**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Review of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm.Code Chapter 4901:1-37. | ) ) ) ) ) ) | Case No. 17-974-EL-UNC |

# THIRD SET OF INITIAL COMMENTS OF INTERSTATE GAS SUPPLY, INC.


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## TABLE OF CONTENTS

**BEFORE**
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| | | |
|---|---|---|
| In the Matter of the Review of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm.Code Chapter 4901:1-37. | ) ) ) ) ) ) | Case No. 17-974-EL-UNC |

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## I. INTRODUCTION

The purpose of a corporate separation plan is to ensure that an electric distribution utility ("EDU") does not provide any of its affiliates or part of its own business with an undue preference or advantage.[1] In order to rectify many of the past inequities identified in the multiple audit reports and by the parties to this proceeding, the Commission needs to force the EDU to divest all business units that provide nonelectric products and services, allow non-utility entities the same space on the utility bill that the EDU has enjoyed for years, and levy appropriate fines for past violations. Two separate independent Audit Reports along with recent events reveal that the Corporate Separation Plan of Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company (collectively "FirstEnergy" or the "FirstEnergy EDUs") is simply not working. With the submission of the third round of comments regarding the insufficiencies of FirstEnergy's Corporate Separation Plan, the Commission should see the necessity to

[1] *See* R.C. 4928.17(A)(3); Ohio Adm.Code 4901:1-37-02.

amend FirstEnergy's Corporate Separation Plan to comply with R.C. 4928.17(A)(1), and to adopt the recommendations provided in the Audit Reports along with those proposed by Interstate Gas Supply, Inc. ("IGS" or "IGS Energy") to end the anti-competitive subsides flowing from FirstEnergy to its competitive affiliates as well parts of FirstEnergy's own businesses engaged in the supply of nonelectric products and services.

In order to bring FirstEnergy's business practices into compliance with R.C. 4928.17, IGS recommends that the Commission order FirstEnergy to immediately cease offering nonelectric products and services. FirstEnergy should divest itself of that business and be required to operate it as a standalone affiliate that does not leverage the FirstEnergy name. Next, in order to bring FirstEnergy's preferential, discriminatory billing practices into compliance with the Commission's rules (and principles of corporate separation), the Commission should order FirstEnergy to permit competitive retail electric service ("CRES") providers to include their nonelectric charges on the consolidated utility bill, a service that has long been provided by FirstEnergy for years.

Finally, the Commission should not take FirstEnergy's violations lightly. Given the gravity of FirstEnergy's numerous offenses, the Commission should levy appropriate fines. A slap on the wrist would simply encourage more bad behavior.

## II. BACKGROUND AND PROCEDURAL HISTORY

### A. Initial Audit of FirstEnergy's Compliance with Corporate Separation Requirements

Following the passage of SB 3 in 1999, FirstEnergy filed an electric transition plan ("ETP") to separate and unbundle competitive and non-competitive services. As part of its ETP, FirstEnergy was required to implement a corporate separation plan that complied

with the requirements of R.C. 4928.17. That section—specifically, R.C. 4928.17(A)(1)—required full structural separation of all unregulated services and businesses from the EDU, however, the law permitted a temporary exception from that requirement based upon a finding of good cause. R.C. 4928.17(C). Like many utilities, due to financial entanglements related to the financing of its competitive, unregulated assets, FirstEnergy sought and received, based upon a finding of good cause, an exception from the requirement to fully separate its unregulated businesses.[2]

Although FirstEnergy subsequently amended its corporate separation plan from time to time, including the ultimate transfer of its generating assets to an affiliate, FirstEnergy never again requested or attempted to justify an exception based upon a finding of good cause from the requirement to provide nonelectric services through a separate affiliate.

In 2014, through the *Retail Market COI*, the Commission found that each of the Ohio EDUs should be subject to an audit to ensure their compliance with the corporate separation laws in R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37.[3] In 2017, this proceeding was opened to fulfill this directive for FirstEnergy. To assist with this review, the Commission selected an auditor, Sage Management Consultants, LLC ("Sage"), to draft a report assessing FirstEnergy's compliance with the corporate separation laws and

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[2] *In the Matter of the Application of FirstEnergy Corp. on behalf of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of their Electric Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-ETP ("*Initial CSP Proceeding")* Order at (Jul.19, 2000) at 23-27.

[3] *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market ("Retail Market COI")*, Case No. 12-3151-EL-COI, Finding and Order (Mar. 26, 2014) at 16-17.

rules ("Sage Audit Report").[4] Parties, including IGS Energy, submitted comments in December 2018 and January 2019 in response to the findings in the Sage Audit Report, which largely focused on FirstEnergy's relationship with its competitive affiliate FirstEnergy Solutions ("FES").[5]

While the comments were pending before the Commission, on March 20, 2020, FirstEnergy filed notice in this proceeding that FES had emerged from bankruptcy as Energy Harbor Corp. ("Energy Harbor") and that Energy Harbor is no longer an affiliate of FirstEnergy's parent, FirstEnergy Corp.[6] Additionally, on April 22, 2020, the Commission granted the application of Suvon, LLC d/b/a FirstEnergy Advisors ("FirstEnergy Advisors"), an affiliate of FirstEnergy, for certification as a CRES power broker and aggregator in the state of Ohio.[7]

In light of both the emergence of Energy Harbor from bankruptcy and concerns regarding corporate separation requirements raised in the FirstEnergy Advisors certification case, the attorney examiner found that interested persons should have the opportunity to file supplemental comments and supplemental reply comments regarding the Sage Audit Report.[8] Parties, including IGS Energy, filed Supplemental Comments

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[4] Sage Management Consultants LLC Compliance Audit of FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio (May 14, 2018) ("Sage Audit Report").
[5] Initial Comments of Interstate Gas Supply, Inc. (Dec. 31, 2018) ("IGS Initial Comments"); Reply Comments of Interstate Gas Supply, Inc. and the Retail Energy Supply Association (Jan. 7, 2019) ("IGS Initial Reply Comments").
[6] Entry (Nov. 4, 2020) at ¶ 8.
[7] *In the Matter of the Application of Suvon, LLC,* Case No. 20-103-EL-AGG *("FirstEnergy Advisors Case")*, Finding and Order (Apr. 22, 2020) at ¶ 22.
[8] Entry (Nov. 4, 2020) at ¶ 10.

and Supplemental Reply Comments in May 2020 and June 2020, respectively.[9] Subsequently, on November 3, 2021, based upon a remand issued by the Ohio Supreme Court, the Commission vacated its order granting certification to FirstEnergy Advisors as a CRES power broker and aggregator.[10]

### B. Second Audit of FirstEnergy's Compliance with Corporate Separation Requirements

On July 21, 2020, a complaint and supporting affidavit containing federal criminal allegations were filed against the now former Ohio House Speaker Larry Householder and other individuals and entities allegedly affiliated with Mr. Householder regarding activities surrounding the passage of Am. Sub. H.B. 6 ("H.B. 6").[11]

On October 29, 2020, FirstEnergy Corp. filed a Form 8-K with the United States Securities and Exchange Commission reporting the termination of certain officers.[12] The Form 8-K further stated that during the course of FirstEnergy Corp.'s internal investigation related to ongoing government investigations, the Independent Review Committee of the Board of Directors determined that each of the terminated executives violated certain FirstEnergy Corp. policies and its code of conduct.[13]

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[9] *See* Supplemental Comments of Interstate Gas Supply, Inc. (May 20, 2020) ("Supplemental Comments"); Supplemental Reply Comments of Interstate Gas Supply, Inc. (June 15, 2020) ("Supplemental Reply Comments").

[10] *FirstEnergy Advisors Case*, Order on Remand (Nov. 3, 2021).

[11] *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 20-1629-EL-RDR ("*DCR Audit Proceeding*"), Compliance Audit of the 2020 Delivery Capital Recovery (DCR) Riders of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company and Expanded Scope (Aug. 3, 2021) ("DCR Audit Report – Expanded Scope") at 5.

[12] *Id.* at ¶ 16; FirstEnergy Corp. Form 8-K (October 29, 2020) available at https://sec.report/Document/0001193125-20-281617/.

[13] Entry (Nov. 4, 2020) at ¶ 16.

On November 4, 2020, the Commission issued an Entry stating that the information supplied by FirstEnergy Corp. in the Form 8-K requires additional action to ensure compliance by FirstEnergy and its affiliates with the corporate separation provisions of R.C. 4928.17 and with FirstEnergy's Corporate Separation Plan.[14] Therefore, the Commission ordered a second corporate separation audit to examine activities during the time period leading up to the passage of H.B. 6 and the subsequent referendum.[15] This Third Set of Initial Comments are in response to this second audit ("Daymark Audit").[16]

On July 21, 2021 it was announced that FirstEnergy Corp. had entered into a deferred prosecution agreement on federal charges and agreed to pay a $230 million fine in connection with federal wire fraud and bribery charges.[17] The legal case remains ongoing and charges still may be levied against other individuals involved in the overall scheme.

**C. Delivery Capital Recovery Riders Audit Proceeding**

In a separate proceeding, Blue Ridge Consulting Services, Inc. was selected to complete an audit of FirstEnergy's Delivery Capital Recovery ("DCR") Riders ("DCR Audit").[18] However, prior to the audit's completion, FirstEnergy Corp. reported the following in a 10-K filing: "Also, in connection with the internal investigation, FirstEnergy [Corp.] recently identified certain transactions, which, in some instances, extended back

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[14] *Id* at ¶ 1, 17.
[15] *Id.*
[16] Daymark Energy Advisors Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio (Sept. 13, 2021) ("Daymark Audit Report").
[17] https://www.justice.gov/usao-sdoh/pr/firstenergy-charged-federally-agrees-terms-deferred-prosecution-settlement.
[18] *DCR Audit Proceeding*, Entry (Mar. 10, 2021) at ¶ 5.

ten years or more, including vendor services, that were either improperly classified, misallocated to certain of the Utilities and Transmission Companies, or lacked proper supporting documentation."[19] In response to this revelation, the Commission expanded the scope of the DCR Audit to include the review of some of these disclosed transactions to determine whether funds collected from ratepayers were used to pay the vendors and if so, whether or not the funds associated with those payments should be returned to ratepayers.[20]

Included in the vendor transactions under review was a Consulting Services Agreement ("Consulting Agreement") entered into by the FirstEnergy Service Company with the Sustainability Funding Alliance of Ohio, Inc. ("Sustainability Funding Alliance").[21] The DCR Audit Report, filed on August 4, 2021, revealed that the FirstEnergy EDUs were allocated costs for some the payments made under the Consulting Agreement.[22] However, the Consulting Agreement was for consulting services for FirstEnergy's competitive affiliate, FirstEnergy Solutions.[23] Thus, it is clear that the FirstEnergy EDUs were responsible for bankrolling the consulting expenses of their competitive affiliate for years despite the alleged protections of their corporate separation plan and Ohio law. The Audit Report in this proceeding, however, does not address this issue.

**D. The Commission's Rulemaking Order**

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[19] Id. at ¶ 6, *citing* FirstEnergy Corp. Form 10-K Fiscal Year Ended December 31, 2020 at 28.
[20] *DCR Audit Proceeding*, Entry (Mar. 10, 2021) at ¶ 7.
[21] Consulting Services Agreement Term Sheet, Attachment A to General Terms and Conditions ("IGS Att. A").
[22] *DCR Audit Proceeding*, DCR Audit Report – Expanded Scope at 13.
[23] FirstEnergy Purchase Order No. 55116871 ("IGS Att. B") at 1.

In parallel with this proceeding, the Commission has undertaken its five-year rule review of the electrical safety and service standards. In that case, IGS raised concerns regarding EDUs utilization of consolidated utility bill to invoice and collect for its own or affiliate nonelectric services while denying CRES providers comparable access. The Commission agreed that IGS' position had merit, stating that the "Commission does acknowledge IGS's concern about unreasonable preferences and competitive advantages, considering the current rules have not directly addressed the situation where an EDU consistently enters into a contract only with the EDU's affiliate regarding placement of only that affiliate's nonjurisdictional service charges on the EDU's bill at the exclusion of all other potential providers."[24] Accordingly, the Commission modified its rules to explicitly require that: "An electric utility cannot discriminate or unduly restrict a customer's CRES provider from including nonjurisdictional charges on a consolidated electric bill."[25]

The Commission's rules became effective November 1, 2021. On that same day, FirstEnergy filed a motion for a waiver of the Commission's rule, apparently seeking to further deny CRES providers the same level of access that FirstEnergy has enjoyed for years.[26] While IGS acknowledges that case will proceed on its own

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[24] *In the Matter of the Commission's Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, Finding and Order at 50 (Feb. 26, 2020).
[25] *Id.* At 79.
[26] *In the Matter of the Application of Ohio Edison Co., the Cleveland Electric Illuminating Co., and the Toledo Edison Co. for a Limited Waiver of Rules 4901:1-10-22(C), 4901:1-10-24(E)(3), and 4901:1-10-33(A)*, Case No. 21-1125-EL-WVR.

schedule, the matters raised in that proceeding should be considered with the context of the significant corporate separation violations identified in this proceeding.

### E. Comments in this Proceeding

IGS Energy now submits its third set of initial comments in this proceeding. Although all of the recommendations and issues raised by IGS in the previous filings remain pertinent, IGS focuses this set of comments on the unlawfulness of FirstEnergy's Corporate Separation Plan, recommendations within the Daymark Audit Report, and the corporate separation violation that came to light in the *DCR Audit Proceeding.*

## III. FIRSTENERGY'S UNLAWFUL CORPORATE SEPARATION PLAN

### A. FirstEnergy's Corporate Separation Plan does not comply with R.C. 4928.17, and therefore, must be amended.

IGS once again urges the Commission to not allow a key component of this proceeding to be lost – FirstEnergy's Corporate Separate Plan fails to comply with R.C. 4928.17. When the Commission directed these audits in the *Retail Market COI*, it specifically stated the plan would be reviewed for compliance with the corporate separation laws in R.C. 4928.17 and Ohio Adm.Code Chapter 4901:1-37.[27] Indeed, this proceeding is titled "*In the Matter of the Review of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm.Code Chapter 4901:1-37*" (emphasis

[27] *Retail Market COI*, Finding and Order (Mar. 26, 2014) at 16-17.

added). Compliance with R.C. 4928.17 has always been part of this proceeding and therefore, must be reviewed.

### *1. FirstEnergy's offering of nonelectric products and services does not comply with R.C. 4928.17.*

Ohio's corporate separation requirements are set forth in R.C. 4928.17 and Ohio Adm.Code 4901:1-37. Specifically, an EDU is prohibited from, either directly or through an affiliate, being in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service, or in the businesses of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service, unless the EDU implements and operates under a corporate separation plan. R.C. 4928.17(A). The corporate separation plan must be approved by the Commission, consistent with the policy specified in R.C. 4928.02, and achieve the three requirements provided in R.C. 4928.17(A)(1)-(3).

The first of these three requirements is that the corporate separation plan "provides, at minimum, for the provision of the competitive retail electric service or the nonelectric product or service through a fully separated affiliate of the utility." R.C. 4928.17(A)(1). FirstEnergy's Corporate Separation Plan fails do this. Instead, it includes a section titled "Consumer Products," which explicitly states that FirstEnergy offers the provision of nonelectric products and services.[28]

[28] *In the Matter of the Application for the Approval of a Corporate Separation Plan Section 4928.17, Revised Code and 4901:1-37, Ohio Administrative Code*, Case No. 09-462-EL-UNC, Corporate Separation Plan (June 1, 2009) at 6.

Thus, FirstEnergy is engaged in this state in the business of supplying a noncompetitive retail electric service and products and services other than retail electric service. Under R.C. 4928.17(A), FirstEnergy is unable to do this without a Commission approved plan that provides, at a minimum, for the provision of the competitive retail electric service or the nonelectric product or service through a fully separated affiliate of the utility. FirstEnergy's plan fails to do so, and thus, is in violation of R.C. 4928.17.

Moreover, while the law permitted a utility to operate pursuant to functional separation—rather than physical separation—it may only do so, "for good cause shown" under an "interim plan" that otherwise satisfies the letter and spirit of R.C. 4928.17 and state policy embodied in R.C. 4928.02. As discussed below, FirstEnergy, of course, has failed to provide any reason to support a finding of good cause for such a temporary exception and the Audit Report itself provides many examples of its disrespect for the letter and spirit of the law.

**2. *FirstEnergy*'s Corporate Separation Plan must be amended.**

Because FirstEnergy's Corporate Separation Plan is inconsistent with the requirements prescribed under the law, it must be amended. Under R.C. 4928.17(D), "[a]ny party may seek an amendment to a corporate separation plan approved under this section, and the commission, pursuant to a request from any party or on its own initiative, may order as it considers necessary the filing of an amended corporate separation plan to reflect changed circumstances." In IGS Energy's Supplemental Comments, IGS sought an amendment to FirstEnergy's Corporate Separation Plan under this statute, or in the alternative, urged the Commission to use its ability in R.C. 4928.17(D) to amend the plan

upon its own initiative.[29] When the Commission approved FirstEnergy's Corporate Separation Plan it "reserve[d] the right to invoke its authority to preserve fair competition, for both interim and permanent arrangements."[30] Such modification is certainly appropriate in this instance.

At a minimum, the Commission should require FirstEnergy's plan to ensure that FirstEnergy does not offer products and services other than retail electric service.[31] This is necessary to reflect several changed circumstances, consistent with R.C. 4928.17(C).

First, an amendment is necessary to comply with the Commission's own precedent established subsequent to the approval of FirstEnergy's most recent amendment to its Corporate Separation Plan. Specifically, the Supreme Court of Ohio and the Commission have provided additional guidance regarding the application of R.C. 4928.17. In *In re Duke Energy Ohio, Inc.*, the Court remanded Duke's Fourth Corporate Separation Plan because the Commission failed to set forth the evidence and reasoning as to how it determined Duke's plan complied with R.C. 4928.17, despite the plan allowing Duke to offer nonelectric products and services.[32] Although the majority court was "admittedly skeptical" as to whether the plan could comply with the statute, Justice Kennedy, in an

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[29] *See* IGS Supplemental Comments at 6-9.
[30] *In the Matter of the Application of FirstEnergy Corp. on behalf of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of their Electric Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-ETP, Opinion and Order (Jul. 19, 2000) at 26.
[31] *See* FirstEnergy Corporate Separation Plan, Section VI, Consumer Products.
[32] *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its Fourth Amended Corporate Separation Plan*, Case Nos. 14-689-EL-UNC, Order on Remand (June 14, 2017) at ¶ 29, citing *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its Fourth Amended Corporate Separation Plan*, 148 Ohio St.3d 510, 2016-Ohio-7535.

opinion that dissented in part and concurred in part, took the additional step concluding that it could not. In its Order on Remand, the Commission agreed with Justice Kennedy.[33]

The Commission specifically held that a plan allowing an EDU to offer nonelectric products and services does not comply with R.C. 4928.17(A) because these products and services are not being offered through an affiliate.[34] Additionally, the Commission held that "by not offering the nonelectric services through an affiliate, Duke's plan disregards the state policy in R.C. 4928.02(H) to ensure effective competition."[35]

Thus, that the Commission has expressly held that a corporate separation plan does not comply with R.C. 4928.17 when the EDU is offering nonelectric products and services, it should apply its own precedent by requiring FirstEnergy to update their Corporate Separation Plan to reflect this change.

