Duke within three (3) days following the close of the RFP.
- Demonstrate that they are a Competitive Retail Electric Service ("CRES") provider.
- Agree that if they become the winning bidder, they will comply with the creditworthiness requirements set forth in the Master PIPP Supply Agreement.
- Certify that if they qualify to participate, they will not disclose confidential information that may be obtained during the bidding process.
- 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 Registered Bidders to another entity.
- Make a number of certifications to ensure the confidentiality of information regarding the RFP, and in regards to associations with other CRES providers in Duke Energy Ohio territory to ensure that they are participating independently of other CRES providers in the PIPP RFP. More details on the certifications can be found in the section, "Confidential Information, Certifications, and Sanctions," later in this document.

Prior to submitting a bid, prospective suppliers must submit Pre-Bid Security in the amount specified by the PIPP RFP Manager based on the information provided in the PIPP Supplier Application. Either cash (electronic wire transfer) or a Pre-Bid Security Letter of Credit will be accepted as pre-bid security. The standard form of the Pre-Bid Security Letter of Credit will be posted to the Information Website. If a draft Pre-Bid Security Letter of Credit submitted by the prospective bidder with the Application does not conform to the standard form, the prospective bidder shall indicate clearly any and all modifications in electronic, red-lined format from the standard form. Proposed modifications must be received by the PIPP RFP Manager no later than the Application due date and approved by Duke Energy Ohio. Duke will assess, in their sole and exclusive discretion, whether such modifications are acceptable.

**Bidding Rules for Duke Energy Ohio's PIPP RFP**

Pre-bid security will remain in full force, at a minimum, until five (5) calendar days after the conclusion of the RFP. Subsequently, a bidder's pre-bid security will be cancelled and returned as follows:

- As soon as practicable if the bidder has not won.
- After the bidder has signed the Master PIPP Supply Agreement and has complied with all creditworthiness requirements of the Master PIPP Supply Agreement.

Duke Energy Ohio can collect on the financial guarantees of a winning bidder that fails to sign the Master PIPP Supply Agreement or fails to comply with the creditworthiness requirements immediately following the close of the RFP.

If the applicant would like to propose changes to the Form of PIPP Supplier Letter of Credit to be used post-RFP by a winning bidder, submit those changes in an electronic, red-lined version by the Application Due Date.

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

**4.3. Benchmark Price**

Before the Bid Window opens, the PIPP RFP Manager will inform all Registered Bidders of the Benchmark Price for the RFP product. The Benchmark Price for the PIPP RFP will be set pursuant to the PUCO order following the last Standard Service Offer ("SSO") competitive bidding process ("CBP") that will be used to establish the Benchmark Price.

**4.4. Extraordinary Events**

The RFP Manager, in consultation with the Duke Energy Ohio, may determine that, due to extraordinary events, the schedule for the RFP process may need to be revised.

**5. BIDDING FORMAT FOR PIPP RFPS**

In order to participate in the RFP, bidders must have been successful in the qualification process. Only Registered Bidders are permitted to participate in the PIPP RFP. Registered Bidders will submit their bid in the RFP by accessing the PIPP RFP Manager's secure PIPP RFP portal.

**5.1. Bid Submission**

The bids can be submitted during the Bid Window as specified for each PIPP RFP. A bidder submits a bid by completing the PIPP RFP Bid Submission Form on the PIPP RFP portal, including entering the bidder's bid price. The bid price is the price at which the Bidder agrees to serve the PIPP Load offered at the PIPP RFP. Once the bid is received electronically, a unique Confirmation Number is assigned to the bid, and a unique random number is assigned to the bidder the first time the bidder submits a bid during the Bid Window.

A submitted bid is a binding offer to serve the PIPP Load at the bid price. All bids will be considered binding offers to supply PIPP Load until bidders have been notified that they will not be declared the



**Bidding Rules for Duke Energy Ohio's PIPP RFP**

winning bidder in the PIPP RFP. Such notification will be made once the PUCO has issued an Order on the RFP results.