Second, as discussed below, the Audit Reports and recent events have demonstrated that FirstEnergy's Corporate Separation Plan is simply insufficient even if the Supreme Court had not shut the door on a utility operating pursuant to "functional separation." Most notably, the Daymark Audit Report found that the cost allocation manual fails to ensure the Commission that no cross-subsidization between the utility and its affiliates is occurring as required under Ohio Adm.Code 4901:1-37-08(C).[36] This finding of insufficiency of FirstEnergy's Corporate Separation Plan is a changed circumstance that necessitates amendments.

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[33] *Id.* at ¶ 9.
[34] *Id.* at ¶ 10. ("Initially, we note that Duke's request does not comply with 4928.17(A) as the Company admittedly is not seeking to offer nonelectric products through an affiliate.").
[35] *Id.*
[36] Daymark Audit Report, App. A at 3.

Therefore, based upon the clear language of the law and as further demonstrated by FirstEnergy's course of conduct during the audit period, it is clear that FirstEnergy's Corporate Separation Plan should be modified to comply with R.C. 4928.17, specifically by removing FirstEnergy's offerings of nonelectric products and services. Moreover, in order to start to rectify several years of abuse, favoritism for its own products, and discrimination against competitors, FirstEnergy should be directed to permit competitive retail electric service providers to use the consolidated utility bill to invoice customers for nonelectric services. This form of relief is particularly important, given that FirstEnergy has separately sought a waiver of the requirement to provide comparable access to the utility bill.

## IV. UNLAWFUL ADVANTAGES AND SUBSIDIES IDENTIFIED IN THE DAYMARK AUDIT REPORT

The FirstEnergy EDUs offer a wide variety of nonelectric products and services to its distribution customers. FirstEnergy Products, part of FirstEnergy Service Company, assists FirstEnergy with the marketing and solicitation of these products and services to its customers."[37] During the 2016 to 2020 time period, the offerings included:

- Air Conditioning Maintenance;
- Mover Services Program;
- Electric Services Program;
- EV Charging Stations;
- Heat Maintenance;

[37]IGS-INT-03-002; IGS-INT-03-003; IGS-INT-03-004 ("IGS Att. D").

- HVAC Maintenance;
- Home Insulation;
- Repair and Protection Plans;
- Kitchen Repair;
- Landscape Lighting;
- Laundry Room Repair;
- Plumbing Repair;
- Post Lamps;
- Surge Assist; and
- Tree Services.[38]

In just those few years, the sale of these products and services brought in over [redacted] in net profits for FirstEnergy.[39] Yet when asked whether any direct or indirect costs associated with the FirstEnergy EDUs' offering of nonelectric products and services are collected through distribution rates or riders, FirstEnergy responded that request would "impose an extraordinary and unreasonable burden" to review the expenses to determine whether any of the costs impacted customer rates.[40]

Although it should be completed, a review is unnecessary to determine that subsidization exists. FirstEnergy is clearly subsidizing its sale of nonelectric products and services by utilizing the distribution service call center and captive customer base for the

[38] Daymark Audit Report at 62, Table 14.
[39] *Id.*
[40] IGS-INT-04-004 ("IGS Att. E").

solicitation of these products and services and the distribution billing system to bill for these offerings. This violation is further exacerbated by FirstEnergy's billing of nonelectric products and services on the consolidated utility bill while continually refusing to permit any competitors like or similar access.

Specifically, FirstEnergy is leveraging its ratepayer funded call center to market and sell unregulated products and services through a practice known as "soft transfers."[41] This means when a distribution service customer contacts FirstEnergy's call center regarding a service-related issue, the customer may also be transferred to the FirstEnergy Product Group for the solicitation of unregulated products and services offered by FirstEnergy.[42] This practice has been quite profitable, with [redacted] of the net profits generated from the sale of nonelectric products and services between 2016 to 2020 occurring through soft transfers.

In addition, FirstEnergy is further leveraging its status as the distribution company by using its distribution customers' information like a rolodex that it can sift through whenever it would like to market whatever is most profitable to itself. FirstEnergy makes its customers' email and mailing addresses available for FirstEnergy Products to market and sell unregulated products and services on behalf of FirstEnergy.[43]

Additionally, FirstEnergy is utilizing the billing systems and utility bills, paid for by its distribution customers, to charge customers for these unregulated products and

[41] Daymark Audit Report at 63-64.
[42] *Id.*
[43] IGS-INT-04-006; IGS-INT-04-007 ("IGS Att. E").

services. Although customers have multiple options for payment, a staggering [redacted] of the revenue collected by FirstEnergy for these nonelectric products and services is collected through the customer's distribution bill.[44] Despite this evidence that customers prefer to be charged for nonelectric products and services through the utility bill, FirstEnergy refuses to allow any other provider to do the same.[45] Similarly, FirstEnergy uses its access to the utility bill to include bill inserts advertising its nonelectric products and services but also does not provide the same access to any other entity.[46]

In the Daymark Audit Report, out of the 44 corporate separation requirements examined, FirstEnergy was found to be non-compliant in 8 and presented an opportunity for improvement in 13.[47] Unsurprisingly, the majority of areas of non-compliance relate to the improper subsidization of FirstEnergy's own offering of nonelectric products and services and its affiliates, including the subsidies described above.[48]

The Daymark Audit Report found that offering nonelectric products and services through a regulated channel is a competitive advantage for FirstEnergy that other providers do not have.[49] It also provides an anticompetitive subsidy from FirstEnergy's distribution service to its offering of nonelectric goods and services.[50] The auditor found that FirstEnergy has captive utility customers that it can reach out to with little additional

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[44] Daymark Audit Report at 63.
[45] *Id.* at 71.
[46] IGS-INT-04-008; IGS-INT-04-009 ("IGS Att. E").
[47] Daymark Audit Report at 8.
[48] *See id*. at 8-11.
[49] *Id.* at 9.
[50] *Id.,* App. A at 2.

investment.[51] Indeed, FirstEnergy competitors would not have access to this opportunity to gain customers through redirected distribution customer service calls, or "soft transfers."[52]

The Daymark Audit Report also found that FirstEnergy has a competitive advantage with regards to the use of the distribution utility bill for unregulated services.[53] The auditor found that "[t]his is clearly a desirable option, as evidenced by [redacted] of the revenue in the 2016-2020 period being collected in this manner."[54] However, none of FirstEnergy's competitors have access to this option.[55]

In recognition that the distribution customers are providing a market for FirstEnergy's nonelectric products and services and paying for the billing services used for nonelectric products and services, the auditor recommended establishing a profit sharing mechanism between utility customers and FirstEnergy.[56] Additionally, the auditor suggested exploring the ability of other providers to have access to the regulated customer billing system to provide equitable treatment.[57]

Further, the Daymark Audit Report found non-compliance with Ohio Adm.Code 4901:1-37-04(D)(10)(a) regarding the use of the FirstEnergy name to market nonelectric products and services.[58] The auditor recommended that FirstEnergy remove the names

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[51] *Id.* at 69.
[52] *Id*. at 10, App. A at 3.
[53] *Id.* at 13.
[54] *Id.* at 13.
[55] *Id.*
[56] *Id*. at 13, 61.
[57] *Id.* at 13.
[58] *Id*. at 10, App. A at 3.

and logos of the EDUs from their marketing materials and activities for nonelectric products and services.[59] The use of the "FirstEnergy names to sell nonelectric goods and services is capitalizing on the reputation of FirstEnergy" and provides an advantage that its competitors do not have.[60] Additionally, the auditor found the use of the FirstEnergy name confusing to customers as to what entity was actually providing the products and services.[61]

Additionally, the Daymark Audit Report found instances of non-compliance within FirstEnergy's accounting methods and cost allocation manual ("CAM"). Most notably, the auditor found that the CAM is not sufficiently preventing cross-subsidization between FirstEnergy and its affiliates, and there is a lack of monitoring and controls in place.[62] The auditor expressed concern that FirstEnergy has little visibility into the charges being allocated to them by FirstEnergy Service Company, and there is no process for FirstEnergy to resolve any disputes.[63]

**A. FirstEnergy has repeatedly violated R.C. 4928.17(A)(2) and (3) and Ohio Adm.Code 4901:1-37-04(D)(6), which prohibit unfair competitive advantages, undue preferences and advantages to internal businesses providing nonelectric products and services, and anticompetitive subsides flowing from a noncompetitive retail electric service to a product or service other than retail electric service.**

The purpose behind corporate separation requirements in Ohio law and rule is clear: Ensure that a monopoly EDU does not leverage its status—a position of trust,

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[59] *Id.* at 76.
[60] *Id.* at 10, 13.
[61] *Id*. at 76.
[62] *Id.* at App. A at 3, citing Ohio Adm.Code 4901:1-37-08(C).
[63] Daymark Audit at 14, 82-83, App. A at 3.

literally and figuratively—to provide an advantage of any sort to its unregulated business operations (either its own or those of an affiliate). Specifically, a corporate separation plan must "satisfy the public interest by preventing unfair competitive advantage . . . ." R.C .4928.17(A)(2). Further, the plan must "ensure that the utility will not extend ***any undue preference or advantage to*** any affiliate, division, or ***part of its own business*** engaged in the business of supplying the competitive retail electric service ***or nonelectric product or service***." R.C. 4928.17(A)(3) (emphasis added).

Likewise, consistent with the state policy contained in R.C. 4928.02(H), Section IIV of FirstEnergy's Corporate Separation Plan, "Code of Conduct," adopts Ohio Adm. Code 4901:1-37-04(D)(6), which provides the following:

> The Companies will ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa.[64]

The Daymark Audit Report and subsequent discovery reveal multiple instances of FirstEnergy violating of this rule and the statutes identified above. Specifically, FirstEnergy is subsidizing its sale of nonelectric products and services by utilizing the distribution service call center and captive customer base for the solicitation of these products and services and the distribution billing system to bill for these offerings. This violation is further exacerbated by FirstEnergy's billing of nonelectric products on the consolidated utility bill while refusing to permit any competitors like or similar access.

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[64] *In the Matter of the Application for the Approval of a Corporate Separation Plan Section 4928.17, Revised Code and 4901:1-37, Ohio Administrative Code*, Case No. 09-462-EL-UNC, Corporate Separation Plan (June 1, 2009) at 14.

Additionally, as discussed below, further investigation by the Commission is necessary to determine if ratepayers have been subsidizing the costs to implement billing capabilities and the uncollectible expenses related to the nonelectric products and services.

### *1. Utilizing distribution system assets and information to solicit customers for nonelectric products and services is an undue advantage and anticompetitive subsidy.*

Regarding the soft transfer practice, the Daymark Audit Report found that FirstEnergy's competitors do not have the access to this opportunity to gain customers through redirected electric utility customer service calls and that this is "competitive advantage" to FirstEnergy.[65]

IGS agrees with the auditor's findings but is baffled that the auditor somehow considers this merely an "opportunity for improvement."[66] This practice plainly violates several principles of corporate separation. First, using the regulated call center to market nonelectric products and services provides its own product an undue preference and competitive advantage over the products of third parties. Second, the practice provides an anticompetitive subsidy from FirstEnergy's noncompetitive retail electric service to its offering of products and services other than retail electric service contrary to Ohio Adm.Code 4901:1-37-04(D)(6) and R.C. 4928.02(H). The FirstEnergy EDUs are utilizing their call center, paid for by their distribution customers, as a platform to solicit unregulated products and services. In fact, this subsidy can be at least partially quantified. The Daymark Audit Report determined that in the 2016-2020 period, FirstEnergy has

[65] Daymark Audit Report at 68-69.
[66] *Id.* at 10, 69, Att. A at 2.

profited about [redacted] from sale of unregulated products and services through the soft transfer process.[67]

Also notable is comparison of FirstEnergy's costs to revenues with respect to these offerings. For example, the Connections Mover Services had just [redacted] in costs from 2016 to 2020 compared to its over [redacted] dollars in revenue.[68] These numbers demonstrate the auditor's finding that FirstEnergy has captive utility customers that it can either reach out to customers with little to no additional investment, or there is a greater undisclosed subsidization of this product through distribution rates or other means that have not been fully evaluated.[69]

Moreover, IGS notes that FirstEnergy admits that during these soft transfers, "[c]ustomers are not informed that products and/or services are available from and may be obtained from other suppliers."[70] This is contrary to FirstEnergy's tariffs, as well as the repeated assertions made by FirstEnergy when justifying its ability to continue offering of unregulated services when its Corporate Separation Plan was first approved.[71]

R.C. 4928.18(B) provides the Commission with jurisdiction to determine whether an electric utility or its affiliate has violated any provision of R.C. 4928.17 or an order

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[67] *Id.* at 64, Table 15.
[68] *Id.*
[69] *Id.* at 69.
[70] IGS-INT-03-004 ("IGS Att. D").
[71] Ohio Companies Tariffs, Electric Service Regulations at Page 13 of 21 ("No such special customer service shall be provided except where the Company has informed the customer that such service is available from and may be obtained from other suppliers."); *Initial CSP Proceeding*, Opinion and Order (July 19, 2000) ("The company claims that customers will be informed that such services are available from other contractors."); Entry on Rehearing (September 13, 2000) at ¶ 9 ("FirstEnergy has indicated that it will ensure that customers are fully informed that other service providers are available to perform special services.")

issued or rule adopted under that section. If the Commission determines that a violation has occurred, in addition to the other remedies provided by law, the Commission may impose a forfeiture on the utility or its affiliate for up to $25,000 per day per violation. R.C. 4928.18(D)(1).

As noted above, FirstEnergy made [redacted] dollars from 2016 to 2020 via soft transfers. To adequately and fairly penalize FirstEnergy for violating the law and deter FirstEnergy and other utilities from doing the same in the future, the forfeiture must be substantial to match the profits. Therefore, IGS recommends that a hearing be held and the Commission issue orders determining the appropriate level of forfeiture, given that FirstEnergy may be liable up to $25,000 per day per violation that FirstEnergy's Call Center was open beginning January 1, 2016 to the filing date of these comments, or 1,474 days.[72] This amount could total a forfeiture of approximately $36,850,000. The Commission, of course should also consider alternative forms of relief such as leveling the playing field by permitting CRES providers equal access to the FirstEnergy bill for nonelectric products. This relief would be equitable, given that the competitors of FirstEnergy (such as IGS) have been aggrieved the most by these continued violations.

### *2. FirstEnergy's use of customers' personal information held only because of its role as a distribution company to solicit customers for nonelectric products and services is an unlawful competitive advantage.*

Although the Daymark Audit Report expressed concern with FirstEnergy utilizing its existing customer base to sell goods and services, it failed to specifically acknowledge

[72] This calculation excludes weekends and public holidays.

FirstEnergy's improper and unlawful use of its distribution customer contact information to market and sell unregulated products and services on behalf of FirstEnergy.[73]

This is another example of the FirstEnergy EDUs inappropriately leveraging their roles as distribution utilities for their own financial benefit and to the detriment of their customers. Using the personal information of their distribution customers, held only because the FirstEnergy EDUs serve as the customers' distribution utility, for the marketing and sale of its nonelectric goods and services is a competitive advantage. None of FirstEnergy's competitors have access to this information. Therefore, this practice must be terminated immediately.

***3. Utilizing distribution system assets to bill customers for nonelectric products and services is an unlawful advantage and anticompetitive subsidy.***

IGS agrees with the Daymark Audit Report that FirstEnergy's use of the distribution billing system is a competitive advantage. In order for a competitor to offer the exact same nonelectric products and services as FirstEnergy, it would need to invest in an entire billing system, as well as printing supplies, postage, office equipment, general overhead, and labor.

Moreover, even this level of investment cannot rectify the competitive advantage that FirstEnergy provides to its own service. Including nonelectric charges on the consolidated utility bill provides customers with the convenience of paying only one bill.

[73] *See* Daymark Audit Report, App. A at 2; IGS-INT-04-006; IGS-INT-04-007 ("IGS Att. E"); *See also* R.C. 4928.17(3) which explicitly prohibits undue preference or advantage to utility products under a corporate separation plan.

Indeed, when given the choice between paying one bill and two, in IGS's experience, customers select the former at least two thirds of the time.[74] This is consistent with FirstEnergy's experience of collecting [redacted] of its revenues for nonelectric products and services through the utility bill.[75] Thus, FirstEnergy's nonelectric products have an advantage over any competitor.

Recently, the Commission amended its rules to prevent this unreasonable practice, finding that a utility cannot discriminate or unduly restrict a customer's CRES provider from including nonjurisdictional charges on a consolidated electric bill.[76] Therefore, FirstEnergy must allow the customer's CRES provider, on an open and nondiscriminatory basis, access to the consolidated bill to list nonjurisdictional service charges.[77]

### B. The Commission should require FirstEnergy to demonstrate that no distribution ratepayer funds have be used to support FirstEnergy's offering of nonelectric products and services.

The utility has the burden of proof to demonstrate compliance with the Commission's corporate separation rules. Ohio Adm.Code 4901:1-37-02(E). However, through discovery in this proceeding it has become apparent that FirstEnergy cannot confirm compliance is occurring. Additionally, the DCR Audit Report has demonstrated

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[74] *In the Matter of the Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code,* Case No. 19-1429-GA-ORD, Initial Comments of Interstate Gas Supply, Inc. (Jan. 17, 2020) at Affidavit of Ron Waterman.
[75] Daymark Audit Report at 63.
[76] *In the Matter of the Commission's Review of Its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code,* Case No. 17-1842-EL-ORD, Finding and Order (Feb. 26, 2020) at ¶ 213.
[77] *Id.*

that the cost allocation methods and systems utilized by FirstEnergy are not without faults.[78] Therefore, IGS recommends that the Commission require FirstEnergy to demonstrate its compliance with corporate separation requirements with regards to certain costs associated with its offering of nonelectric products and services.

### *1. The Commission should ensure that FirstEnergy has not collected any costs collected from ratepayers associated with FirstEnergy's nonelectric products and services billing capabilities.*

According to FirstEnergy, it began billing for products and services on FirstEnergy's electric utility bills in 1996.[79] In 2017, the system supporting this billing capability was upgraded for an approximate cost of $8,000,000.[80] When asked about these costs, FirstEnergy was not aware that any analysis has occurred regarding the costs associated with implementing this capability prior to 2017, nor had FirstEnergy analyzed the treatment of costs associated with this capability.[81] Additionally, "[c]osts are incurred for ongoing platform licensing, maintenance, and support, including break fix and minor enhancements."[82] In 2020 alone, these costs totaled about $530,000.[83]

Because FirstEnergy appears to be unaware of how the costs associated with this billing capability have been recovered, the Commission should direct FirstEnergy to conduct this analysis. Should any of the costs be allocated to FirstEnergy's provision of noncompetitive retail electric service, FirstEnergy has further violated their Corporate

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[78] *See e.g. DCR Audit Proceeding,* DCR Audit Report – Expanded Scope at 1-20.
[79] IGS-INT-03-002 ("IGS Att. D").
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*

Separation Plan and Ohio law's prohibition of anticompetitive subsidies flowing to the offering of nonelectric products and services, and thus, remedies under R.C. 4928.18 should be applied.

***2. The Commission should ensure that FirstEnergy is not collecting any uncollectibles related to its offering of nonelectric products and services through distribution rates.***

Further, when asked if FirstEnergy recovers the uncollectible amounts associated with its nonelectric products and services through distribution rates, riders, or any other recovery mechanism, FirstEnergy replied that "to the extent this Request seeks information about products and services offered by the Companies, the Companies have not completed the requested analysis but will supplement their response to this Request as necessary."[84]

The Commission should be alarmed that FirstEnergy's answer to this question is anything but an unequivocal "no." FirstEnergy should not have to complete an analysis to determine if distribution customers are subsidizing FirstEnergy's unregulated offerings. The purpose of a corporate separation plan is to ensure these anti-competitive and unfair advantages do not occur. Thus, the Commission should require FirstEnergy to demonstrate that they are not collecting the uncollectibles related to their nonelectric products and services through distribution charges.

**C. The Commission should adopt the recommendation to prohibit FirstEnergy from operating a competitive affiliate or part of its own**

[84] IGS-INT-03-003 ("IGS Att. D"). As of November 22, 2021, IGS has not received a supplement to this response.

**business engaged in nonelectric products and services that utilizes the same or similar name or logo of the distribution utilities.**

Two independent auditors made the same findings: using the "FirstEnergy" name can be confusing and misleading to customers, implies an endorsement by FirstEnergy, and provides an unfair advantage.[85] Additionally, two independent auditors made the same recommendation: prohibit this.[86]

In the Sage Audit Report, the auditor recommended removing the FirstEnergy name from its CRES affiliate.[87] The report found that FirstEnergy works hard on its stand-alone branding in Ohio, and its executives "tout the importance of using the FirstEnergy name" because "FirstEnergy is a 'trusted supplier' and the 'FirstEnergy brand is prominent.'"[88] But it also found that it is "natural" for someone to infer a competitive affiliate utilizing the FirstEnergy name is the same as their "trust utility supplier" and give greater consideration to the affiliate when selecting a CRES provider.[89]

In the Daymark Audit Report, the auditor recommended that the FirstEnergy EDU names and logos be removed from their marketing materials and activities of nonelectric goods and services."[90] According to Daymark, "[u]sing the FirstEnergy name to sell nonelectric goods and services is capitalizing on the reputation of FirstEnergy."[91]

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[85] Sage Audit Report at 98-99; Daymark Audit Report at 76.
[86] *Id.*
[87] Sage Audit Report at 98-99.
[88] *Id.* at 98.
[89] *Id.*
[90] Daymark Audit Report at 76.
[91] *Id.* at 13.

Additionally, the Daymark Audit Report expressed concern that the use of the "FirstEnergy" can be confusing and misleading to customers.

Perhaps the best way to demonstrate the confusion caused by the varied use of the "FirstEnergy" name (as well as the ability for FirstEnergy to offer products and services other than retail electric service despite being contrary to Ohio law) is in Daymark Audit Report. Indeed, Daymark itself was confused and mistaken by the relationship between FirstEnergy as the EDUs, Ohio Edison, Toledo Edison, and Illuminating Company Services, and FirstEnergy Products:

> Section X.C of FirstEnergy' approved tariffs allow the Companies to "furnish special customer services as identified in this section." OAC 4901:1-37 Section 4(D)(11) states that FirstEnergy must "clearly disclose upon whose behalf their public representations are being made when such representations concern the entity's provision of electric services." That means that FirstEnergy must disclose ***that the products and services being offered are not by FirstEnergy.***[92]
>
> However, ***adding "Services" may not provide enough information for customers to distinguish between the entity offering products and services and their distribution company.*** A customer could reasonably assume that FirstEnergy Products, while using their utility's name, was also their utility.[93]
>
> While having this disclosure is a good first step, it is so small the customer is unlikely to read it. ***A customer could still assume that when receiving this type of marketing that FirstEnergy Products was also their utility***.[94]
>
> The FEP group adds "Services" to the Ohio regulated Companies name to market nonelectric products and services. As discussed earlier, adding "Services" may not provide enough information for customers to distinguish that the entity offering products and services is different than their

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[92] *Id.* at 59.
[93] *Id.* at 73.
[94] *Id.*

> distribution company. ***A customer could reasonably assume that FirstEnergy Products was also their regulated utility,*** which provides a competitive advantage to FirstEnergy.[95]
>
> Although there is a disclaimer on marketing materials, it is not highly visible ***and a customer could reasonably assume that FirstEnergy Products was their utility's offering, rather than an affiliate's offering***.[96]

The problem here is that the ***entity offering the products and services <u>is</u> the customer's distribution utility.*** FirstEnergy repeatedly stated this throughout its discovery responses: "The Companies object to this Request because it incorrectly assumes that FEP offers products and services to the Companies' customers. The Companies, not FEP, offer products and services to their customers."[97] In addition, Products & Services website, displaying the logos of the FirstEnergy Corp. distribution utilities in Ohio and Pennsylvania, includes a disclosure that recognizes that products on this site are sold by FirstEnergy utility companies.[98] If the auditor cannot fully comprehend the extent of the relationships, it is likely the average customer will have the same problem.

Further, implementation of this restriction is not new or novel concept. In Texas, the court upheld the Texas Public Utility Commission's decision to prohibit AEP from utilizing the AEP name and branding for its competitive retail electric provider ("REP")

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[95] *Id.* at 76.
[96] *Id.*
[97] IGS-INT-03-002; IGS-INT-03-003; IGS-INT-03-004 ("IGS Att. D").
[98] FirstEnergy Products & Services, available at https://www.firstenergycorp.com/products/products-services.html. IGS also notes that this does not properly inform "the customer that such service is available from and may be obtained from other suppliers," as required under FirstEnergy' tariffs.

affiliate, AEP Retail Energy.[99] This would prevent any cross-subsidization between regulated and competitive activities, a "central legislative concern," and the ability of AEP to leverage its monopoly position as the distribution utility, AEP Texas TDU.[100] The Commission found that:

> "AEP Retail Energy and the AEP Texas TDUs['] sharing of identical AEP branding is joint promotion that will cause confusion among customers and result in favoring AEP Retail Energy over non-affiliated REPs." Specifically, there was evidence that allowing AEP REP to sell electricity in the Texas retail market as "AEP Retail Electric," with the same "AEP" identifier and logo as the "AEP Texas" TDUs would tend to cause retail and small commercial customers to perceive incorrectly that "AEP Retail Electric" and "AEP Texas" were one and the same or that customers of "AEP Retail Electric" otherwise stood to benefit from that company's affiliation with the TDU-e.g., perceiving that the affiliation would enable the customer to obtain more reliable service or more responsive restoration of service following an outage.[101]

The identical analysis can be applied here. Therefore, the Commission should prohibit an EDU from operating a competitive affiliate or part of its own business engaged in nonelectric products and services from the soliciting, marketing, or advertising to consumers using the same or similar name or logo of the distribution utility.[102]

## V. ANTI-COMPETITIVE SUBSIDIES FOR FIRSTENERGY SOLUTIONS

### A. FirstEnergy violated R.C. 4928.17 and Ohio Adm.Code 4901:1-37-04(D)(6) and 4901:1-37-04(A)(3) by subsidizing their affiliate, FirstEnergy Solutions.

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[99] *AEP Texas Com. & Indus. Retail Ltd. P'ship v. Pub. Util. Comm'n of Texas*, 436 S.W.3d 890, 893 (Tex. App. 2014).
[100] *Id.*
[101] *Id.*
[102] *See also The Southern Company, AGL Resources Inc., and Northern Illinois Gas Company d/b/a Nicor Gas Company*, Case No. 15-0558 at 16 (Jun. 7, 2016) (authorizing a merger agreement and terminating Nicor Advanced Energy's authority to use the word "Nicor" in the provision of competitive retail natural gas service).

As noted above, through the *DCR Audit Proceeding*, between 2014 and 2018, the FirstEnergy Service Company allocated costs associated with payments made under a certain consulting services agreement to the FirstEnergy EDUs between 2014 to 2018.[103] While the recovery of such payments from ratepayers is at issue in the *DCR Audit Proceeding*, the unlawfulness of making these allocations, or subsidies, is a corporate separation issue more appropriately addressed in this proceeding.[104]

On January 8, 2013, the FirstEnergy Service Company entered into a Consulting Services Agreement ("Consulting Agreement") with the Sustainability Funding Alliance of Ohio.[105] The Consulting Agreement had a term of 5 years, subject to extension by mutual agreement.[106] The term "work" was explicitly defined in the Consulting Agreement as follows:

| | |
|---|---|
| "Work" | Defined from time to time by the President and/or the VP, Sales & Marketing of FirstEnergy Solutions Corp. |

Source: IGS Attachment A at 2.

[103] *DCR Audit Proceeding*, DCR Audit Report – Expanded Scope at 13.
[104] In the *DCR Audit Proceeding*, the Commission stated: "This is the fourth investigation initiated by the Commission related to the allegations surrounding FirstEnergy Corp. We continue to believe that it is appropriate to keep each investigation focused on its purpose. In this case, a focused investigation will ensure that any funds which should be returned to ratepayers are returned as expeditiously as possible." *DCR Audit Proceeding*, Entry (Mar. 10, 2021) ¶ 9.
[105] Consulting Services Agreement Term Sheet, Attachment A to General Terms and Conditions ("IGS Att. A").
[106] Subsequently, the FirstEnergy Service Company and Sustainability Funding Alliance of Ohio, Inc. amended the Consulting Agreement, but there were no changes to the definition of "work." See Consulting Services Agreement Term Sheet, Second Amended Attachment A to General Terms and Conditions ("IGS Att. C").

In addition, a purchase order was created regarding the Consulting Agreement.[107] In the purchase order, it provides the following description: "Misc Consulting Services **for FirstEnergy Solutions**."[108] It also states: "Provides consulting services **for FirstEnergy Solutions** on an as needed basis by authorized FirstEnergy employees."[109] Donald Schneider, **the President of FirstEnergy Solutions** at the time of the purchase order, is listed as the contact for any technical questions.[110]

The Consulting Agreement itself and the associated internal purchase order make it undoubtedly clear that the beneficiary of this agreement was FirstEnergy Solutions, the former competitive affiliate of FirstEnergy. Therefore, by allocating these costs to the FirstEnergy EDUs, instead of the affiliate, FirstEnergy has violated its Corporate Separation Plan and Ohio law. Specifically, FirstEnergy has violated Adm.Code 4901:1-37-04(D)(6) and R.C. 4928.02(H), which prohibits FirstEnergy from providing anticompetitive subsidies flowing from its noncompetitive retail electric service to a competitive retail electric service. Additionally, FirstEnergy has violated Ohio Adm. Code 4901:1-37-04(A)(3), which prohibits cross-subsidies between an EDU and its affiliates. Further, bankrolling millions in consulting, legal, and potentially other "services" for its competitive affiliate represents the conveyance of an undue preference and competitive advantage in violation of R.C. 4828.17(A)(2) and (3).

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[107] FirstEnergy Purchase Order No. 55116871 ("IGS Att. B"). "This Purchase Order is governed by the attached "FirstEnergy Service Company- General Terms and Conditions" signed by Mark T. Clark and Samuel C. Randazzo on 1/8/2013." IGS Att. B at 3.
[108] *Id.* at 1 (emphasis added).
[109] *Id.* at 2 (emphasis added).
[110] *Id.* at 1.

R.C. 4928.18(B) provides the Commission with jurisdiction to determine whether an electric utility or its affiliate has violated any provision of R.C. 4928.17 or an order issued or rule adopted under that section. If the Commission determines that a violation has occurred, in addition to the other remedies provided by law, the Commission may impose a forfeiture on the utility or its affiliate for up to $25,000 per day per violation. R.C. 4928.18(D)(1).

Here, the DCR Audit provides that the FirstEnergy EDUs were allocated $13,441,982 for 22 payments made to the Sustainability Funding Alliance from 2014 to 2018.[111] Records provided by FirstEnergy demonstrate that the majority of these were payments made under the Consulting Agreement, totaling [redacted].[112] Given the gravity of the violations, the Commission should hold a hearing and determine the appropriate level of forfeiture given the gravity and scope of this conduct. In total, FirstEnergy has been in violation of this rule for over 2,850 days, dating back to 2014.

In this proceeding, it is of no consequence that because of a surplus in the revenue caps in Rider DCR, recovery of these payments ultimately did not come from ratepayers. That is the issue in the *DCR Audit Proceeding*. Instead, the Commission's focus and concern should be on the fact that the FirstEnergy EDUs subsidized a competitive affiliate via improper cost allocations, contrary to its Corporate Separation Plan and Ohio law.

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[111] *DCR Audit Proceeding*, DCR Audit Report - Expanded Scope at 13, Table 14 at Line 16.
[112] BRC AS-Set 1-INT-010 Attachment 1 Confidential, Payment Detail Tab ("IGS Att. F – CONFIDENTIAL"). Based upon payment amount and the terms of the Consulting Agreement, it is assumed the other payments made to the Sustainability Funding Alliance relate to "Energy efficiency funding." *See DCR Audit Proceeding,* DCR Audit Report - Expanded Scope at 13, Table 14 at Line 16.

Also concerning is that the discovery of this only occurred because of a federal criminal investigation.

This scenario is illustrative of the risk that can occur when you have a monopoly with competitive affiliates operating in the same market, as well as the importance of robust corporate separation plans with timely reviews. These unlawful subsidies seemingly went unnoticed in 2014, 2015, 2016, 2017, and 2018, evidence that FirstEnergy's Corporate Separation Plan is failing to do its stated purpose of preventing against them.

## VI. SCOPE OF EVIDENTIARY HEARING AND REQUEST FOR RELIEF

Pursuant to an entry, the evidentiary hearing in this proceeding will commence on February 10, 2022. The Scope of the Evidentiary Hearing should be as follows:

(a) To evaluate the reasonableness of the recommendations in the audit report, including potential violations of R.C. R.C. 4928.17

(b) To take evidence and briefing with respect to FirstEnergy's provision of nonjurisdictional (nonelectric) services, whether such services were provided in violation of R.C. 4928.17 and the Ohio Administrative code, and any appropriate relief for such violations

(c) To take evidence and briefing with respect to the improper allocation to FirstEnergy of a consulting agreement for the benefit of FirstEnergy Solutions, whether such allocation occurred in contravention of R.C. 4928.17, and any appropriate relief for such violations.

(d) To take evidence and briefing with respect to the shared use of the FirstEnergy name by affiliates, whether such use violates R.C. 4928.17, and any appropriate relief.

Additionally, for the reasons set forth above, IGS Energy requests the following relief:

a) An interim, emergency order directing FirstEnergy, during the pendency of this proceeding, to immediately cease and desist from advertising, offering, or providing nonelectric products and services;

b) Issuance of an order directing FirstEnergy to allow CRES providers to include nonelectric products and services on the consolidated utility bill;

c) Issuance of an order finding that FirstEnergy is in violation of R.C. 4928.17 and Ohio Adm.Code 4901:1-37-04(D)(6) and 4901:1-37-04(A)(3) and therefore subject to a civil complaint for treble damages under R.C. 4905.61;

d) Issuance of any necessary orders to amend FirstEnergy's existing corporate separation plan;

e) Issuance of necessary orders to impose a forfeiture and order restitution, in accordance with R.C. 4928.18(D); and

f) All other necessary and proper relief.

Respectfully submitted,

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(Counsel willing to accept service by e-mail)

## CERTIFICATE OF SERVICE

I certify that this *Third Set of Initial Comments of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on November 22, 2021. The PUCO's e-filing system will electronically serve notice of the filing on the subscribed parties. Additionally, the parties below have received a copy of this filing via electronic transmission.

*/s/ Evan Betterton*
Evan Betterton

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**Consulting Services Agreement Term Sheet**
**Attachment A to General Terms and Conditions**

| | |
|---|---|
| Parties: | FirstEnergy Service Company ("FESC")<br>Sustainability Funding Alliance of Ohio Inc.[1] ("SFA")<br>Business Location<br>492 East Mound Street, Columbus, Ohio 43215<br>Mailing Address<br>1101 Broadview Avenue, Columbus, Ohio 43212 |
| Term: | The term is five (5) years starting 1-1-13 subject to extension by mutual agreement. The consulting relationship shall not be exclusive except Consultant shall not consult for any other electric utility or CRES provider (exclusive of IEU-Ohio). |
| Compensation | Annual amount paid monthly to SFA by FESC *via* Purchase Order covering the full initial term[2] as follows: |

| | |
|---|---|
| Year One | $300,000 ($25,000 per month |
| Year Two | $300,000 ($25,000 per month |
| Year Three | $500,000 ($41,666 per month) |
| Year Four | $500,000 ($41,666 per month) |
| Year Five | $500,000 ($41,666 per month) |

- $1750 per month allowance for in-state (Ohio) expenses, reimbursement for out of pocket costs incurred in conjunction with activities outside Ohio.
- Following the end of each year, SFA shall invoice FESC against the specified Purchase Order for hours worked by Sam Randazzo in excess of the annual amount specified below at an hourly rate of $450 per hour and FESC shall pay such invoice within 30 days. (Parties shall work in good faith to address compensation for excess hours for other than Sam Randazzo should such excess hours occur).
- FESC shall have the right to terminate the agreement without cause at any time by providing SFA a written termination notice to SFA no less than 30 days prior to the effective date of such termination. If FESC terminates for any reason, it shall, upon such termination, pay SFA the monthly expense allowance for the balance of the year in which the termination occurs plus: 90% of the total of all unpaid annual amounts if the termination occurs in year one; 85% of the total of all unpaid annual amounts if the termination occurs in year two; 80% of the total of all unpaid annual amounts if the termination occurs in year three; 75% of the total of all unpaid annual amounts if the termination occurs in year four; and, 70% of the total of all unpaid annual amounts if the termination occurs in year five.

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[1] SFA is a corporation owned by S.C. Randazzo. It has no employees.
[2] The monthly amount shall be paid routinely on or before the 15th day of each month in accordance with the Purchase Order covering the term.

Annual Time Commitment Expectations

| | |
|---|---|
| Year One | 780 hours[3] |
| Year Two | 780 hours[4] |
| Year Three | 900 hours[5] |
| Year Four | 900 hours[6] |
| Year Five | 900 hours[6] |

"Work" Defined from time to time by the President and/or the VP, Sales & Marketing of FirstEnergy Solutions Corp.

[3] Not to exceed 80 hours in any month absent consent by SFA. At least one half of the annual amount of the expected hours for each year shall be spent at a location specified by FESC in or around Akron, Ohio.
[4] Not to exceed 80 hours in any month absent consent by SFA.
[5] Not to exceed 95 hours in any month

# MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT ("Agreement"), is entered into by and between the undersigned parties (referred to herein individually as a "Party" and collectively as the "Parties"), effective as of the dates set forth below.

## RECITALS:

A. Each of the Parties may disclose to the other(s) certain proprietary and confidential information in connection with possible business opportunities and transactions, including the following (the "Permitted Use"):

Consultant's Permitted Use: Providing to FirstEnergy consulting services under Consulting Services Agreement ("Consulting Agreement") dated the same date as this Mutual Confidentiality Agreement.

FirstEnergy's Permitted Use: Planning and performing product development, public and governmental relations, marketing, promotional, and sales activities, corporate organization and communications, and other business activities of FirstEnergy and its affiliates, including implementing activities recommended by Consultant.