If the Bid Submission Form is incomplete, illegible, contains inconsistencies or errors, or otherwise is not considered conforming by the PIPP RFP Manager, the PIPP RFP Manager will attempt to notify the bidder that the bid is non-conforming. The bidder solely is responsible for ensuring they submit a conforming bid during the Bid Window. The PIPP RFP Manager and Duke Energy Ohio assume no responsibility if the bidder does not submit a conforming bid during the Bid Window. If a bidder submits more than one bid:

- The random number included in the Confirmation Number assigned to the first bid received from the bidder also will be the random number included in the Confirmation Number assigned to any subsequent bids received from the bidder. Each subsequent bid submission by a bidder does not generate a new random number for the bidder
- The last conforming bid received from the bidder during the Bid Window will supersede all prior bids submitted by the bidder.

If a bidder submits a bid during the Bid Window but later decides they do not want to submit a bid at all, there is an option on the PIPP RFP Bid Submission Form to cancel any prior bids submitted. However, a bidder must cancel its bid only during the Bid Window. If a bidder is experiencing technical difficulties during the Bid Window they can contact the RFP Manager. In any case, bids cannot be canceled after the Bid Window closes. Also, entering a bid price of zero is not a cancellation of a bid — instead, it is a binding commitment to be paid a price of zero for serving PIPP Load. A bidder must use the bid cancellation option during the Bid Window to cancel any prior bids submitted.

**5.2. Bid Evaluation, Bid Selection, and Tie-Breaker**

Once the Bid Window is closed, all conforming bids will be sorted in ascending order by the prices in the bids, and then in ascending order by the random number in the Confirmation Number assigned to each bid. The lowest-priced bid that is below the Benchmark Price will be deemed the tentative winning bid.

If there is more than one bidder that submitted the lowest priced bid below the Benchmark Price, then there is a tie and the bidder with the lower random number in their Confirmation Number is deemed the tentative winning bidder.

If there are no conforming bids priced below the Benchmark Price, then there is no tentative winning bid and no tentative winning bidder.

Bidding Rules for Duke Energy Ohio's PIPP RFP**6. AFTER THE RFP CLOSES****6.1. Notification of Results**

At the close of the PIPP RFP, the PIPP RFP Manager will notify Duke Energy Ohio, the PUCO, and the PUCO consultant (if one has been retained) as follows:

- Whether or not the any of the PIPP RFP rules were violated in such a manner as to invalidate the PIPP RFP.
- Whether there is a tentative winning bidder, and if so, the identity of the tentative winning bidder and the tentative winning bid price.
- The identities of all the bidders, whether or not their bid was conforming, the price they bid, the time the bid was received, and the Confirmation Number they were assigned.

Bidders will be notified of their status (i.e., if they are the tentative winning bidder or not) as soon as practicable after the Bid Window closes.

The PUCO will confirm or reject the tentative winning bid and the winning bidder (if any) based on the information submitted by the RFP Manager. The PUCO may confirm or reject the results of the PIPP RFP and select the winning bidder and the winning bid (if any) through an order filed within forty-eight (48) hours of the conclusion of the PIPP RFP.

If a winning bidder is selected, it will be paid the winning price which is the price in the winning bidder's bid.

Once the PUCO issues an order, the RFP Manager will notify the winning bidder (if any) that they are the winning bidder. Once the winning bidder has executed the Master PIPP Supply Agreement, or five (5) days following the close of the Bid Window, whichever occurs first, the RFP Manager will notify the non-winning bidders that they have not won and bidders will be released from their potential obligation to supply PIPP Load.

**6.2. Execution of Master PIPP Supply Agreement**

After confirmation of the RFP results by the PUCO, the winning bidder and Duke Energy Ohio will execute the Master PIPP Supply Agreement no later than three (3) days following the close of the PIPP RFP once the specific pricing information and load obligations have been inserted in the Master PIPP Supply Agreement. The winning bidder must demonstrate compliance with the creditworthiness requirements set forth in the Master PIPP Supply Agreement.

**6.3. Sanctions for Failure to Execute the Master PIPP Supply Agreement**

A winning bidder's financial guaranty posted with its PIPP Supplier Application may be forfeited if the winning bidder does not execute the Master PIPP Supply Agreement within three (3) days following the close of the PIPP RFP Bid Window, if it fails to demonstrate compliance with the creditworthiness requirements set forth in the Master PIPP Supply Agreement, or if it fails to agree to any of the terms of the Master PIPP 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.