B. In this Agreement, "Confidential Information" means marketing and commercial strategies, business, tax, and financial information, information concerning the Disclosing Party's or any of its affiliates' customers or suppliers, scientific and technical information, devices, designs, drawings, methods, computer programs and software, processes, data concepts, and know-how, and unique combinations of separate items which individually may or may not be confidential, which information is not generally known to the public and either derives economic value, actual or potential, from not being generally known or has a character such that the Disclosing Party or any of its affiliates has an interest in maintaining its secrecy. The existence and terms of the Consulting Agreement shall be considered Confidential Information.

C. With respect to each disclosure of Confidential Information under this Agreement, "Disclosing Party" shall mean the Party who discloses Confidential Information to the other Party or Parties; "Receiving Party" shall mean the Party or Parties who receive Confidential Information from the Disclosing Party; and "Representative" means, as to a Party, the directors, officers, employees, Affiliates, consultants, subcontractors, agents, or other representatives of such Party.

FOR GOOD AND VALUABLE CONSIDERATION, the Parties agree as follows:

1. The Receiving Party: (a) shall maintain in confidence, any and all Confidential Information which the Receiving Party may directly or indirectly receive from the Disclosing Party, its officers, directors, agents or employees, including any Confidential Information that the Receiving Party may directly or indirectly receive as a result of tours of the Disclosing Party's offices or manufacturing facilities; (b) shall not, without the prior written consent of a duly authorized representative of the Disclosing Party, disclose any Confidential Information to any third person or entity, except Representatives of the Receiving Party who require access to the Confidential Information for the proper performance of their assigned duties with respect to the Permitted Use, and who shall be advised of the confidential nature of the information and the confidentiality provisions set out herein; and (c) shall use any Confidential Information disclosed to it by the Disclosing Party solely for the Permitted Use. The Receiving Party shall take all reasonable and appropriate measures to safeguard the Confidential Information from theft, loss and negligent disclosure to others.

2. No Party may use the name, trade name, trademark, logo, acronym or other designation of the other Party(ies) in connection with any press release, advertising, publicity materials or otherwise without the prior written consent of such other Party(ies) and no Party may publically identify the Consulting Agreement or the nature of the Work to be preformed thereunder without the prior written consent of the other Party which shall not be unreasonably withheld.

3. The obligations of the Receiving Party with respect to Confidential Information disclosed hereunder shall survive for a period of three (3) years after termination of the relationship between the Parties for which this Agreement is executed.

4. The obligations of the Receiving Party under this Agreement shall not apply with respect to Confidential Information received by the Receiving Party if the Receiving Party can establish by documentary evidence that such Confidential Information:

(a) is or has become generally known to, or readily ascertainable by, the public without the fault or omission of the Receiving Party or its employees or agents;

(b) was known to the Receiving Party (or to a parent, subsidiary, or affiliate of Receiving Party) prior to the first disclosure of such information by Disclosing Party;

(c) was received by the Receiving Party without restrictions as to its use from a third party who is lawfully in possession and not restricted as to the use thereof;

(d) is required to be disclosed by law or by order of a court of competent jurisdiction, or

(e) was independently developed by the Receiving Party (or by a parent, subsidiary, or affiliate of Receiving Party) through persons who have not had, either directly or indirectly, access to or knowledge of similar information provided by the Disclosing Party.

Information which is specific in nature shall not be deemed to be within any of the exceptions listed in subparagraphs (a), (b), (c), (d) or (e) above merely because it is embraced by more general information which is generally available to the public, already in the possession of the Receiving Party, independently developed, or received without restriction from a third party.

5. If the Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, Civil Investigative Demand or similar process, or otherwise in compliance with applicable law) to disclose any Confidential Information supplied to Receiving Party in the course of its dealings with the Disclosing Party, Receiving Party shall provide the Disclosing Party with prompt notice of such request(s) so that the Disclosing Party may seek an appropriate protective order.

6. All Confidential Information submitted to Receiving Party under this Agreement will remain the property of the Disclosing Party and may be recalled by the Disclosing Party at any time. Upon the request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party any and all written or printed information, and all copies thereof, containing or reflecting Confidential Information (whether prepared by the Disclosing Party or otherwise), and all documents, memoranda, notes, summaries, analyses,

extracts and other writings whatsoever prepared by the Receiving Party based on the Confidential Information shall be destroyed, and such destruction shall be verified in writing to the Disclosing Party upon specific request; provided that one archival copy may be maintained securely by Receiving Party's legal counsel.

7. Neither the execution of this Agreement nor the furnishing of any Confidential Information under this Agreement shall be construed as granting, either expressly or by implication, estoppel or otherwise, any license under or title to any invention, patent, or copyright now or hereafter owned or controlled by the Disclosing Party. The execution, delivery, and performance of this Agreement shall not create or evidence any obligation of either Party to sell or purchase products or services or to perform any other transaction with the other Party, except as expressly set forth herein.

8. Disclosing Party makes no warranties regarding the accuracy of the Confidential Information. Disclosing Party accepts no responsibility for any expenses, losses or other actual or consequential damages or actions incurred or undertaken by the Receiving Party as a result of the receipt of Confidential Information under this Agreement, even if advised of the possibility thereof.

9. Miscellaneous.

(a) The Receiving Party acknowledges that it is aware that its obligations under the securities laws of the United States (as well as stock exchange regulations) prohibit any person who has material, non public information concerning the Disclosing Party, its parent or affiliates or a possible transaction involving the Disclosing Party, its parent or affiliates, from trading, purchasing or selling the Disclosing Party's, its parent's or its affiliates' securities when in possession of such information and from communicating such information to any other person or entity under circumstances in which it is reasonably foreseeable that such person or entity is likely to purchase or sell such securities in reliance upon such information.

(b) This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all other prior understandings, correspondence and agreements, oral or written, between them. This Agreement may not be altered, amended, or modified in any way except by a written modification signed by all Parties. None of the terms or provisions of this Agreement shall be deemed waived except by a writing signed by the Party which is entitled to the benefits thereof. The failure of any Party to require performance of any provision hereof shall in no manner affect such Party's right at a later time to enforce the same. The waiver by a Party of any provision hereof shall not be deemed to be a continuing waiver of any such provision or a waiver of any other provision hereof. When used herein, the words "include" and "including" shall be construed as "include, without limitation" and "including, without limitation."

(c) Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties hereto, nor is anything in this Agreement intended to relieve or discharge the obligations or liabilities of any third person or give any third person any right of subrogation or action over or against any Party hereto. This Agreement is binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns. This Agreement is not assignable by any Party hereto, directly or indirectly, in whole or in part, without the prior written consent of the other Parties.

(d) If a Party breaches or threatens to breach this Agreement, the Parties acknowledge that there may exist no adequate remedy at law, and hereby agree that the non-defaulting Party shall have the right to seek temporary and permanent injunctive relief to restrain a violation of this Agreement, without the necessity of posting a bond. The right to injunctive relief shall be cumulative and in addition to the right to seek and obtain other remedies, including monetary damages.

(e) If any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, such provision shall be interpreted to call for the protection of the Disclosing Party's rights to the greatest extent which is legal, valid, and enforceable, unless such clause or provision cannot be so interpreted, or a court of competent jurisdiction declines to permit such clause or provision to be so interpreted, in which case such clause or provision shall be severed and the remaining provisions of this Agreement shall continue in full force and effect.

(f) This Agreement shall be construed under and governed by the laws of the State of Ohio.

(g) The relationship of the Parties shall be that of independent contractors, and nothing contained in this Agreement shall be deemed to create any relationship of agency, joint venture or partnership.

(h) This Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, Ohio 44308

By: _____
Its: Exec. Vice President
Date: January 8, 2013

SUSTAINABILITY FUNDING ALLIANCE OF OHIO, INC.
492 East Mound Street
Columbus, Ohio 43215

By: _____
Its: Owner
Date: January 8, 2013

# FIRSTENERGY SERVICE COMPANY – GENERAL TERMS AND CONDITIONS FOR PURCHASE OF PROFESSIONAL OR CONSULTING SERVICES

## ARTICLE I - DEFINITIONS

The following capitalized terms, when used in the Agreement, shall have the meanings given below unless in any particular instance the context clearly indicates otherwise:

A. "Consultant" means the party engaged to perform the Work under the terms of the Agreement.
B. "Data" means material that includes documentation, manuals, maps, plans, schedules, programs, specifications, software, reports, drawings, designs and other relevant information.
C. "Purchaser" means FirstEnergy Service Company for itself or as an authorized agent of the affiliate company or companies set forth on the face of the Agreement for which the Work shall be performed.
D. "Parties" means Consultant and Purchaser.
E. "Purchaser's Site" includes locations owned or leased by Purchaser to which the Work is to be delivered or where the Work is to be carried out (if it is not to be performed at the facility of Consultant or others).
F. "Specifications" means the portion of the Agreement that describes the products and services to be delivered by Consultant. Should any conflict occur between the Specifications and any other provision of the Agreement, the Specifications shall take precedence only when and to the extent that such does not result in any way in the dilution or diminution of the rights or benefits of the Purchaser under the Agreement.
F. "Work" is defined in Article IV.

## ARTICLE II – TERMS OF AGREEMENT

A. Agreement. The terms and conditions set forth in this document, together with the Purchase Order and all attachments including but not limited to the attached term sheet (Attachment A), exhibits, revisions, Specifications and supplements thereof, shall constitute the complete and entire agreement between Purchaser and Consultant (the "Agreement"). In case of any error, inconsistency or omission in the various documents and/or provisions comprising the Agreement, the matter will be submitted immediately to Purchaser, without whose decision said discrepancy shall not be adjusted by Consultant. If any conflict arises between a term defined in this document and a term (defined or otherwise) contained in another document comprising a part of the Agreement, the conflict shall be resolved in favor of the more specific defined term unless the context clearly indicates otherwise or such a resolution would deny or dilute Purchaser's rights or benefits under the Agreement.
B. Offer and Acceptance. Consultant's and Purchaser's acknowledgement, commencement of performance, or any conduct which recognizes the existence of a contract shall constitute acceptance by Consultant of the Agreement and all of its terms and conditions. Acceptance of the Agreement is expressly limited to assent to all of the terms and conditions of the Agreement. Additional or different terms provided in Consultant's acceptance of Purchaser's offer which vary in any degree from any of the terms herein or the Agreement may be accepted by Purchaser and thereby become part of the Agreement.
C. Integration; Modification. The Parties intend the Agreement to constitute the complete, exclusive and fully integrated statement of their agreement concerning the subject matter hereof. As such, the Agreement is the sole repository of their agreement and the parties are not bound by any other agreements of whatsoever kind or nature. No amendment, modification, or rescission of the Agreement shall be enforceable unless the same is in writing and signed by the party against whom the terms of such amendment, modification, or rescission are sought to be enforced.
D. Non-Exclusivity. The Agreement is not exclusive, and Purchaser and Consultant may at its sole discretion contract with others to perform such work as is herein contemplated, or may perform such work with its own forces, except as otherwise provided in Attachment A.
E. Audit. Purchaser shall have the right to audit books and records of Consultant upon reasonable notice for the purpose of confirming the amount due Consultant under the Agreement provided such books and records are associated with services provided by Consultant to Purchaser. Consultant, Consultant's subcontractors and any other entity used by Consultant in the performance of the Agreement shall preserve all such records for a period of three (3) years after final payment hereunder. Upon request, Consultant shall provide Purchaser with sufficient information related to prices of services to enable Purchaser to comply with accounting regulation of the Federal Energy Regulatory Commission (FERC). Consultant shall provide for such right to audit by Purchaser in all contracts with subcontractors and other entities relating to the Agreement.
F. Modifications. In the event that Purchaser requires modifications or changes to the Work after it has been performed, which modifications or changes are through no fault of Consultant, or in the event that Purchaser desires additional Work not covered by the Agreement, Consultant shall, upon Consultant's consent, only perform such Work as ordered by Purchaser in writing, and shall be paid for such Work as may be agreed to in writing between the Parties.

## ARTICLE III - CONSULTANT'S PERSONNEL

A. Relationship of Parties. In performing the Work, Consultant shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Purchaser. As an independent contractor, Consultant shall determine the means and methods for performing the Work satisfactorily, and shall have full responsibility for complying with the Agreement. Nothing in the Agreement or in the performance of the Work shall be construed to create a partnership, joint venture or other joint business arrangement between Purchaser and Consultant. At all times, Consultant shall perform Work based on Consultant's independently formed views and opinions and strive to assist Purchaser identify and pursue strategies, plans and outcomes that will enhance Purchaser's ability and opportunity to understand the perspective of larger ultimate consumers and how Purchaser can provide value to such consumers through the provision of goods and services.
B. Employees. Consultant represents that it will employ for the Work only persons known by Consultant to be experienced, qualified, reliable and trustworthy. At Purchaser's request, the credentials of any of Consultant's employees assigned to perform the Work shall be submitted to Purchaser in advance of such assignment. During the performance of the Work, Purchaser may object to any Consultant employee who, in Purchaser's opinion, does not meet these criteria. In such case, Consultant shall, at its expense and risk, immediately replace or remove such employee. Notwithstanding the foregoing, the Parties shall be responsible for all acts or omissions (negligent or otherwise) of agents, employees and subcontractors.
C. Background Checks. Consultant shall make commercial best efforts to ensure that Consultant's employees assigned to the Work do not have criminal records and are not involved in criminal activity which could create a risk to Purchaser, Purchaser's, customers, or employees. Upon actual knowledge of a criminal record or involvement in criminal activity, Consultant shall

immediately remove said employee or employees from the Work. Purchaser, at any time, may request Consultant to verify that an employee or employees does not possess a criminal record. Prior to the start of Work and in the event Consultant has any employees authorized as part of the Work, the Consultant shall provide certification pursuant to a North American Electric Reliability Corporation (NERC) Critical Infrastructure Protective (CIP) compliant documented personnel risk assessment and training program that each of Consultant's employees, who are authorized as part of the Work to have electronic or unescorted physical access to Critical Cyber Assets (as the same are identified by Purchaser from time to time): (i) have submitted to a background check consisting of at a minimum an identity verification (e.g., Social Security Number verification in the U.S.) and a seven (7) year criminal check within the past seven (7) years whereby no evidence of a criminal record or criminal activity was discovered; or (ii) have been subject to a seven-year cycle re-check of the background check; and (iii) have received the Purchaser-sponsored Security Awareness training or will receive such training prior to accessing Critical Cyber Assets. These requirements are subject to audit and certification by Consultant upon request by Purchaser. Consultant shall inform Purchaser immediately, but no greater than within thirty (30) minutes, via email and phone call, if a Consultant's employee having authorized cyber or authorized unescorted physical access to Critical Cyber Assets is terminated for cause. Further, Consultant shall inform Purchaser within forty-eight (48) hours, via email and phone call, if a Consultant's employee having authorized cyber or authorized unescorted physical access to Critical Cyber Assets is voluntarily terminated; is transferred to a position where they no longer require access to the Purchaser's CIP assets; or when the access rights of a Consultant's employee to Critical Cyber Assets needs to be changed or removed.

D. Substance Abuse. The Parties agree to comply with all applicable state and federal laws regarding drug-free workplace, as well as Purchaser's rules and regulations concerning the same. The Parties are responsible for ensuring that all employees and subcontractors, while working on Purchaser's Site, will not be under the influence, purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

E. Gifts and Gratuities/Conflicts of Interest. Purchaser's parent company ("FirstEnergy") enforces policies governing the conduct of Purchaser's employees in carrying out its business activities, including contact with third-party business partners. The conflicts of interest and gifts and gratuities policies generally prohibit the employees of all FirstEnergy subsidiaries and/or their family members from giving or receiving gifts, favors, services, or privileges (including travel or entertainment) from existing or potential customers, suppliers, or contractors that are more than a nominal value, or that exceed the level of standard business courtesies, and the acceptance of cash, gift certificates, or loans in any amount. The conflicts of interest policy generally prohibits employees of all FirstEnergy subsidiaries or their family members from serving as an officer, director, employee, consultant, agent, or buyer of a beneficial interest in an organization which has a business relationship with FirstEnergy as a supplier or contractor, if the employee is in a position to influence decisions concerning the relationship. The entire text of these policies may be found within the Supply Chain Section at www.firstenergycorp.com. Suppliers and prospective suppliers to Purchaser are expected to be aware of and comply with these policies in their dealings with FirstEnergy employees and their family members. *Any suspected or actual violations of these policies should be reported; and, may be reported anonymously and confidentially by a customer, supplier, contractor, or employee by calling the Employee Concerns Line (1-800-683-3625), 24 hours a day, 7 days a week.*

F. Access to Purchaser's Site. Personnel of Consultant and its employees, agents, subcontractors and suppliers shall enter and exit Purchaser's Site only by the entrances designated from time to time by Purchaser. Consultant shall comply with all of Purchaser's protection and safety rules for any Purchaser Site at which the Work is performed, and with all instructions and directives from Purchaser's Site manager or their designees. In the event that Consultant is working at Purchaser's Site, Consultant may be one of several vendors working at such Site, and shall cooperate fully with Purchaser and other vendors, and shall plan and perform the Work in such a manner so as not to interfere with the activities or operations of Purchaser or other vendors. Purchaser will establish priorities and, at the request of other vendors, resolve interferences.

G. Safety and Health. The Parties shall conduct their operations in a manner to avoid risk of bodily harm to persons or damage to property. The Parties shall take all precautions necessary and shall be responsible for the safety of the Work and the safety and adequacy of the manner and methods it employs in performing the Work and shall not require any employee or representative performing hereunder to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety. Consultant shall ensure that while any agents, employees, subcontractors or invitees of Consultant are on Purchaser's Site, they will conform to and comply with all applicable safety and health laws, ordinances, rules, regulations, orders and all other requirements (including, without limitation, standards under the Occupational Safety and Health Act and Purchaser's safety requirements).

## ARTICLE IV – SCOPE OF WORK

Consultant agrees to provide Purchaser with professional or consulting services as specified in the Agreement, which shall include, but are not limited to providing all services, material, equipment, Data, tools, supplies, technical information, reports, studies, deliverables, products, outcomes, results, information, new discoveries, inventions, improvements, technical consulting or other technical services, design services, analytical services, quality assurance, supervision and direction of work or performance of labor, and all other facilities and services which are necessary for the complete performance of the Agreement by the Consultant (the "Work"). Time is of the essence to all Work performed under the Agreement and all of Purchaser's actions that must be completed to permit Consultant to perform the Work.

## ARTICLE V – COMPENSATION AND TERMS OF PAYMENT

A. Compensation for the Work performed shall be as described on the face of the Agreement the associated Purchase Order or both.

B. For Work to be performed on a time and materials basis, each invoice must: (a) detail by activity the man-hours worked by Consultant; (b) detail by activity the labor cost; (c) detail the direct reimbursable costs in connection with the Work; (d) indicate the cumulative cost to date for all activities; (e) indicate the total monthly cost of the Work; and (f) include other information reasonably required by Purchaser.

C. Each invoice shall, after approval by the Purchaser, be processed for payment in accordance with the terms of payment as set forth on the face of the Agreement, for the amount of each approved invoice less any monies retained, if any, per the terms of payment or under Section D below. Payments made by Purchaser shall not be deemed evidence of acceptance by Purchaser of the Work procured in the Agreement.

1. Unless otherwise set forth herein, payment terms for Work performed on a time and materials basis are 2% 10 Net 45 Days. Payment dates shall be calculated from the date of receipt of invoice or acceptance of the Work by Purchaser, whichever is later unless Payment occurs according to alternative terms specified in the Agreement or the associated Purchase Order. Payments by Purchaser shall not be deemed evidence of acceptance by Purchaser of the Work.
2. Electronic Invoices. Unless exempted by Purchaser, Consultant shall utilize the Purchaser's then-current Electronic Invoice Presentment and Payment Program to submit invoices and receive payment electronically from Purchaser.

D. Withholding.

If Purchaser has a claim under the Agreement, regardless of when it is discovered, including a claim that: (a) Consultant's invoice is erroneous; (b) the Work is deficient, defective or incomplete; (c) a third party claim has been asserted or there is reasonable evidence indicating the possibility of such a claim; (d) Consultant fails to make a payment as and when due to a subcontractor or supplier for materials, labor or equipment; (e) Purchaser, another Consultant, subcontractor, or other party suffers damage or injury which is attributable to Consultant; or (f) Consultant has failed to supply any affidavit, release or waiver of lien which Purchaser may require pursuant to law; then Purchaser may withhold payment of, or set off the amount of its claim, costs, or losses against any amount invoiced by Consultant. If any monies are so withheld, they shall be paid only when, without cost to the Purchaser, the cause of such withholding has been eliminated to the satisfaction of Purchaser. Moreover, if any monies are so withheld, Purchaser shall not be responsible for any interest payment to Consultant.

E. Consultant is deemed to be self-employed; and accordingly, no sums are contemplated to be withheld from Consultant's compensation to cover the payment of income taxes, FICA (social security), FUTA (unemployment compensation) or other taxes. Consultant agrees to file all required federal, state and local income tax and other tax returns (including, without limitation, all required declarations of estimated tax) covering Consultant's compensation hereunder. Consultant agrees to pay all such taxes and contributions when due; and Consultant hereby indemnifies Purchaser and holds it harmless from and against any and all loss, cost and liability whatsoever incurred by or claimed against Purchaser for any failure of Consultant to comply herewith.

## ARTICLE VI - STANDARD OF CARE AND PERFORMANCE

A. Standard of Care. Consultant expressly warrants that all Work performed hereunder shall be: (i) conducted in a manner consistent with the highest generally accepted level of care and skill ordinarily exercised by professionals and other persons performing work of a nature similar to that which Consultant is performing; (ii) performed safely, lawfully, efficiently and properly, and otherwise in a good and workmanlike manner; (iii) in strict conformity with the requirements of the Agreement, including, without limitation, all specific design standards and the specific Specifications and drawings incorporated into said Agreement; and (iv) of good workmanship and quality, free from defects (including, without limitation, defects in design, material, workmanship and title), and fit for the purposes intended by Purchaser as set forth in the Agreement. Consultant further warrants that all equipment used in connection with performance of the Work shall be in safe and proper working order. Consultant acknowledges and agrees that Purchaser is relying upon Consultant's special and unique abilities and the accuracy, competence and completeness of Consultant's Work.

B. Performance. Consultant represents and warrants that it is technically, physically, financially and legally ready, willing, competent and able to perform, and capable of performing, the Work. Consultant represents, warrants and covenants that it has, and will have throughout the term of the Agreement, the requisite personnel, competence, skill and physical resources to perform the Work, and that it has, and shall maintain, the capability, experience, registrations, and permits required to perform the Work.

C. Consultant shall cure any breach of the foregoing warranties at no cost to Purchaser and shall reimburse Purchaser for any damages that may be incurred by Purchaser as a result of reliance by Purchaser, its employees, agents, other consultants or subcontractors on such Work or anticipated performance by Consultant. The costs of transporting, repairing, replacing, removing or installing material to make the Work comply with the above performance standards, warranties and requirements shall be borne by Consultant. If Consultant should fail to cure such breach or if Purchaser determines that Consultant will be unable to cure such breach before the scheduled time of completion, Purchaser may correct such breach itself or through a third party and charge Consultant for the costs incurred therefor.

## ARTICLE VII - INTELLECTUAL PROPERTY RIGHTS

A. Ownership of Work and Data. The Work and all Data associated with the Work, whether or not patentable, registrable as a copyrightable work, or registrable as a trademark or service mark, shall become the property of Purchaser and Purchaser shall own all intellectual property rights therein (including the rights to any patent, trademark or service mark, trade secret, and copyright therein). Consultant hereby agrees that any materials and works of authorship conceived or written by Consultant during the term of the Agreement that pertain in any material respect to the Work shall be done as "work made for hire" as defined and used in the Copyright Act of 1976, 17 USC §1 et seq., and that Purchaser, as the entity for which the work is prepared, shall own all right, title and interest in and to such materials, including the entire copyright therein. To the extent that any such materials are not deemed to be a "work made for hire," Consultant will assign to Purchaser ownership of all right, title, and interest in and to such materials, including ownership of the entire copyright therein.

B. Infringement. Consultant warrants that the goods and services provided by Consultant hereunder are and will be original, do not and will not infringe on or misappropriate any United States or foreign patent, copyright, trademark, or other intellectual property rights of any third party, and have not previously been and will not be assigned, licensed or otherwise encumbered. If the Work or any portion thereof is held to constitute an infringement or misappropriation of the intellectual property rights of a third party, Consultant shall, at its expense and within a reasonable time, either (1) secure for Purchaser the right to use the Work or any portion thereof which is said to be infringing by procuring for Purchaser a license or otherwise, or (2) replace the Work or such portion thereof with non-infringing Work that meets the requirements of the Agreement, or (3) remove such infringing Work or such portion thereof, as Purchaser may elect, and refund the sums paid therefor by Purchaser, together with any out-of-pocket costs incurred by Purchaser in connection with its purchase and use of the infringing Work, all without damage or injury to Purchaser's other property.

C. Data Furnished by Purchaser. All Data furnished by Purchaser in connection with the Work shall remain Purchaser's exclusive property. Consultant shall not use Purchaser-furnished Data for any purpose other than for the Work. Consultant shall: (1) sign and deliver a written itemized receipt for all Purchaser-furnished Data and shall be responsible for its safekeeping, and (2) return such Purchaser-furnished Data and all copies thereof to Purchaser upon completing the Work.

ARTICLE VIII - INDEMNITY

A. Consultant's Indemnity. Consultant shall indemnify, defend, and hold harmless Purchaser, its parent, subsidiaries and affiliates, and each of their respective agents, officers, employees, successors, assigns, and indemnitees (the "Indemnified Parties"), from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Consultant's obligations under this Article VIII) (collectively, "Losses"), which any of the Indemnified Parties may suffer or incur in whole or in part arising out of or in any way related to the Work performed or to be performed, the presence of Consultant and/or its subcontractors at Purchaser's Site, and/or the actions or omissions of Consultant and/or its subcontractors, including, without limitation, Losses relating to: (1) actual or alleged bodily or mental injury to or death of any person, including, without limitation, any person employed by Purchaser, by Consultant, or by any subcontractor; (2) damage to or loss of use of property of Purchaser, Consultant, any subcontractor, or any third party; (3) any contractual liability owed by Purchaser to a third party; (4) any breach of or inaccuracy in the covenants, representations, and warranties made by Consultant under the Agreement; and/or (5) any violation by Consultant or any subcontractor of any ordinance, regulation, rule, or law of the United States or any political subdivision or duly constituted public authority; subject, however, to the limitations provided in Section VIII(B) (for Work performed in Pennsylvania), or Section VIII(C) (for Work performed in states other than Pennsylvania). Purchaser shall be entitled to control the defense of any action indemnified hereunder, with legal counsel of its own choosing.

B. WITH RESPECT TO WORK PERFORMED OR TO BE PERFORMED WITHIN THE COMMONWEALTH OF PENNSYLVANIA, Consultant's indemnity obligations under Section VIII(A) shall apply in each case whether or not caused or contributed to by the fault or negligence of any or all of the Indemnified Parties, and Consultant expressly agrees that Consultant will indemnify, defend, and hold harmless the Indemnified Parties in connection with Section VIII(A) even if any such Losses are caused in whole or in part by the sole or concurrent negligence of one or more of the Indemnified Parties. Consultant agrees to waive and release any rights of contribution, indemnity, or subrogation it may have against any of the Indemnified Parties as a result of an indemnity claim asserted by another Indemnified Party under Section VIII(A). Section VIII(A) is intended to be an express written contract to indemnify as contemplated under Section 303(b) of the Pennsylvania Workers' Compensation Act (or any successor to such provision).

C. WITH RESPECT TO WORK PERFORMED OR TO BE PERFORMED AT ANY LOCATION WHICH IS NOT WITHIN THE COMMONWEALTH OF PENNSYLVANIA, Consultant's indemnity obligations under Section VIII(A) shall not apply to any Losses to the extent such Losses are found to have been initiated or proximately caused by or resulting from the negligence or willful misconduct of any of the Indemnified Parties.

D. Waiver of Immunities. If an employee of Consultant or its subcontractor, or such employee's heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death to such employee, brings an action at law against any Indemnified Party, then Consultant, for itself, its successors, assigns, and subcontractors, hereby expressly waives any provision of any workers' compensation act or other similar law whereby Consultant could preclude its joinder by such Indemnified Party as an additional defendant, or avoid liability for damages, contribution, defense, or indemnity in any action at law, or otherwise. Consultant's obligation to Purchaser herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Consultant under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Consultant or anyone employed directly or indirectly by Consultant or anyone for whose acts Consultant may be liable.

E. No Impairments. Consultant's obligations under this Article VIII shall not be limited to the extent of any insurance available to or provided by Consultant. Consultant's obligations to defend Purchaser shall survive any judicial determination invalidating, in whole or in part, the indemnity provision of the Agreement.

ARTICLE IX - INSURANCE

Consultant's Insurance. Consultant agrees to secure and maintain in force minimum policies of insurance of the types listed below and shall furnish to Purchaser, prior to starting Work and throughout the duration of the Work, certificates of insurance evidencing current coverage listed below.

1.

2. Automobile Liability Insurance, including non-ownership and hired car endorsement, with minimum limits of $,300,000 per occurrence, combined single limit.

3. 4.

Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

C. Lapse of Coverage. In the event of cancellation or lapse of or prohibited change in any policy for which a certificate is required to be furnished under the Agreement, Purchaser shall have the right to suspend the Work until the policy and certificates in evidence thereof are reinstated or arrangements acceptable to Purchaser are made pending issuance of new policies and certificates. If any such insurance shall be about to lapse or be canceled, Consultant shall, at least thirty (30) days before coverage thereunder ceases, obtain a new policy with like coverage, and if Consultant fails to do so, Purchaser may obtain insurance protecting it from the hazards covered by such lapsed or cancelled policy, and all premiums and expenses of such insurance shall be charged against Consultant and shall be a legitimate deduction from any sum due it from Purchaser.

D. Waiver of Subrogation. Consultant and any of its subcontractors shall waive and hereby waives any rights of subrogation which they or any of their insurers may have against Purchaser, its affiliates, and each non-affiliated company disclosed in the Agreement, their respective agents or employees.

E. Performance Bond. Purchaser may, at any time, require Consultant to secure a performance bond with such conditions and limits as may be prescribed by Purchaser. Purchaser shall reimburse Consultant for the cost of such bond.

ARTICLE X - TERM AND TERMINATION

A. Purchaser may terminate the Agreement at any time, including with respect to any Work in process, if (a) Consultant fails to obtain, or maintain as valid, any license, permit or approval required to allow lawful performance of the Work; (b) Purchaser determines, in its sole discretion, that Consultant is not complying with any law; (c) Consultant fails to perform the Work in accordance with the acceptable practices and customary diligence of the profession or industry of which Consultant is a member or in a timely way; (d) Consultant breaches any material term or condition of the Agreement; or (e) Purchaser determines, in its

sole discretion, that Consultant is not financially stable or responsible. Notice of termination pursuant to this Paragraph X(A) shall be in writing and shall be effective upon receipt thereof.

B. Purchaser may terminate the Agreement, or suspend Consultant's performance of the Work, in whole or in part, at any time without cause and for its own convenience, by giving Consultant ten (10) days written notice, and with no further recourse to Consultant, other than payment for Work completed and all reimbursable expenses incurred through and including the effective date of termination. In the event that Purchaser terminates the Agreement without cause or for any other reason except for the reason specified in paragraph X.A herein, Purchaser shall continue to pay Consultant in accordance with Attachment A to the Agreement.

C. After receiving a notice of termination or suspension and except as otherwise directed by Purchaser, Consultant shall: (1) stop the Work on the date and to the extent specified therein; (2) place no further orders or subcontracts except as may be necessary for completing such portions of the Work as have not been terminated or suspended; (3) terminate all orders and subcontracts to the extent that they relate to the portions of the Work terminated (or suspend all orders and subcontracts to the extent that they relate to the portions of the Work suspended); (4) take such action as may be necessary or as directed by Purchaser to protect and preserve all properly related to the Work which is in Consultant's possession and any other items in which Purchaser has or may acquire an interest; and (5) Consultant shall return all equipment, supplies, identification cards, etc. to Purchaser upon termination.

D. If Consultant fails to render the Work by the time specified in the Agreement, Purchaser reserves the right, without liability and in addition to its other rights and remedies at law or equity, to cancel all or any part of the Work by notice effective when received by Consultant as to Work not yet rendered.

ARTICLE XI – COMPLIANCE WITH LAWS, REGULATIONS, AND PERMITS

A. During the performance of the Agreement, the Parties shall strictly comply with all federal, state and local laws, rules or regulations and executive orders applicable to the Work.

B. Purchaser is required to include, and Consultant shall comply with, the below listed clauses from the Federal Acquisition Regulations (48 CFR Chapter 1), as amended from time to time ("FAR") incorporated herein by reference, *if the applicable criteria specified in the FAR and identified parenthetically below, are met*. Additionally, *if Consultant's subcontracts meet such criteria, Consultant shall include the terms or substance of the applicable clause in its subcontracts.* If the provisions of this paragraph C conflict with the balance of the Agreement, this paragraph C shall prevail.

1. 52.202-1 Definitions (required when the Agreement exceeds $100,000);
2. 52.203-5 Covenant Against Contingent Fees (required when the Agreement exceeds $100,000);
3. 52.203-7 Anti-Kickback Procedures (required when the Agreement exceeds $100,000 and is for other than commercial items);
4. 52.203-13 Contractor Code of Business Ethics and Conduct (required in all subcontracts under the Agreement that exceed $5,000,000 and the Performance Period is 120 Days or more);
5. 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (ARRA) (required in the Agreement and in all subcontracts that are funded, in whole or in part, with ARRA funds and are for commercial items or commercial components);
6. 52.219-8 Utilization of Small Business Concerns (required in all subcontracts under the Agreement that exceed $100,000 and are for commercial items);
7. 52.219-9 Small Business Subcontracting Plan (required in all subcontracts that offer subcontracting possibilities, and are required to contain 52.219-8 clause and the Agreement exceeds $550,000);
8. 52.219-16 Liquidated Damages - Subcontracting Plan (required in all subcontracts that contain 52.219-9 clause and the Agreement exceeds $550,000);
9. 52.222-26 Equal Opportunity (required in the Agreement and in all subcontracts for commercial items or commercial components; unless the Agreement is exempt from all requirements of Executive Order 11246 [Equal Employment Opportunity]);
10. 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (required in the Agreement and in all subcontracts for commercial items or commercial components);
11. 52.222-36 Affirmative Action for Workers with Disabilities (required in the Agreement and in all subcontracts exceeding $10,000; unless the work and recruitment of workers will occur outside the United States and its territories);
12. 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (required in the Agreement and in all subcontracts for commercial items or commercial components that contain 52.222-35 clause);
13. 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues (required in the Agreement and in all subcontracts exceeding $100,000);
14. 52.222-50 Combating Trafficking in Persons (required in the Agreement and in all subcontracts for commercial items or commercial components that will be performed outside the United States);
15. 52.222-54 Employment Eligibility Verification (required in the Agreement and in all subcontracts exceeding $100,000; unless either the work will be performed outside the United States, or the performance period is less than 120 days, or the Agreement is only for commercially available off-the-shelf items or COTS items, or the Agreement is for commercial services that are part of the purchase of the COTS item);
16. 52.225-13 Restrictions on Certain Foreign Purchases;
17. 52.233-3 Protest after Award (required when the Agreement exceeds $100,000);
18. 52.233-4 Applicable Law after Breach of Contract;
19. 52.241-2 Order of Precedence – Utilities;
20. 52.241-4 Change in Class of Service;
21. 52.241-5 Contractor's Facilities;
22. 52.242-13 Bankruptcy (required when the Agreement exceeds $100,000);
23. 52.244-6 Subcontracts for Commercial Items (required in the Agreement and in all subcontracts);

24. 52.247-64 Preference for Privately Owned U.S. – Flag Commercial Vessels (required in the Agreement and in all subcontracts for commercial items or commercial components involving ocean transportation of supplies subject to the Cargo Preference Act of 1954);
25. 52.252-2 Clauses Incorporated by Reference. As prescribed in 52.107(b), insert the following clause: "Clauses Incorporated By Reference (Feb 1998) This Agreement incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of a clause may be accessed electronically at https://www.acquisition.gov/far/";
26. The following clauses have been reproduced verbatim in the Agreement (via a standard message) and each may also be accessed electronically at https://www.acquisition.gov/far/: Limitation of Government Liability; 52.216-25 Contract Definition; 52.223-14 Toxic Chemical Release Reporting; 52.233-2 Service of Protest; 52.241-3 Scope and Duration of Contract.

C. Consultant shall comply with the Department of Commerce Export Administration Regulations ("EAR") in 15 CFR Chapter VII, subchapter C, including 15 CFR Section 734.2 which prohibits the export or release of controlled technology and/or software to foreign nationals within the United States who are not lawfully admitted to the United States for permanent residence. Consultant shall confirm that these regulations either do not apply to Consultant's activities under the terms of the Agreement or that Consultant has procedures to ensure compliance. If Consultant is directly or indirectly employing a foreign national not currently lawfully admitted to the United Sates for permanent residence to perform work under the Agreement, Consultant warrants to Purchaser that such employment does not violate the foregoing regulations.

D. Foreign Corrupt Practices Act ("FCPA"). The following provisions shall apply to Consultant (unless it is a foreign concern) if it performs or obtains any of the Work in a foreign country:
   1. All payments to Consultant shall be by check or bank transfer only. No payment shall be in cash or by bearer instrument and no payment shall be made to any corporation or person other than Consultant. All payments due hereunder shall be made to Consultant at its principal place of business in the United States, even if Consultant performs or obtains the Work in a foreign country.
   2. Consultant represents that it is familiar with the FCPA and its purposes as they may relate to the Work; and that, in particular, it is familiar with the prohibition against paying or giving of anything of value, either directly or indirectly, by an American company to an official of a foreign government for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with that government, to assist a company in obtaining or retaining business for or with, or directing business to, any person.
   3. Consultant represents that none of its partners, purchasers, principals, and staff members are officials, officers, or representatives of any government or political party or candidates for political office. Consultant shall not use any part of its compensation for any purpose, and shall take no action, that would constitute a violation of any law of the United States (including the FCPA) or of any jurisdiction where it performs services or manufactures or sells goods. Purchaser represents that it does not desire and will not knowingly request any Work by Consultant that would or might constitute any such violation.
   4. Purchaser may terminate the Agreement for default at any time, without any liability or obligation beyond that set forth herein, if it believes, in good faith, that Consultant has violated this Article. Any action by Consultant which would or might constitute a violation of the FCPA, or a request for such action from Consultant's representative, shall result in immediate termination of the Agreement for default. Should Consultant ever receive, directly or indirectly, from any Purchaser representative a request that Consultant believes will or might violate the FCPA, Consultant shall immediately notify Purchaser's general counsel.
   5. Purchaser may disclose the existence and terms of the Agreement, including the compensation provisions, at any time, for any reason and to whomever Purchaser's general counsel determines has a legitimate need to know the same including, without limitation, the United States government, the government of any country where the Work is performed or obtained, and any regulatory agency with jurisdiction over Purchaser.