**Bidding Rules for Duke Energy Ohio's PIPP RFP**

In addition, the winning bidder will be liable for damages incurred by Duke, which will be determined in accordance with the terms of the Master PIPP Supply Agreement as though the winning bidder were a Defaulting Party to the Master PIPP Supply Agreement.

**6.4. Disclosure of the RFP Results**

The name of the winning bidder and the winning price will remain confidential unless and until released publicly by the PUCO or as required by law. The PUCO may choose to release additional information.

The winning bidder itself may release information regarding the fact that it has won, and a non-winning bidder itself may release information regarding the fact that it participated in the RFP, but not before the earliest of:

- (1) A PUCO Order confirming the results of the PIPP RFP.
- (2) Forty-eight (48) hours after the Bid Window closes.

The winning bidder and the non-winning bidders otherwise continue to be bound by their certifications as described elsewhere. In particular, the winning bidder and the non-winning bidders are not allowed reveal bid prices or the winning price in the RFP unless and until those prices are released publicly by the PUCO.

**7. USE OF THE BIDDING WEBSITE**

Bidders submit bids through the PIPP RFP Manager's secure PIPP RFP portal. An Authorized Representative of a bidder will access the PIPP RFP portal using their own Web browser. The URL address for the PIPP RFP portal, as well as user names and passwords, will be provided to Registered Bidders prior to the start of the RFP.

The PIPP RFP portal allows a Registered Bidder to submit and confirm bids, to receive the Confirmation Number, and the time-stamp of the bid submission.

**7.1. Requirements for Using the Bidding Website**

Access to the Bidding Website requires all of the following:

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

**8. BACKUP BIDDING PROCEDURE**

In case a bidder has technical difficulties, and as a result is not able to submit a bid via the PIPP RFP portal, the Bid Submission Form should be e-mailed to the PIPP RFP Manager at [Duke-EnergyPIPP-RFPManager@crai.com](mailto:Duke-EnergyPIPP-RFPManager@crai.com).

## **9. WHO TO CONTACT IN CASE OF PROBLEMS DURING THE RFP**

A bidder should contact the PIPP RFP Manager if it has questions or problems at [Duke-EnergyPIPP-RFPManager@crai.com](mailto:Duke-EnergyPIPP-RFPManager@crai.com). The RFP Manager also will provide a phone number for bidders experiencing connectivity issues during the Bid Window.

## **10. CONTINGENCY PLAN TO PROCURE PIPP RFP LOAD**

### **10.1. Supplemental PIPP RFP**

In the event that the PIPP Load is not procured in the PIPP RFP ("first PIPP RFP"), a supplemental PIPP RFP will be conducted. All the Registered Bidders for the first PIPP RFP automatically will be Registered Bidders for the supplemental PIPP RFP — unless the Registered Bidder violated the rules or incurs a material change so that the Registered Bidder no longer meets the qualification criteria to be a Registered Bidder.

The bidding rules for the supplemental PIPP RFP will be the same rules as laid out in this Bidding Rules document for the first PIPP RFP, with one exception: there will be no Benchmark Price for the supplemental PIPP RFP. In the Supplemental PIPP RFP, the tentative winning bidder will be the bidder that offers the lowest price in a conforming bid, even if this price is higher than the Benchmark Price of the first PIPP RFP.

As with the first PIPP RFP, the results of the supplemental PIPP RFP are subject to confirmation or rejection by the PUCO and all Supplemental RFP bids are considered binding up to and through any PUCO Order on the results of the Supplemental RFP.

### **10.2. PIPP Supply Requirements to be Offered to Existing SSO Suppliers**

If, after the attempts above to procure PIPP Load, the PIPP Load remains unfilled, the necessary PIPP Load requirements 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 asked to submit a best and final price at which they would be willing and able to supply the full PIPP load up for bid. The lowest offered price will be submitted to the PUCO for approval.

### **10.3. PIPP Supply Requirements to be Met through PJM-Administered Markets**

If, after the attempts above to procure PIPP Load, the PIPP Load remains unfilled, the necessary PIPP Load requirements will be met through PJM-administered markets at prevailing day-ahead 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.

### **10.4. PIPP Supplier Default Prior to or During the Delivery Period**

In the event the PIPP supplier selected from the RFP defaults prior to or during the delivery of PIPP Load requirements, Duke Energy Ohio will implement a contingency plan for PIPP Load. Under that plan,

Bidding Rules for Duke Energy Ohio's PIPP RFP

PIPP Load supply requirements will be met either by current SSO Suppliers or through PJM-administered markets as described above.

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.

## **11. CONFIDENTIAL INFORMATION, CERTIFICATIONS, AND SANCTIONS**

### **11.1. Confidential Information**

Confidential Information relative to bidding strategy means information relating to a bidder's bid in the PIPP RFP process, whether in writing or verbally, which if it were to be made public likely would have an effect on any of the bid 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 bid; the bidder's estimation of the value of serving PIPP Load; the bidder's estimation of the risks associated with serving PIPP Load; and a bidder's contractual arrangements for purchasing power to serve such load were the bidder to win the PIPP Load.

Confidential Information regarding the RFP means information that is not released publicly by the PUCO, Duke Energy Ohio or the PIPP RFP Manager and that a bidder acquires as a result of participating in the PIPP RFP process, whether in writing or verbally, which if it were to be made public could impair the integrity of current or future solicitations, impair the ability of Duke Energy Ohio to hold future solicitations, or harm consumers, bidders, or applicants. Confidential Information regarding the RFP may include (but is not limited to): the list of Registered Bidders and all non-public reports of results and announcements made by the PIPP RFP Manager to any or all bidders in the PIPP RFP process.

Confidential Information may not receive continued confidential or protected treatment should:

- (a) A bidder publicly disclose Confidential Information relating solely to that bidder; or
- (b) Public disclosure is required or compelled by the PUCO, a court or otherwise by law.

The PIPP RFP Manager, the PUCO, and Duke Energy Ohio shall not be liable for such public disclosures or, so long as reasonable measures have been taken to keep such information confidential, any other public disclosure of Confidential Information. By participating in this PIPP RFP 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 PIPP RFP 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 PIPP RFP 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 PIPP RFP process. Notwithstanding the above, Duke Energy Ohio and the PIPP RFP Manager reserve the right to use and communicate publicly and/or to third parties any and all information/data submitted as part of this PIPP RFP 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.

### **11.2. Certifications and Disclosures to Be Made**

A prospective bidder will be required to make the certifications listed in the PIPP Supplier Application and to disclose certain information. For example:

- A prospective bidder will be required to certify that it accepts the terms of the Master PIPP Supply Agreement and, should it win the PIPP RFP, it will sign the applicable Master PIPP Supply Agreement and comply with all creditworthiness requirements by the stated deadline.
- A prospective bidder will be required in its PIPP Supplier 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 PIPP RFP process. 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, a joint venture for the purpose of participating in the PIPP RFP process, a bidding consortium, or any other arrangement pertaining to participating in the PIPP RFP process. A bidding consortium is a group of separate businesses or business people joining together to submit joint bid in the RFP.
- Each prospective bidder will be asked to certify in its PIPP Supplier Application that it will undertake steps to appropriately restrict its disclosure of Confidential Information relative to its bidding strategy and Confidential Information regarding the PIPP RFP process.
- A prospective bidder will be asked to certify in its PIPP Supplier Application that it has not and will not come to any agreement with another CRES provider in the Duke Energy Ohio territory with respect to bidding in the PIPP RFP, except as disclosed and approved by the PIPP RFP Manager in its PIPP Supplier Application.
- Before obtaining any sealed documentation necessary to participate in the RFP, 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 RFP.

### **11.3. Actions to be Taken if Certifications Cannot Be Made**

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

If prospective bidders do not comply with additional information requests by the PIPP RFP Manager regarding certifications required in the PIPP Supplier Application, the PIPP RFP Manager may reject the application.