E. To the extent applicable to the Work, Consultant shall comply with the Occupational Safety and Health Act of 1970 and all rules, regulations, standards, requirements, and revisions thereof or adopted pursuant thereto provided they are applicable to Consultant. If applicable, Consultant agrees to comply with all Hazard Communication Standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et seq., as amended, to insure that chemical hazards produced, imported, or used with the workplace are evaluated, and that hazard information is transmitted to affected employees of Consultant, of any subcontractor or of Purchaser.

F. Unless the Agreement otherwise provides, Consultant shall, at its own expense, obtain from appropriate governmental authorities all permits, inspections and licenses which are required for the Work and comply with all rules and regulations of insurance companies which have insured any of the Work.

G. Any costs, fines, penalties, awards, damages or other liabilities associated with any violations of this Article associated with the Work shall be borne and paid by Consultant.

H. If applicable to the Work, Consultant agrees to comply with all Hazard Communication Standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et seq., as amended, to insure that chemical hazards produced, imported, or used with the workplace are evaluated, and that hazard information is transmitted to affected employees of Consultant, of any subcontractor or of Purchaser.

I. Consultant acknowledges and agrees that its employees, if given access to FirstEnergy's (FirstEnergy Corp., its parent, subsidiaries and affiliates) Information and Control Systems, shall be required to sign a Network/Systems Access Agreement governing Consultant's and such employees' use of such systems.

J. Consultant shall comply with all requirements of any governmental regulatory codes of conduct applicable to the Work.

ARTICLE XII - SET-OFF

Purchaser shall be entitled at all times to set-off any amount owing from Consultant to Purchaser or any affiliate of Purchaser against any amount payable by Purchaser hereunder, and in no event shall Purchaser be liable for interest.

ARTICLE XIII – LIMITATION OF LIABILITY/DAMAGES

Under no circumstances shall Purchaser, its parent, subsidiaries and affiliates, be liable for any anticipated profits or for incidental, indirect, punitive or consequential damages.

ARTICLE XIV – ASSIGNMENT AND SUBCONTRACTS

A. The Parties may not assign any rights or claims, or delegate any duties under the Agreement, in whole or in part, without the prior written consent of the non-assigning party, which may be withheld for any reason. In the event of any assignment or delegation permitted hereunder, Consultant and Purchaser shall continue to be liable for the performance of their respective obligations hereunder. For purposes of the Agreement, the term "assignment" shall include a transfer of rights hereunder, and/or a succession to its obligations hereunder (i) by operation of law, including a merger, consolidation, corporate reorganization, reclassification or liquidation of Consultant or a sale of all or substantially all assets, or (ii) by a change in the control of Consultant or Purchaser. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through ownership of or the right to vote a majority of the voting stock in the case of a corporation, or the comparable interest in the case of any other entity, or by contract, or otherwise. Notwithstanding the foregoing, Purchaser may assign its rights and obligations to any of its subsidiaries or affiliates.

ARTICLE XV - NON-WAIVER

The delay or failure of either party to assert or enforce in any instance strict performance of any of the terms of the Agreement or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights at any later time or on any future occasion.

ARTICLE XVI - PROHIBITION OF PUBLICITY

Neither Purchaser nor Consultant shall refer to the Agreement or reference the Purchaser, its parent, subsidiaries and affiliates, directly or indirectly, in its advertising or promotional materials without the prior express written consent of the non-referencing Party.

ARTICLE XVII - CONFIDENTIALITY

A. Consultant acknowledges that in the course of performing under the Agreement it may have access to and/or be in possession of Confidential Information of Purchaser. "Confidential Information" shall include the Work, Data, drawings, plans, Specifications, calculations, reports, scientific and technical information, formulas, devices, concepts, inventions, designs, methods, techniques, computer software, screens, user interfaces, system designs and documentation, marketing and commercial strategies, information concerning Purchaser's or any of its affiliates' employees, customers, or suppliers, processes, data concepts, know-how, and unique combinations of separate items which individually may or may not be confidential, which information is not generally known to the public and either derives economic value, actual or potential, from not being generally known or has a character such that Purchaser or any of its affiliates has an interest in maintaining its secrecy. Consultant shall hold in confidence, in the same manner as it holds its own Confidential Information of like kind, all Confidential Information to which it may have access hereunder, and shall not use Confidential Information for any purpose other than performance of the Work. Access to Confidential Information shall be restricted to Consultant's employees with a need to know such information in connection with the Work. Consultant shall return Data and Confidential Information to Purchaser upon completion of performance of the Agreement.

B. The Parties shall not use or disclose Confidential Information for any reason or purpose without the prior written consent. Consultant may use Confidential Information for the sole purpose of the performance of the Agreement for the benefit of the Purchaser. Consultant will take all precautions and actions to prevent sale, transfer, sublicense, use or disclosure of Confidential Information to any third party.

C. The restrictions set forth in this Article XVII shall not apply to information which: (1) is or has become generally known to, or readily ascertainable by, the public without fault or omission of either party or its employees or agents; or (2) was already known prior to the first disclosure of such information; or (3) was received without restrictions as to its use from a third party who is lawfully in possession and not restricted as to the use thereof; or (4) is required to be disclosed by law or by order of a court of competent jurisdiction; or (5) was independently developed by Consultant through persons who have not had, either directly or indirectly, access to or knowledge of similar information provided by Purchaser.

D. If Consultant is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, Civil Investigative Demand or similar process, or otherwise in compliance with applicable law) to disclose any Confidential Information supplied to Consultant in its course of dealings with Purchaser, Consultant shall provide Purchaser with prompt notice of such request(s) so that Purchaser may seek an appropriate protective order and shall itself use appropriate efforts to limit the disclosure and maintain confidentiality to the maximum extent possible.

E. Consultant shall incorporate the above provisions in all agreements with its subcontractors, agents and assigns.

ARTICLE XVIII – SEVERABILITY

If any portion of the Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of the Agreement or an associated Purchase Order, and the parties further agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

ARTICLE XIX - FORCE MAJEURE

With the exception of any amount that may be due Consultant pursuant to the Agreement or Purchase Order, neither party shall be liable to the other for any expenses, loss or damage resulting from delays, disruption, interferences, hindrances, impacts, or prevention of performance arising from causes beyond its reasonable control including by fire, flood, accident, epidemic, strikes, civil commotion, governmental or military authority, insurrection, riots, embargoes or acts of God or public enemy. In the event of any delay, disruption, interference, hindrance, or impact arising by reason of any of the foregoing events, the time for performance shall be extended by a period of time equal to the time lost by reason thereof. The affected party will notify the other party as soon as reasonably practical (but no later than within forty-eight (48) hours) of the affected party becoming aware of a force majeure occurrence as defined herein which will or has caused a delay, disruption, interference, hindrance, or impact. Within a reasonable period of time of such occurrence, the affected party will further define the precise cause or causes, the measures taken or to be taken to minimize, the time table by which the measures will be implemented, the duration of the delay, disruption, interference, hindrance, or impact, the extension of time for performance of the Agreement and documented evidence that supports the claim. The non-affected party will review the claim and advise the affected party in writing of the decision regarding the claim for extension of time for performance of the Agreement.

ARTICLE XX – SALES TAX

Taxes, if any, shall be shown separately on any bids or invoices sent to Purchaser. Direct Payment Permit Numbers authorizing purchase of tangible personal property without payment of the tax at the time of purchase, have been issued to Purchaser. The Permit

Numbers are: 98001123 for Ohio Edison Co.; 128 for Pennsylvania Power Co.; 98002722 for FirstEnergy Nuclear Operating Co.; 98000312 for The Cleveland Electric Illuminating Co.; 98001495 for The Toledo Edison Co.; DP-210-485-010 for Jersey Central Power and Light Co.; 127 for Pennsylvania Electric Company Co.; 135 for Metropolitan Edison Co.; 98-002723 for FirstEnergy Generation Corp.; issued but unnumbered for Potomac Edison Co (MD); 290 for West Penn Power Co. (PA); 94-2-002521 for Allegheny Communications Connect Inc. (WV); 94-2-002482 for Allegheny Energy Supply Co. LLC (WV); 91-1-024150 for Monongahela Power Co. (WV); 91-1-086241 for Potomac Edison Co. (WV); L2000193792 for PATH Allegheny Transmission Co. (WV); L1375690752 for Trans-Allegheny Interstate Line Co. (WV); and 91-1-064620 for West Penn Power Co (WV). Upon request a Sales and Use Tax Exemption Certificate is available for Allegheny Energy Supply Company, LLC in Maryland and Pennsylvania and for Trans-Allegheny Interstate Line Co in Pennsylvania. In Michigan, a Michigan Sales and Use Tax Certificate of Exemption shall be made available upon request. Purchaser agrees to maintain adequate records of all purchases and pay tax on the taxable items directly to the Treasurer of each respective State. In Maryland, Sales and Use Tax Regulations 03.06.01.32-2 and 03.06.01.19.C.(3) provide for tax-exempt purchase of materials used in a production activity by contractors performing real property construction, improvements, alterations and repairs. In order to qualify for tax exemption, the property must be used directly and predominantly in the production activity of generating electricity for sale. Contract bids should be submitted accordingly. The successful bidder will be issued a Maryland Sales and Use Tax Exemption Certificate upon request to permit tax-exempt purchase of qualifying materials. In Ohio, Direct Payment Permits do not apply to construction contracts under which the contractor is considered to be the consumer and liable for the tax on materials incorporated into a structure or improvement as provided in Section 5739.01 (B) Ohio Revised Code. Pennsylvania Direct Payment Permits do not apply to construction contracts under which a contractor is considered to be the consumer and liable for the tax on materials incorporated into the property of Pennsylvania companies. Pennsylvania Sales and Use Tax Regulations Sections 31.11 through 31.16 provide for tax-exempt purchase of materials by a contractor for those materials that will be incorporated into and become a part of the property of Pennsylvania companies. In order to qualify, the property must be directly used in the rendition of the Public Utility Service. Contract bids should be submitted accordingly. The successful bidder will be issued a properly executed "Certification" form upon request to permit tax-exempt purchase of qualifying materials. In West Virginia, Direct Payment Permits apply to contractors performing construction contracting services. West Virginia Sales and Use Tax Regulation Section 11-15-9-(b)(2), and Administrative Notice 2007-19, provide for tax exemption for services, machinery, supplies and materials directly used or consumed in the activities of communications (applies to Allegheny Communications Connect Inc. only), generation/production/selling of electric power, provision of a public utility service, operation of a utility service/utility business or transmission of electricity by wires. Contract bids should be submitted accordingly. The successful bidder will be issued a WV Contractor Tax Exemption Instructions form upon request for items qualifying for tax exemption.

*Questions concerning Pennsylvania or New Jersey sales taxes should be directed to the FirstEnergy Service Company, at (973) 401-8383. Questions about Ohio sales taxes (and states other than Pennsylvania or New Jersey), should be directed to the FirstEnergy Service Company, at (330) 384-5334.*

ARTICLE XXI -- GOVERNING LAW

Any and all matters of dispute between the parties, whether arising from the Agreement itself, or arising from alleged extra-contractual facts prior to, during or subsequent to formation of the Agreement, shall be governed, construed, and enforced in accordance with the laws of the State of Ohio regardless of the theory upon which such matter is asserted. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. Any legal suit, action, or proceeding to collect payment due hereunder from Purchaser, or otherwise arising out of or relating to the Agreement, may be (and, if against Purchaser, must exclusively be) instituted in a State or Federal Court in the County of Summit, State of Ohio, and Consultant waives any objection which it may have now or hereafter to the laying of the venue of any such suit, action or proceeding and hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

ARTICLE XXII - INTERPRETATION

The following principles of interpretation shall apply to the Agreement: (i) paragraph headings and captions are inserted for convenience only and shall not be considered in construing intent; (ii) neither Purchaser nor Consultant shall be considered to be the party responsible for the drafting of any particular provision of the Agreement; (iii) the words "hereof," "herein," "hereunder," and words of similar import shall refer to the Agreement as a whole and not to any particular provision hereof; (iv) the word "including" means "including, but not limited to" and shall be interpreted as broadly as possible; (v) words in the singular include the plural and vice versa; (vi) all references to "days" shall be calendar days (and not merely business days, unless the Agreement so states); (vii) any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction and the provision that is prohibited or unenforceable shall be reformed or modified to reflect the parties' intent to the maximum extent permitted by applicable legal requirements; and (viii) if any conflict arises between a term defined in this document and a term (defined or otherwise) contained in another document comprising a part of the Agreement, the conflict shall be resolved in favor of the more specific defined term unless the context clearly indicates otherwise or such a resolution would deny or dilute Purchaser's rights or benefits under the Agreement.

ARTICLE XXIII - EXECUTION AND COUNTERPARTS

The Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, Ohio 44308

By: [signature]
Its: Exec. Vice President
Date: January 8, 2013

SUSTAINABILITY FUNDING ALLIANCE OF OHIO, INC.
492 East Mound Street
Columbus, Ohio 43215

By: Samuel C. Randazzo
Its: Owner
Date: January 8, 2013

FirstEnergy

SUSTAINABILITY FUNDING ALLIANCE
OF OHIO INCORPORATED
21 EAST STATE STREET 17TH FLOOR
COLUMBUS OH 43215

**Purchase Order**

PO number/date
55116871 / 03/06/2013
Contact person/Telephone
Vince Laguardia/330-384-4544
Contact person Email
VLAGUARDIA
@FIRSTENERGYCORP.COM
Our fax number
330-245-5727

Your number with us
210032291

Valid from:
01/08/2013
Valid to :
12/31/2013

Please deliver to:
Various Plants
44309

Freight Charges & FOB Terms: No freight, FOB destination
Terms of payt.: Within 30 days Due net Currency USD

"Purchaser" is FirstEnergy Service Company on its own behalf and on behalf of its affiliates. The ship-to address may name either the Purchaser as named above and/or a subsidiary or affiliate company of the Purchaser. If more than one company is identified as the purchaser, the liability of each company named shall be several and not joint and shall be limited to such company's interest as identified therein.

External Contacts:
Attn:Samuel C. Randazzo
Ph:(614)395-4268
Email:Sam@mwncmh.com

Buyer Contact:
Vincent Laguardia
Ph: 330-384-4544
Fax: 330-245-5727
vlaguardia@firstenergycorp.com

Technical questions please call Donald Schneider at 330-315-7205.

Brief Description: Misc Consulting Services for FirstEnergy Solutions

The contract period of performance shall be from January 8, 2013 through December 31, 2013.

SUSTAINABILITY FUNDING ALLIANCE
COLUMBUS OH 43215

PO number/date
55116871 / 03/06/2013



Invoicing:

Questions about invoices or payments or electronic payment/presentment may be directed to the Accounts Payable help desk at (814)539-3200.

FirstEnergy's vision is a paperless, automated procure-to-pay process. Our objective is one hundred (100) percent adoption of electronic presentment and payment by our suppliers.

Suppliers performing work with FirstEnergy are expected to enroll in and use the J. P. Morgan Order-To-Pay (Xign) Network to submit invoices electronically to FirstEnergy and to receive payment electronically from FirstEnergy.

Supplier acknowledges that timely submission of invoices is critical for effective budget and financial planning for FirstEnergy.

We encourage you to enroll with J. P. Morgan Order-To-Pay (Xign) our third party provider for electronic payment and presentment and their Discount Manager program. To enroll please go to http://firstenergy.xign.net. Select "ENROLL NOW" and then select the "I DO NOT HAVE AN ENROLLMENT CODE" option. Plan ahead as enrollment takes several business days to complete prior to invoicing in the J.P. Morgan Order-to-Pay (Xign) website.

In the event Supplier does not choose to support FirstEnergy's vision for a paperless procure-to-pay process, all invoices rendered under this purchase order shall be sent directly to:

FirstEnergy
Attn: Donald Schneider (A-WAC-B3)
341 White Pond Drive
Akron, OH 44320

The invoice must include the following:
- Purchase order number
- Line item number

| Item | FE Material No. | Order qty. | Unit | Price per unit | Net value |
|---|---|---|---|---|---|
| 00001 | | | | | |

Provide consulting services for FirstEnergy Solutions on an as needed, as requested basis by authorized FirstEnergy employees. Supplier will provide pricing on mutually agreed to scopes of work on a project-to-project basis prior to work commencing.

This Purchase Order is governed by the attached "FirstEnergy Service Company- General Terms and Conditions" signed by Mark T. Clark and Samuel C. Randazzo on 1/8/2013

Gifts and Gratuities/Conflicts of Interest

Purchaser's employees are subject to conflicts of interest and gifts and gratuities policies, which generally prohibit such employees and/or their family members from giving or receiving gifts, favors, services, or privileges (including travel and entertainment, and discounts that would not be available to the general public) from existing or potential customers, suppliers, or contractors that are more than a nominal value, or that exceed the level of standard business courtesies, and the acceptance of cash, gift certificates, or loans in any amount. The conflicts of interest policy generally prohibits Purchaser's employees and/or their family members from serving as an officer, director, employee, consultant, agent, of, or owning any beneficial interest in, an organization which has a business relationship with FirstEnergy as a supplier or contractor, if the employee is in a position to influence decisions concerning the relationship. The entire text of these policies may be found within the Supply Chain Section at www.firstenergycorp.com. Suppliers and prospective suppliers to Purchaser are expected to be aware of and comply with these policies in their dealings with FirstEnergy employees and their family members. Any suspected or actual violations of these policies should be reported; and, may be reported anonymously and confidentially by a customer, supplier, contractor, or employee by calling the Employee Concerns Line (1-800-683-3625), 24 hours a day, 7 days a week.

SUSTAINABILITY FUNDING ALLIANCE
COLUMBUS OH 43215

PO number/date
55116871 / 03/06/2013



Supplier or Contractor to execute this order and return a copy to the appropriate address below:
The Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

FirstEnergy Service Company
Attn: Vincent LaGuardia(A-GO-09)
76 South Main Street
Akron, Ohio 44308-1890

Supplier or Contractor to retain a copy for Supplier's/Contractor's records.

Supplier or Contractor acknowledges receipt of and agreement to this writing and the terms
contained herein and in the attached terms and conditions.