### **11.4. Sanctions for Failure to Comply**

Sanctions may be imposed on a bidder for failing to properly disclose information relevant to determining associations, for coordinating with another bidder, for failure to abide by any of the certifications made in its PIPP Supplier Application, for releasing Confidential Information or disclosing information during the PIPP RFP process (aside from only specific exceptions provided with respect to entities explicitly named in the PIPP Supplier Application as entities that are part of a bidding agreement or other arrangement), 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 PIPP Supply Agreement.
- The loss of all rights to provide supply for Duke Energy Ohio to serve any load won by such bidder.
- The forfeiture of letters of credit, financial guarantees, 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.
- Other sanctions that may be appropriate.

Should such an event occur, the PIPP RFP Manager will make a recommendation Duke Energy Ohio regarding sanctions. The imposition of such sanctions will be at the discretion of Duke.

## **12. MISCELLANEOUS**

### **12.1. Warranty on Information**

The information provided for the RFP, including but not limited to information provided on the Information Website, has been prepared to assist bidders in evaluating the PIPP RFP 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 PIPP RFP 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 PIPP RFP process or any omissions from the PIPP RFP 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 PIPP RFP 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.

### **12.2. Hold Harmless**

Bidder shall hold Duke and the PIPP RFP 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 RFP process or the award of a bid pursuant to the RFP process.

### **12.3. Bid Submissions Become Duke's Property**

All bids submitted by bidders participating in the PIPP RFP process will become the exclusive property of Duke upon conclusion of the PIPP RFP process.

#### **12.4. Bidder's Acceptance**

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

#### **12.5. 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.

#### **12.6. RFP Intellectual Property**

All title, interests and other intellectual property rights in and to the RFP design, the RFP format and methodology, the RFP software, the source code (including all modifications, enhancements, customization, adaptations and derivative works made by the PIPP RFP Manager) and associated documentation, including but not limited to these Bidding Rules, and the screen formats and forms designed by the PIPP RFP Manager (the "RFP Software"), are proprietary to the PIPP RFP Manager and all rights, title, and interest to the RFP Software remain with the PIPP RFP Manager. The PIPP RFP Manager grants Registered Bidders a non-exclusive, non-transferable, limited license to use the RFP Software, solely for use in connection with the RFP, subject to the terms and conditions set forth herein, and not for copying, relicensing, sublicensing, distribution or marketing by the Registered Bidder. No other interest is conveyed to the Registered 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 RFP process. If at any time it is determined in the PIPP RFP Manager's sole discretion that the Registered Bidder is in breach of this section 12.6, the PIPP RFP Manager shall be entitled to terminate the Registered Bidder's access rights to the RFP Software.

Notwithstanding anything herein to the contrary, and without limiting the Registered Bidder's other obligations herein, the Registered Bidder shall not, nor shall it permit any third party to: (i) modify, translate or otherwise create derivative works of the RFP Software; (ii) reverse engineer, decompile, decode, disassemble or translate any RFP Software, or output thereof, or otherwise attempt to reduce to human readable form or derive the source code, protocols or architecture of any RFP Software; (iii) use or study any RFP 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 RFP 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 RFP Software; (v) permit any other person who is not authorized to access or use all or any part of the RFP Software or (vi) copy the RFP Software, distribute the RFP Software, remove or obscure any proprietary labeling on or in the RFP Software, create any derivative works based on the RFP Software, or modify the RFP Software, in each case, except to the extent expressly permitted by the PIPP RFP Manager in writing.

In using the RFP Software, a Registered 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 RFP Software from being introduced into the systems.



## **Attachment K**

# **Communications Protocols for Duke Energy Ohio, Inc.'s Percentage of Income Payment Plan (“PIPP”) RFPs**

Communications Protocols for Duke Energy Ohio's PIPP RFPs

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## 1. INTRODUCTION

These Communications Protocols apply to the request for proposal RFPs for Duke Energy Ohio, Inc. ("Duke Energy Ohio") to procure competitive retail electric service for percentage of income payment plan ("PIPP") program customers of Duke Energy Ohio.

The Communications Protocols in this document are intended to promote a fair, open, transparent, objective, and non-discriminatory process for the PIPP RFPs to procure a supply of energy for PIPP 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 RFP process or future RFP 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 PIPP 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 PIPP RFP Manager recognize that additional information should be kept confidential, the PIPP RFP 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 PIPP RFP Manager and Bidders.
- Section 6 summarizes Communications Protocols with the PUCO, including communications between the PUCO and the PIPP RFP 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 PIPP RFP 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 RFP 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 RFP 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 PIPP RFP Manager. The second guiding principle is that the PIPP RFP 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 PIPP RFP Manager responds to inquiries from Bidders and information is disseminated to all Bidders by or under the supervision of the PIPP RFP Manager.

The PIPP RFP Manager also will ensure that information generated by the implementation of the RFP 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 PIPP RFP 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 PIPP RFP process where such communication or information is related directly or indirectly to this RFP 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 unless required to facilitate the review of financial information and credit documents submitted as part of the qualification process. When the PIPP RFP Manager informs Duke Energy Ohio about the price of the winning bid and identifies the winning Bidder, representatives from Duke Energy Ohio then will communicate with the winning Bidder in order to execute the necessary documents.

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

### **3.3 PIPP Supplier Application**

For the PIPP Supplier Application process, the PIPP RFP Manager will need to provide the names of the applications to Duke Energy Ohio's credit representatives for purposes of confirming the applicants' credit qualifications. Following the PIPP Supplier Application process, the PIPP RFP Manager will provide to Duke Energy Ohio the names of the Registered Bidders.

### **3.4 Communication of the Bid Selection Criteria**

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

### **3.5 RFP Results and Post-RFP Reports**

If there is a winning bid, shortly after the close of the RFP, the PIPP RFP Manager will: (a) prepare its post-RFP letter that informs Duke Energy Ohio (as well as the PUCO and PUCO Consultant) about the winning bid and identify the winning Bidder, and (b) notify the winning Bidder. Duke Energy Ohio will contact the winning Bidder to execute necessary documents. The PIPP RFP Manager also will inform any Bidders that did not win that they are not the winning Bidder.

If there is no winning bid, the PIPP RFP 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 PIPP RFP Manager's office.

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

#### **4. GENERAL PUBLIC AND MEDIA**

While the bidding window is open, there shall be no communication with the media or the public. After the PIPP RFP 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 PIPP RFP 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 may have restricted, non-public section that will be accessible only to parties allowed to have such access.

##### **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 PIPP RFP Manager has concerning the RFP 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 PIPP RFP 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 PIPP RFP 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 PIPP RFP Manager will be directed to the Information Website. Inquiries from the media to the PIPP RFP Manager will be directed to Duke Energy Ohio.

### **5. BIDDERS**

#### **5.1 Communications Among Bidders**

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

#### **5.2 Communications between the PIPP RFP 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 RFP process. As discussed above, once registered through the Information Website, Registered Users will receive notifications from the PIPP RFP Manager about updates to the RFP process and to the Information Website.

If the PIPP RFP Manager receives an inquiry from a party and prepares a response that would be relevant for other parties, the PIPP RFP 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 PIPP RFP Manager may contact Bidders directly in order to seek or provide information about the RFP process in a way that does not advantage any Bidder.

Any communications from the PIPP RFP 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 an 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 PIPP RFP Manager to Duke Energy Ohio. Inquiries to be answered by the PIPP RFP Manager will be forwarded to Duke Energy Ohio with a draft response. Any inquiry or draft response forwarded by the PIPP RFP Manager to Duke Energy Ohio will not identify the party posing the inquiry. Both Duke Energy Ohio and the PIPP RFP Manager will review any inquiry and response before the FAQ is posted to the Information Website.

### **5.4 Bidding Process**

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

The PIPP RFP Manager will ensure the bids submitted by Bidders conform to the rules of the RFP process.

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

### **5.5 Limitations on Disclosures by Bidders**

Bidders shall not disclose that they are participating in a PIPP RFP and the winning Bidder shall not disclose that they are the winning Bidder until the PUCO publicly reports the results of the PIPP RFP. 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 PIPP RFP 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 PIPP RFP Manager**

During the PIPP RFP bidding window, the identity of Bidders and prices will be kept confidential. This information may be released to the PUCO after the close of the RFP.

## **6.3 Communications with Duke Energy Ohio**

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

## **6.4 Communications with Bidders**

The PUCO will not communicate with Bidders about the PIPP RFP process prior to the determination of a winning bid. 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 PIPP RFP Manager.