Name: _____ Date: _____
(Authorized Supplier/Contractor Signature)

(Print) Name: _____ Title: _____

Name: _____ Date: _____
(Authorized Purchasing Representative Signature)

(Print) Name: _Vincent LaGuardia_____ Title: __SC Specialist__

FirstEnergy

SUSTAINABILITY FUNDING ALLIANCE
OF OHIO INCORPORATED
21 EAST STATE STREET 17TH FLOOR
COLUMBUS OH 43215

**Purchase Order**

PO number/date
55116871 / 03/06/2013
Contact person/Telephone
Vince Laguardia/330-384-4544
Contact person Email
VLAGUARDIA
@FIRSTENERGYCORP.COM
Our fax number
330-245-5727

Your number with us
210032291

Valid from:
01/08/2013
Valid to :
12/31/2013

Please deliver to:
Various Plants
44309

Freight Charges & FOB Terms: No freight, FOB destination
Terms of payt.: Within 30 days Due net Currency USD

"Purchaser" is FirstEnergy Service Company on its own behalf and on behalf of its affiliates. The ship-to address may name either the Purchaser as named above and/or a subsidiary or affiliate company of the Purchaser. If more than one company is identified as the purchaser, the liability of each company named shall be several and not joint and shall be limited to such company's interest as identified therein.

External Contacts:
Attn:Samuel C. Randazzo
Ph:(614)395-4268
Email:Sam@mwncmh.com

Buyer Contact:
Vincent Laguardia
Ph: 330-384-4544
Fax: 330-245-5727
vlaguardia@firstenergycorp.com

Technical questions please call Donald Schneider at 330-315-7205.

Brief Description: Misc Consulting Services for FirstEnergy Solutions

The contract period of performance shall be from January 8, 2013 through December 31, 2013.

SUSTAINABILITY FUNDING ALLIANCE
COLUMBUS OH 43215

PO number/date
55116871 / 03/06/2013



Invoicing:

Questions about invoices or payments or electronic payment/presentment may be directed to the Accounts Payable help desk at (814)539-3200.

FirstEnergy's vision is a paperless, automated procure-to-pay process. Our objective is one hundred (100) percent adoption of electronic presentment and payment by our suppliers.

Suppliers performing work with FirstEnergy are expected to enroll in and use the J. P. Morgan Order-To-Pay (Xign) Network to submit invoices electronically to FirstEnergy and to receive payment electronically from FirstEnergy.

Supplier acknowledges that timely submission of invoices is critical for effective budget and financial planning for FirstEnergy.

We encourage you to enroll with J. P. Morgan Order-To-Pay (Xign) our third party provider for electronic payment and presentment and their Discount Manager program. To enroll please go to http://firstenergy.xign.net. Select "ENROLL NOW" and then select the "I DO NOT HAVE AN ENROLLMENT CODE" option. Plan ahead as enrollment takes several business days to complete prior to invoicing in the J.P. Morgan Order-to-Pay (Xign) website.

In the event Supplier does not choose to support FirstEnergy's vision for a paperless procure-to-pay process, all invoices rendered under this purchase order shall be sent directly to:

FirstEnergy
Attn: Donald Schneider (A-WAC-B3)
341 White Pond Drive
Akron, OH 44320

The invoice must include the following:
- Purchase order number
- Line item number

| Item | FE Material No. | Order qty. | Unit | Price per unit | Net value |
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| 00001 | | | | | |

Provide consulting services for FirstEnergy Solutions on an as needed, as requested basis by authorized FirstEnergy employees. Supplier will provide pricing on mutually agreed to scopes of work on a project-to-project basis prior to work commencing.

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Gifts and Gratuities/Conflicts of Interest

Purchaser's employees are subject to conflicts of interest and gifts and gratuities policies, which generally prohibit such employees and/or their family members from giving or receiving gifts, favors, services, or privileges (including travel and entertainment, and discounts that would not be available to the general public) from existing or potential customers, suppliers, or contractors that are more than a nominal value, or that exceed the level of standard business courtesies, and the acceptance of cash, gift certificates, or loans in any amount. The conflicts of interest policy generally prohibits Purchaser's employees and/or their family members from serving as an officer, director, employee, consultant, agent, of, or owning any beneficial interest in, an organization which has a business relationship with FirstEnergy as a supplier or contractor, if the employee is in a position to influence decisions concerning the relationship. The entire text of these policies may be found within the Supply Chain Section at www.firstenergycorp.com. Suppliers and prospective suppliers to Purchaser are expected to be aware of and comply with these policies in their dealings with FirstEnergy employees and their family members. Any suspected or actual violations of these policies should be reported; and, may be reported anonymously and confidentially by a customer, supplier, contractor, or employee by calling the Employee Concerns Line (1-800-683-3625), 24 hours a day, 7 days a week.

| SUSTAINABILITY FUNDING ALLIANCE<br>COLUMBUS OH 43215 | PO number/date<br>55116871 / 03/06/2013 | Page<br>4 |
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Supplier or Contractor to execute this order and return a copy to the appropriate address below:
The Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

FirstEnergy Service Company
Attn: Vincent LaGuardia(A-GO-09)
76 South Main Street
Akron, Ohio 44308-1890

Supplier or Contractor to retain a copy for Supplier's/Contractor's records.

Supplier or Contractor acknowledges receipt of and agreement to this writing and the terms
contained herein and in the attached terms and conditions.

Name: _____ Date: _____
(Authorized Supplier/Contractor Signature)

(Print) Name: _____ Title: _____

Name:  Supply Chain Specialist
I am approving this document
Mar 6 2013 5:32 PM Date: _____
(Authorized Purchasing Representative Signature)

(Print) Name: _Vincent LaGuardia_____ Title: __SC Specialist__

**FIRSTENERGY SERVICE COMPANY – GENERAL TERMS AND CONDITIONS**
**FOR PURCHASE OF PROFESSIONAL OR CONSULTING SERVICES**

**ARTICLE I - DEFINITIONS**

The following capitalized terms, when used in the Agreement, shall have the meanings given below unless in any particular instance the context clearly indicates otherwise:

A. "Consultant" means the party engaged to perform the Work under the terms of the Agreement.
B. "Data" means material that includes documentation, manuals, maps, plans, schedules, programs, specifications, software, reports, drawings, designs and other relevant information.
C. "Purchaser" means FirstEnergy Service Company for itself or as an authorized agent of the affiliate company or companies set forth on the face of the Agreement for which the Work shall be performed.
D. "Parties" means Consultant and Purchaser.
E. "Purchaser's Site" includes locations owned or leased by Purchaser to which the Work is to be delivered or where the Work is to be carried out (if it is not to be performed at the facility of Consultant or others).
F. "Specifications" means the portion of the Agreement that describes the products and services to be delivered by Consultant. Should any conflict occur between the Specifications and any other provision of the Agreement, the Specifications shall take precedence only when and to the extent that such does not result in any way in the dilution or diminution of the rights or benefits of the Purchaser under the Agreement.
F. "Work" is defined in Article IV.

**ARTICLE II – TERMS OF AGREEMENT**

A. Agreement. The terms and conditions set forth in this document, together with the Purchase Order and all attachments including but not limited to the attached term sheet (Attachment A), exhibits, revisions, Specifications and supplements thereof, shall constitute the complete and entire agreement between Purchaser and Consultant (the "Agreement"). In case of any error, inconsistency or omission in the various documents and/or provisions comprising the Agreement, the matter will be submitted immediately to Purchaser, without whose decision said discrepancy shall not be adjusted by Consultant. If any conflict arises between a term defined in this document and a term (defined or otherwise) contained in another document comprising a part of the Agreement, the conflict shall be resolved in favor of the more specific defined term unless the context clearly indicates otherwise or such a resolution would deny or dilute Purchaser's rights or benefits under the Agreement.
B. Offer and Acceptance. Consultant's and Purchaser's acknowledgement, commencement of performance, or any conduct which recognizes the existence of a contract shall constitute acceptance by Consultant of the Agreement and all of its terms and conditions. Acceptance of the Agreement is expressly limited to assent to all of the terms and conditions of the Agreement. Additional or different terms provided in Consultant's acceptance of Purchaser's offer which vary in any degree from any of the terms herein or the Agreement may be accepted by Purchaser and thereby become part of the Agreement.
C. Integration; Modification. The Parties intend the Agreement to constitute the complete, exclusive and fully integrated statement of their agreement concerning the subject matter hereof. As such, the Agreement is the sole repository of their agreement and the parties are not bound by any other agreements of whatsoever kind or nature. No amendment, modification, or rescission of the Agreement shall be enforceable unless the same is in writing and signed by the party against whom the terms of such amendment, modification, or rescission are sought to be enforced.
D. Non-Exclusivity. The Agreement is not exclusive, and Purchaser and Consultant may at its sole discretion contract with others to perform such work as is herein contemplated, or may perform such work with its own forces, except as otherwise provided in Attachment A.
E. Audit. Purchaser shall have the right to audit books and records of Consultant upon reasonable notice for the purpose of confirming the amount due Consultant under the Agreement provided such books and records are associated with services provided by Consultant to Purchaser. Consultant, Consultant's subcontractors and any other entity used by Consultant in the performance of the Agreement shall preserve all such records for a period of three (3) years after final payment hereunder. Upon request, Consultant shall provide Purchaser with sufficient information related to prices of services to enable Purchaser to comply with accounting regulation of the Federal Energy Regulatory Commission (FERC). Consultant shall provide for such right to audit by Purchaser in all contracts with subcontractors and other entities relating to the Agreement.
F. Modifications. In the event that Purchaser requires modifications or changes to the Work after it has been performed, which modifications or changes are through no fault of Consultant, or in the event that Purchaser desires additional Work not covered by the Agreement, Consultant shall, upon Consultant's consent, only perform such Work as ordered by Purchaser in writing, and shall be paid for such Work as may be agreed to in writing between the Parties.

**ARTICLE III - CONSULTANT'S PERSONNEL**

A. Relationship of Parties. In performing the Work, Consultant shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Purchaser. As an independent contractor, Consultant shall determine the means and methods for performing the Work satisfactorily, and shall have full responsibility for complying with the Agreement. Nothing in the Agreement or in the performance of the Work shall be construed to create a partnership, joint venture or other joint business arrangement between Purchaser and Consultant. At all times, Consultant shall perform Work based on Consultant's independently formed views and opinions and strive to assist Purchaser identify and pursue strategies, plans and outcomes that will enhance Purchaser's ability and opportunity to understand the perspective of larger ultimate consumers and how Purchaser can provide value to such consumers through the provision of goods and services.
B. Employees. Consultant represents that it will employ for the Work only persons known by Consultant to be experienced, qualified, reliable and trustworthy. At Purchaser's request, the credentials of any of Consultant's employees assigned to perform the Work shall be submitted to Purchaser in advance of such assignment. During the performance of the Work, Purchaser may object to any Consultant employee who, in Purchaser's opinion, does not meet these criteria. In such case, Consultant shall, at its expense and risk, immediately replace or remove such employee. Notwithstanding the foregoing, the Parties shall be responsible for all acts or omissions (negligent or otherwise) of agents, employees and subcontractors.
C. Background Checks. Consultant shall make commercial best efforts to ensure that Consultant's employees assigned to the Work do not have criminal records and are not involved in criminal activity which could create a risk to Purchaser, Purchaser's, customers, or employees. Upon actual knowledge of a criminal record or involvement in criminal activity, Consultant shall

immediately remove said employee or employees from the Work. Purchaser, at any time, may request Consultant to verify that an employee or employees does not possess a criminal record. Prior to the start of Work and in the event Consultant has any employees authorized as part of the Work, the Consultant shall provide certification pursuant to a North American Electric Reliability Corporation (NERC) Critical Infrastructure Protective (CIP) compliant documented personnel risk assessment and training program that each of Consultant's employees, who are authorized as part of the Work to have electronic or unescorted physical access to Critical Cyber Assets (as the same are identified by Purchaser from time to time): (i) have submitted to a background check consisting of at a minimum an identity verification (e.g., Social Security Number verification in the U.S.) and a seven (7) year criminal check within the past seven (7) years whereby no evidence of a criminal record or criminal activity was discovered; or (ii) have been subject to a seven-year cycle re-check of the background check; and (iii) have received the Purchaser-sponsored Security Awareness training or will receive such training prior to accessing Critical Cyber Assets. These requirements are subject to audit and certification by Consultant upon request by Purchaser. Consultant shall inform Purchaser immediately, but no greater than within thirty (30) minutes, via email and phone call, if a Consultant's employee having authorized cyber or authorized unescorted physical access to Critical Cyber Assets is terminated for cause. Further, Consultant shall inform Purchaser within forty-eight (48) hours, via email and phone call, if a Consultant's employee having authorized cyber or authorized unescorted physical access to Critical Cyber Assets is voluntarily terminated; is transferred to a position where they no longer require access to the Purchaser's CIP assets; or when the access rights of a Consultant's employee to Critical Cyber Assets needs to be changed or removed.

D. Substance Abuse. The Parties agree to comply with all applicable state and federal laws regarding drug-free workplace, as well as Purchaser's rules and regulations concerning the same. The Parties are responsible for ensuring that all employees and subcontractors, while working on Purchaser's Site, will not be under the influence, purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

E. Gifts and Gratuities/Conflicts of Interest. Purchaser's parent company ("FirstEnergy") enforces policies governing the conduct of Purchaser's employees in carrying out its business activities, including contact with third-party business partners. The conflicts of interest and gifts and gratuities policies generally prohibit the employees of all FirstEnergy subsidiaries and/or their family members from giving or receiving gifts, favors, services, or privileges (including travel or entertainment) from existing or potential customers, suppliers, or contractors that are more than a nominal value, or that exceed the level of standard business courtesies, and the acceptance of cash, gift certificates, or loans in any amount. The conflicts of interest policy generally prohibits employees of all FirstEnergy subsidiaries or their family members from serving as an officer, director, employee, consultant, agent, or buyer of a beneficial interest in an organization which has a business relationship with FirstEnergy as a supplier or contractor, if the employee is in a position to influence decisions concerning the relationship. The entire text of these policies may be found within the Supply Chain Section at www.firstenergycorp.com. Suppliers and prospective suppliers to Purchaser are expected to be aware of and comply with these policies in their dealings with FirstEnergy employees and their family members. *Any suspected or actual violations of these policies should be reported; and, may be reported anonymously and confidentially by a customer, supplier, contractor, or employee by calling the Employee Concerns Line (1-800-683-3625), 24 hours a day, 7 days a week.*

F. Access to Purchaser's Site. Personnel of Consultant and its employees, agents, subcontractors and suppliers shall enter and exit Purchaser's Site only by the entrances designated from time to time by Purchaser. Consultant shall comply with all of Purchaser's protection and safety rules for any Purchaser Site at which the Work is performed, and with all instructions and directives from Purchaser's Site manager or their designees. In the event that Consultant is working at Purchaser's Site, Consultant may be one of several vendors working at such Site, and shall cooperate fully with Purchaser and other vendors, and shall plan and perform the Work in such a manner so as not to interfere with the activities or operations of Purchaser or other vendors. Purchaser will establish priorities and, at the request of other vendors, resolve interferences.

G. Safety and Health. The Parties shall conduct their operations in a manner to avoid risk of bodily harm to persons or damage to property. The Parties shall take all precautions necessary and shall be responsible for the safety of the Work and the safety and adequacy of the manner and methods it employs in performing the Work and shall not require any employee or representative performing hereunder to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety. Consultant shall ensure that while any agents, employees, subcontractors or invitees of Consultant are on Purchaser's Site, they will conform to and comply with all applicable safety and health laws, ordinances, rules, regulations, orders and all other requirements (including, without limitation, standards under the Occupational Safety and Health Act and Purchaser's safety requirements).

## ARTICLE IV – SCOPE OF WORK

Consultant agrees to provide Purchaser with professional or consulting services as specified in the Agreement, which shall include, but are not limited to providing all services, material, equipment, Data, tools, supplies, technical information, reports, studies, deliverables, products, outcomes, results, information, new discoveries, inventions, improvements, technical consulting or other technical services, design services, analytical services, quality assurance, supervision and direction of work or performance of labor, and all other facilities and services which are necessary for the complete performance of the Agreement by the Consultant (the "Work"). Time is of the essence to all Work performed under the Agreement and all of Purchaser's actions that must be completed to permit Consultant to perform the Work.

## ARTICLE V – COMPENSATION AND TERMS OF PAYMENT

A. Compensation for the Work performed shall be as described on the face of the Agreement the associated Purchase Order or both.

B. For Work to be performed on a time and materials basis, each invoice must: (a) detail by activity the man-hours worked by Consultant; (b) detail by activity the labor cost; (c) detail the direct reimbursable costs in connection with the Work; (d) indicate the cumulative cost to date for all activities; (e) indicate the total monthly cost of the Work; and (f) include other information reasonably required by Purchaser.

C. Each invoice shall, after approval by the Purchaser, be processed for payment in accordance with the terms of payment as set forth on the face of the Agreement, for the amount of each approved invoice less any monies retained, if any, per the terms of payment or under Section D below. Payments made by Purchaser shall not be deemed evidence of acceptance by Purchaser of the Work procured in the Agreement.

1. Unless otherwise set forth herein, payment terms for Work performed on a time and materials basis are 2% 10 Net 45 Days. Payment dates shall be calculated from the date of receipt of invoice or acceptance of the Work by Purchaser, whichever is later unless Payment occurs according to alternative terms specified in the Agreement or the associated Purchase Order. Payments by Purchaser shall not be deemed evidence of acceptance by Purchaser of the Work.
2. Electronic Invoices. Unless exempted by Purchaser, Consultant shall utilize the Purchaser's then-current Electronic Invoice Presentment and Payment Program to submit invoices and receive payment electronically from Purchaser.

D. Withholding.

If Purchaser has a claim under the Agreement, regardless of when it is discovered, including a claim that: (a) Consultant's invoice is erroneous; (b) the Work is deficient, defective or incomplete; (c) a third party claim has been asserted or there is reasonable evidence indicating the possibility of such a claim; (d) Consultant fails to make a payment as and when due to a subcontractor or supplier for materials, labor or equipment; (e) Purchaser, another Consultant, subcontractor, or other party suffers damage or injury which is attributable to Consultant; or (f) Consultant has failed to supply any affidavit, release or waiver of lien which Purchaser may require pursuant to law; then Purchaser may withhold payment of, or set off the amount of its claim, costs, or losses against any amount invoiced by Consultant. If any monies are so withheld, they shall be paid only when, without cost to the Purchaser, the cause of such withholding has been eliminated to the satisfaction of Purchaser. Moreover, if any monies are so withheld, Purchaser shall not be responsible for any interest payment to Consultant.

E. Consultant is deemed to be self-employed; and accordingly, no sums are contemplated to be withheld from Consultant's compensation to cover the payment of income taxes, FICA (social security), FUTA (unemployment compensation) or other taxes. Consultant agrees to file all required federal, state and local income tax and other tax returns (including, without limitation, all required declarations of estimated tax) covering Consultant's compensation hereunder. Consultant agrees to pay all such taxes and contributions when due; and Consultant hereby indemnifies Purchaser and holds it harmless from and against any and all loss, cost and liability whatsoever incurred by or claimed against Purchaser for any failure of Consultant to comply herewith.

## ARTICLE VI - STANDARD OF CARE AND PERFORMANCE

A. Standard of Care. Consultant expressly warrants that all Work performed hereunder shall be: (i) conducted in a manner consistent with the highest generally accepted level of care and skill ordinarily exercised by professionals and other persons performing work of a nature similar to that which Consultant is performing; (ii) performed safely, lawfully, efficiently and properly, and otherwise in a good and workmanlike manner; (iii) in strict conformity with the requirements of the Agreement, including, without limitation, all specific design standards and the specific Specifications and drawings incorporated into said Agreement; and (iv) of good workmanship and quality, free from defects (including, without limitation, defects in design, material, workmanship and title), and fit for the purposes intended by Purchaser as set forth in the Agreement. Consultant further warrants that all equipment used in connection with performance of the Work shall be in safe and proper working order. Consultant acknowledges and agrees that Purchaser is relying upon Consultant's special and unique abilities and the accuracy, competence and completeness of Consultant's Work.