## **6.5 Information on RFP Participation**

In order to maintain confidential and proprietary information provided by Bidders as part of the RFP process, the identity of all Bidders that submitted PIPP Supplier Applications in the RFP process 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 Bids**

Actual bids by Bidders will be kept confidential pursuant to the confidentiality provisions of the PIPP RFP Bidding Rules and the Master PIPP Supply Agreement.

Communications Protocols for Duke Energy Ohio's PIPP RFPs

## 7. GLOSSARY

This Glossary applies to the RFPs for Duke Energy Ohio, Inc. (Duke Energy Ohio) to procure competitive retail electric service for percentage of income payment plan ("PIPP") program customers of Duke Energy Ohio. Some terms contained in this Glossary may also be defined in the Master Percentage of Income Payment Plan Supply Agreement (Master PIPP Supply Agreement). When there is a conflict between this Glossary and the Master PIPP Supply Agreement, the Master PIPP Supply Agreement will take precedence.

**Advisor** means a person or persons who will be advising or assisting the Registered Bidder with respect to bidding strategy, estimation of the value of the product, or estimation of the risks associated with serving PIPP Load.

**Ancillary Services** has the meaning set forth in the PJM Agreements.

**Applicant** means a Party that has submitted or indicated that it is going to submit a PIPP Supplier 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 PIPP Supplier Application and any required attachments. Bidders will be provided logon credentials for the application website upon submitting an expression of interest to the PIPP RFP Manager.

**Authorized Delegate (Delegate)** means the Person authorized by the Applicant to be the point of contact for the PIPP RFP Manager when so designated by the Authorized Representative.

**Authorized Representative** means a designated person who is authorized to represent the Applicant in the RFP. The Authorized Representative must ensure that only authorized persons act on behalf of the Applicant in the RFP and is responsible for ensuring that no Confidential Information is disclosed improperly.

**Benchmark Price** for the PIPP RFP will be set pursuant to the PUCO order following the last Standard Service Offer ("SSO") competitive bidding process ("CBP") that will be used to establish the Benchmark Price.

**Bid Price** is the price at which the Bidder agrees to serve the PIPP Load offered at the PIPP RFP.

**Bid Submission Form** contains a Bidder Information Section and the Bid Price as offered by the Bidder.

**Bid Window** means the period of time when Registered Bidders can submit their bids in the

Communications Protocols for Duke Energy Ohio's PIPP RFPs

RFP.

**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 RFP.

**Bidding Website** means the secure Website used by Registered Bidders to participate in the RFP. The URL address for the Bidding Website will be provided to Registered Bidders.

**Business Day** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Capacity** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Charge** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Commission (PUCO)** means the Public Utilities Commission of Ohio.

**Company** means Duke Energy Ohio.

**Competitive Retail Electric Service Provider (CRES Provider)** has the same meaning as CRES Supplier.

**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 RFP. Confidential information regarding the RFP means information, written or oral, that is not released publicly by the PUCO or the PIPP RFP Manager and that a Bidder acquires as a result of participating in the RFP, which if it were to be made public could impair the integrity of the current or future RFPs, impair the ability of the Company to hold future RFPs, harm consumers, or injure Bidders or Applicants.

**Costs** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**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 PIPP Supply Agreement.

Communications Protocols for Duke Energy Ohio's PIPP RFPs

**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 RFP.

**Customer** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Day(s)** means to Business Day(s), unless noted otherwise.

**Defaulting Party** has the meaning set forth in Section 7.1 of the Master PIPP Supply Agreement.

**Delegate (Authorized Delegate)** means a Person authorized by the Applicant to be the point of contact for the PIPP RFP Manager when so designated by the Authorized Representative.

**Delivery Period** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Effective Date** has the meaning set forth in the preamble of the Master PIPP Supply Agreement.

**Energy** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**FERC** has the meaning set forth in the prevailing Master PIPP 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 PIPP 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 PIPP Supply Agreement.

**Guarantor** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Guaranty** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**ICR Collateral** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**ICT Guaranty** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Independent Credit Requirement (ICR)** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Independent Credit Threshold (ICT)** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Information Website** means <http://www.duke-energyohiopipp-rfp.com/> which is the Website that will be the primary online source of information about the RFPs.

Communications Protocols for Duke Energy Ohio's PIPP RFPs

**Joint Venture** means an enterprise entered into by two or more people for profit with the purpose of bidding in the RFP. 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 PIPP Supply Agreement.

**Kilowatt-hour (kWh)** has the meaning set forth in the prevailing Master PIPP 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 PIPP Supply Agreement.

**Letter of Intent to Provide a Guaranty** means a document that may be issued by Qualified Bidder's Guarantor during the PIPP Supplier Application process. The letter indicates that an ICT Guaranty will be provided once the Master PIPP Supply Agreement is signed.

**Letter of Reference** means a document that may be issued by a Qualified Bidder's bank during the PIPP Supplier 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 PIPP Supplier Application.

**Load Serving Entity (LSE)** has the meaning set forth in the applicable PJM Agreements.

**Master Percentage of Income Payment Plan Supply Agreement (Master PIPP Supply Agreement or Agreement)** means the standard contract that will be used by the winning Bidder and Duke Energy Ohio.

**Megawatt (MW)** means one thousand Kilowatts.

**Megawatt-hour (MWh)** means one Megawatt of electric power used over a period of one hour.

**NERC** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Network Integrated Transmission Services (NITS)** has the meaning set forth in the applicable PJM Agreements.

**Notification to Registered Bidders** is sent by the RFP Manager to the prospective Bidder once they become Registered Bidders. The Notification is in the format set forth in the PIPP Supplier Application.

Communications Protocols for Duke Energy Ohio's PIPP RFPs

**Party** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Person** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**PIPP Customers** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**PIPP Load** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**PIPP RFP Manager** is the team at CRA International, Inc. d/b/a Charles River Associates ("CRA") that is managing the PIPP RFP process for the FirstEnergy Ohio Utilities.

**PIPP Service** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**PIPP Service Offer** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**PIPP Supplier** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**PIPP Supplier Application** is the application process for prospective Bidders to participate in the RFP.

**PIPP Supplier Application Deadline** is the date specified in the timeline on the Information Website.

**PIPP Supply** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**PJM** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**PJM Agreements** has the meaning set forth in the prevailing Master PIPP 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 PIPP Supply Agreement.

**PJM OATT (PJM Tariff)** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**PJM Operating Agreement** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Pre-Bid Security** is posted by each Registered Bidder in an amount sufficient to meet the requirement in the PIPP Supplier Application. Pre-Bid Security to be posted by a Registered Bidder must be received before the Bid Window opens and must be in the form of cash or a Pre-Bid Security Letter of Credit.

**Product** is the PIPP Load of Duke Energy Ohio's Delivery Period.

Communications Protocols for Duke Energy Ohio's PIPP RFPs

**PUCO** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**PUCO Consultant** means any firm and/or individual(s) retained by the PUCO for purposes of assisting the PUCO or PUCO Staff.

**Registered Bidder** means a Party that has successfully completed the PIPP Supplier Application process.

**Registered User** means a Party that has registered through the Information Website to receive information about the RFP.

**RFP** stands for request for proposals.

**Service Territory** means the geographic areas of the State of Ohio in which the Company serves Customers.

**Special Contract Customers** has the meaning set forth in the prevailing Master PIPP Supply Agreement.

**Term** has the meaning set forth in Section 2.1 of the Master PIPP Supply Agreement.

**UCC** means the Uniform Commercial Code.

**Winning Bidder** means a Registered Bidder that has won the PIPP load.

**Winning Price** means for a Product is the price to be paid to the Winning Bidder for the Product.

Notice to Parties in Previous SSO Proceeding

June 1, 2017

**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. 14-841-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. 17-1263-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](http://www.duke-energy.com) and through the PUCO website at [www.puc.state.oh.us](http://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 1<sup>st</sup> day of June 2017, 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. 17-1263-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, 2018, through May 31, 2024. The ESP includes provisions regarding the acquisition and pricing of capacity and energy to serve SSO customers through a series of auctions, distribution service, and other matters.

On average for all customer classes and during the proposed ESP period, it is anticipated that rates may increase annually between 1 and 3 percent, as compared to rates expected to be in effect on May 31, 2018. 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. 17-1263-EL-SSO, or contacting the Commission's call center at 1-800-686-7826.