B. Performance. Consultant represents and warrants that it is technically, physically, financially and legally ready, willing, competent and able to perform, and capable of performing, the Work. Consultant represents, warrants and covenants that it has, and will have throughout the term of the Agreement, the requisite personnel, competence, skill and physical resources to perform the Work, and that it has, and shall maintain, the capability, experience, registrations, and permits required to perform the Work.

C. Consultant shall cure any breach of the foregoing warranties at no cost to Purchaser and shall reimburse Purchaser for any damages that may be incurred by Purchaser as a result of reliance by Purchaser, its employees, agents, other consultants or subcontractors on such Work or anticipated performance by Consultant. The costs of transporting, repairing, replacing, removing or installing material to make the Work comply with the above performance standards, warranties and requirements shall be borne by Consultant. If Consultant should fail to cure such breach or if Purchaser determines that Consultant will be unable to cure such breach before the scheduled time of completion, Purchaser may correct such breach itself or through a third party and charge Consultant for the costs incurred therefor.

## ARTICLE VII - INTELLECTUAL PROPERTY RIGHTS

A. Ownership of Work and Data. The Work and all Data associated with the Work, whether or not patentable, registrable as a copyrightable work, or registrable as a trademark or service mark, shall become the property of Purchaser and Purchaser shall own all intellectual property rights therein (including the rights to any patent, trademark or service mark, trade secret, and copyright therein). Consultant hereby agrees that any materials and works of authorship conceived or written by Consultant during the term of the Agreement that pertain in any material respect to the Work shall be done as "work made for hire" as defined and used in the Copyright Act of 1976, 17 USC §1 et seq., and that Purchaser, as the entity for which the work is prepared, shall own all right, title and interest in and to such materials, including the entire copyright therein. To the extent that any such materials are not deemed to be a "work made for hire," Consultant will assign to Purchaser ownership of all right, title, and interest in and to such materials, including ownership of the entire copyright therein.

B. Infringement. Consultant warrants that the goods and services provided by Consultant hereunder are and will be original, do not and will not infringe on or misappropriate any United States or foreign patent, copyright, trademark, or other intellectual property rights of any third party, and have not previously been and will not be assigned, licensed or otherwise encumbered. If the Work or any portion thereof is held to constitute an infringement or misappropriation of the intellectual property rights of a third party, Consultant shall, at its expense and within a reasonable time, either (1) secure for Purchaser the right to use the Work or any portion thereof which is said to be infringing by procuring for Purchaser a license or otherwise, or (2) replace the Work or such portion thereof with non-infringing Work that meets the requirements of the Agreement, or (3) remove such infringing Work or such portion thereof, as Purchaser may elect, and refund the sums paid therefor by Purchaser, together with any out-of-pocket costs incurred by Purchaser in connection with its purchase and use of the infringing Work, all without damage or injury to Purchaser's other property.

C. Data Furnished by Purchaser. All Data furnished by Purchaser in connection with the Work shall remain Purchaser's exclusive property. Consultant shall not use Purchaser-furnished Data for any purpose other than for the Work. Consultant shall: (1) sign and deliver a written itemized receipt for all Purchaser-furnished Data and shall be responsible for its safekeeping, and (2) return such Purchaser-furnished Data and all copies thereof to Purchaser upon completing the Work.

**ARTICLE VIII - INDEMNITY**

A. Consultant's Indemnity. Consultant shall indemnify, defend, and hold harmless Purchaser, its parent, subsidiaries and affiliates, and each of their respective agents, officers, employees, successors, assigns, and indemnitees (the "Indemnified Parties"), from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Consultant's obligations under this Article VIII) (collectively, "Losses"), which any of the Indemnified Parties may suffer or incur in whole or in part arising out of or in any way related to the Work performed or to be performed, the presence of Consultant and/or its subcontractors at Purchaser's Site, and/or the actions or omissions of Consultant and/or its subcontractors, including, without limitation, Losses relating to: (1) actual or alleged bodily or mental injury to or death of any person, including, without limitation, any person employed by Purchaser, by Consultant, or by any subcontractor; (2) damage to or loss of use of property of Purchaser, Consultant, any subcontractor, or any third party; (3) any contractual liability owed by Purchaser to a third party; (4) any breach of or inaccuracy in the covenants, representations, and warranties made by Consultant under the Agreement; and/or (5) any violation by Consultant or any subcontractor of any ordinance, regulation, rule, or law of the United States or any political subdivision or duly constituted public authority; subject, however, to the limitations provided in Section VIII(B) (for Work performed in Pennsylvania), or Section VIII(C) (for Work performed in states other than Pennsylvania). Purchaser shall be entitled to control the defense of any action indemnified hereunder, with legal counsel of its own choosing.

B. WITH RESPECT TO WORK PERFORMED OR TO BE PERFORMED WITHIN THE COMMONWEALTH OF PENNSYLVANIA, Consultant's indemnity obligations under Section VIII(A) shall apply in each case whether or not caused or contributed to by the fault or negligence of any or all of the Indemnified Parties, and Consultant expressly agrees that Consultant will indemnify, defend, and hold harmless the Indemnified Parties in connection with Section VIII(A) even if any such Losses are caused in whole or in part by the sole or concurrent negligence of one or more of the Indemnified Parties. Consultant agrees to waive and release any rights of contribution, indemnity, or subrogation it may have against any of the Indemnified Parties as a result of an indemnity claim asserted by another Indemnified Party under Section VIII(A). Section VIII(A) is intended to be an express written contract to indemnify as contemplated under Section 303(b) of the Pennsylvania Workers' Compensation Act (or any successor to such provision).

C. WITH RESPECT TO WORK PERFORMED OR TO BE PERFORMED AT ANY LOCATION WHICH IS NOT WITHIN THE COMMONWEALTH OF PENNSYLVANIA, Consultant's indemnity obligations under Section VIII(A) shall not apply to any Losses to the extent such Losses are found to have been initiated or proximately caused by or resulting from the negligence or willful misconduct of any of the Indemnified Parties.

D. Waiver of Immunities. If an employee of Consultant or its subcontractor, or such employee's heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death to such employee, brings an action at law against any Indemnified Party, then Consultant, for itself, its successors, assigns, and subcontractors, hereby expressly waives any provision of any workers' compensation act or other similar law whereby Consultant could preclude its joinder by such Indemnified Party as an additional defendant, or avoid liability for damages, contribution, defense, or indemnity in any action at law, or otherwise. Consultant's obligation to Purchaser herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Consultant under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Consultant or anyone employed directly or indirectly by Consultant or anyone for whose acts Consultant may be liable.

E. No Impairments. Consultant's obligations under this Article VIII shall not be limited to the extent of any insurance available to or provided by Consultant. Consultant's obligations to defend Purchaser shall survive any judicial determination invalidating, in whole or in part, the Indemnity provision of the Agreement.

**ARTICLE IX - INSURANCE**

Consultant's Insurance. Consultant agrees to secure and maintain in force minimum policies of insurance of the types listed below and shall furnish to Purchaser, prior to starting Work and throughout the duration of the Work, certificates of insurance evidencing current coverage listed below.

1.

2. Automobile Liability insurance, including non-ownership and hired car endorsement, with minimum limits of $,300,000 per occurrence, combined single limit.

3. 4.

Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

C. Lapse of Coverage. In the event of cancellation or lapse of or prohibited change in any policy for which a certificate is required to be furnished under the Agreement, Purchaser shall have the right to suspend the Work until the policy and certificates in evidence thereof are reinstated or arrangements acceptable to Purchaser are made pending issuance of new policies and certificates. If any such insurance shall be about to lapse or be canceled, Consultant shall, at least thirty (30) days before coverage thereunder ceases, obtain a new policy with like coverage, and if Consultant fails to do so, Purchaser may obtain insurance protecting it from the hazards covered by such lapsed or cancelled policy, and all premiums and expenses of such insurance shall be charged against Consultant and shall be a legitimate deduction from any sum due it from Purchaser.

D. Waiver of Subrogation. Consultant and any of its subcontractors shall waive and hereby waives any rights of subrogation which they or any of their insurers may have against Purchaser, its affiliates, and each non-affiliated company disclosed in the Agreement, their respective agents or employees.

E. Performance Bond. Purchaser may, at any time, require Consultant to secure a performance bond with such conditions and limits as may be prescribed by Purchaser. Purchaser shall reimburse Consultant for the cost of such bond.

**ARTICLE X - TERM AND TERMINATION**

A. Purchaser may terminate the Agreement at any time, including with respect to any Work in process, if (a) Consultant fails to obtain, or maintain as valid, any license, permit or approval required to allow lawful performance of the Work; (b) Purchaser determines, in its sole discretion, that Consultant is not complying with any law; (c) Consultant fails to perform the Work in accordance with the acceptable practices and customary diligence of the profession or industry of which Consultant is a member or in a timely way; (d) Consultant breaches any material term or condition of the Agreement; or (e) Purchaser determines, in its

sole discretion, that Consultant is not financially stable or responsible. Notice of termination pursuant to this Paragraph X(A) shall be in writing and shall be effective upon receipt thereof.

B. Purchaser may terminate the Agreement, or suspend Consultant's performance of the Work, in whole or in part, at any time without cause and for its own convenience, by giving Consultant ten (10) days written notice, and with no further recourse to Consultant, other than payment for Work completed and all reimbursable expenses incurred through and including the effective date of termination. In the event that Purchaser terminates the Agreement without cause or for any other reason except for the reason specified in paragraph X.A herein, Purchaser shall continue to pay Consultant in accordance with Attachment A to the Agreement.

C. After receiving a notice of termination or suspension and except as otherwise directed by Purchaser, Consultant shall: (1) stop the Work on the date and to the extent specified therein; (2) place no further orders or subcontracts except as may be necessary for completing such portions of the Work as have not been terminated or suspended; (3) terminate all orders and subcontracts to the extent that they relate to the portions of the Work terminated (or suspend all orders and subcontracts to the extent that they relate to the portions of the Work suspended); (4) take such action as may be necessary or as directed by Purchaser to protect and preserve all property related to the Work which is in Consultant's possession and any other items in which Purchaser has or may acquire an interest; and (5) Consultant shall return all equipment, supplies, identification cards, etc. to Purchaser upon termination.

D. If Consultant fails to render the Work by the time specified in the Agreement, Purchaser reserves the right, without liability and in addition to its other rights and remedies at law or equity, to cancel all or any part of the Work by notice effective when received by Consultant as to Work not yet rendered.

**ARTICLE XI – COMPLIANCE WITH LAWS, REGULATIONS, AND PERMITS**

A. During the performance of the Agreement, the Parties shall strictly comply with all federal, state and local laws, rules or regulations and executive orders applicable to the Work.

B. Purchaser is required to include, and Consultant shall comply with, the below listed clauses from the Federal Acquisition Regulations (48 CFR Chapter 1), as amended from time to time ("FAR") incorporated herein by reference, *if the applicable criteria specified in the FAR and identified parenthetically below, are met*. Additionally, *if Consultant's subcontracts meet such criteria, Consultant shall include the terms or substance of the applicable clause in its subcontracts.* If the provisions of this paragraph C conflict with the balance of the Agreement, this paragraph C shall prevail.

1. 52.202-1 Definitions (required when the Agreement exceeds $100,000);
2. 52.203-5 Covenant Against Contingent Fees (required when the Agreement exceeds $100,000);
3. 52.203-7 Anti-Kickback Procedures (required when the Agreement exceeds $100,000 and is for other than commercial items);
4. 52.203-13 Contractor Code of Business Ethics and Conduct (required in all subcontracts under the Agreement that exceed $5,000,000 and the Performance Period is 120 Days or more);
5. 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (ARRA) (required in the Agreement and in all subcontracts that are funded, in whole or in part, with ARRA funds and are for commercial items or commercial components);
6. 52.219-8 Utilization of Small Business Concerns (required in all subcontracts under the Agreement that exceed $100,000 and are for commercial items);
7. 52.219-9 Small Business Subcontracting Plan (required in all subcontracts that offer subcontracting possibilities, and are required to contain 52.219-8 clause and the Agreement exceeds $550,000);
8. 52.219-16 Liquidated Damages - Subcontracting Plan (required in all subcontracts that contain 52.219-9 clause and the Agreement exceeds $550,000);
9. 52.222-26 Equal Opportunity (required in the Agreement and in all subcontracts for commercial items or commercial components; unless the Agreement is exempt from all requirements of Executive Order 11246 [Equal Employment Opportunity]);
10. 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (required in the Agreement and in all subcontracts for commercial items or commercial components);
11. 52.222-36 Affirmative Action for Workers with Disabilities (required in the Agreement and in all subcontracts exceeding $10,000; unless the work and recruitment of workers will occur outside the United States and its territories);
12. 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (required in the Agreement and in all subcontracts for commercial items or commercial components that contain 52.222-35 clause);
13. 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues (required in the Agreement and in all subcontracts exceeding $100,000);
14. 52.222-50 Combating Trafficking in Persons (required in the Agreement and in all subcontracts for commercial items or commercial components that will be performed outside the United States);
15. 52.222-54 Employment Eligibility Verification (required in the Agreement and in all subcontracts exceeding $100,000; unless either the work will be performed outside the United States, or the performance period is less than 120 days, or the Agreement is only for commercially available off-the-shelf items or COTS items, or the Agreement is for commercial services that are part of the purchase of the COTS item);
16. 52.225-13 Restrictions on Certain Foreign Purchases;
17. 52.233-3 Protest after Award (required when the Agreement exceeds $100,000);
18. 52.233-4 Applicable Law after Breach of Contract;
19. 52.241-2 Order of Precedence – Utilities;
20. 52.241-4 Change in Class of Service;
21. 52.241-5 Contractor's Facilities;
22. 52.242-13 Bankruptcy (required when the Agreement exceeds $100,000);
23. 52.244-6 Subcontracts for Commercial Items (required in the Agreement and in all subcontracts);

24. 52.247-64 Preference for Privately Owned U.S. – Flag Commercial Vessels (required in the Agreement and in all subcontracts for commercial items or commercial components involving ocean transportation of supplies subject to the Cargo Preference Act of 1954);
25. 52.252-2 Clauses Incorporated by Reference. As prescribed in 52.107(b), insert the following clause: "Clauses Incorporated By Reference (Feb 1998) This Agreement incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of a clause may be accessed electronically at https://www.acquisition.gov/far/";
26. The following clauses have been reproduced verbatim in the Agreement (via a standard message) and each may also be accessed electronically at https://www.acquisition.gov/far/: Limitation of Government Liability; 52.216-25 Contract Definition; 52.223-14 Toxic Chemical Release Reporting; 52.233-2 Service of Protest; 52.241-3 Scope and Duration of Contract.

C. Consultant shall comply with the Department of Commerce Export Administration Regulations ("EAR") in 15 CFR Chapter VII, subchapter C, including 15 CFR Section 734.2 which prohibits the export or release of controlled technology and/or software to foreign nationals within the United States who are not lawfully admitted to the United States for permanent residence. Consultant shall confirm that these regulations either do not apply to Consultant's activities under the terms of the Agreement or that Consultant has procedures to ensure compliance. If Consultant is directly or indirectly employing a foreign national not currently lawfully admitted to the United Sates for permanent residence to perform work under the Agreement, Consultant warrants to Purchaser that such employment does not violate the foregoing regulations.

D. Foreign Corrupt Practices Act ("FCPA"). The following provisions shall apply to Consultant (unless it is a foreign concern) if it performs or obtains any of the Work in a foreign country:
   1. All payments to Consultant shall be by check or bank transfer only. No payment shall be in cash or by bearer instrument and no payment shall be made to any corporation or person other than Consultant. All payments due hereunder shall be made to Consultant at its principal place of business in the United States, even if Consultant performs or obtains the Work in a foreign country.
   2. Consultant represents that it is familiar with the FCPA and its purposes as they may relate to the Work; and that, in particular, it is familiar with the prohibition against paying or giving of anything of value, either directly or indirectly, by an American company to an official of a foreign government for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with that government, to assist a company in obtaining or retaining business for or with, or directing business to, any person.
   3. Consultant represents that none of its partners, purchasers, principals, and staff members are officials, officers, or representatives of any government or political party or candidates for political office. Consultant shall not use any part of its compensation for any purpose, and shall take no action, that would constitute a violation of any law of the United States (including the FCPA) or of any jurisdiction where it performs services or manufactures or sells goods. Purchaser represents that it does not desire and will not knowingly request any Work by Consultant that would or might constitute any such violation.
   4. Purchaser may terminate the Agreement for default at any time, without any liability or obligation beyond that set forth herein, if it believes, in good faith, that Consultant has violated this Article. Any action by Consultant which would or might constitute a violation of the FCPA, or a request for such action from Consultant's representative, shall result in immediate termination of the Agreement for default. Should Consultant ever receive, directly or indirectly, from any Purchaser representative a request that Consultant believes will or might violate the FCPA, Consultant shall immediately notify Purchaser's general counsel.
   5. Purchaser may disclose the existence and terms of the Agreement, including the compensation provisions, at any time, for any reason and to whomever Purchaser's general counsel determines has a legitimate need to know the same including, without limitation, the United States government, the government of any country where the Work is performed or obtained, and any regulatory agency with jurisdiction over Purchaser.

E. To the extent applicable to the Work, Consultant shall comply with the Occupational Safety and Health Act of 1970 and all rules, regulations, standards, requirements, and revisions thereof or adopted pursuant thereto provided they are applicable to Consultant. If applicable, Consultant agrees to comply with all Hazard Communication Standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et seq., as amended, to insure that chemical hazards produced, imported, or used with the workplace are evaluated, and that hazard information is transmitted to affected employees of Consultant, of any subcontractor or of Purchaser.

F. Unless the Agreement otherwise provides, Consultant shall, at its own expense, obtain from appropriate governmental authorities all permits, inspections and licenses which are required for the Work and comply with all rules and regulations of insurance companies which have insured any of the Work.

G. Any costs, fines, penalties, awards, damages or other liabilities associated with any violations of this Article associated with the Work shall be borne and paid by Consultant.

H. If applicable to the Work, Consultant agrees to comply with all Hazard Communication Standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et seq., as amended, to insure that chemical hazards produced, imported, or used with the workplace are evaluated, and that hazard information is transmitted to affected employees of Consultant, of any subcontractor or of Purchaser.

I. Consultant acknowledges and agrees that its employees, if given access to FirstEnergy's (FirstEnergy Corp., its parent, subsidiaries and affiliates) Information and Control Systems, shall be required to sign a Network/Systems Access Agreement governing Consultant's and such employees' use of such systems.

J. Consultant shall comply with all requirements of any governmental regulatory codes of conduct applicable to the Work.

**ARTICLE XII - SET-OFF**

Purchaser shall be entitled at all times to set-off any amount owing from Consultant to Purchaser or any affiliate of Purchaser against any amount payable by Purchaser hereunder, and in no event shall Purchaser be liable for interest.

**ARTICLE XIII – LIMITATION OF LIABILITY/DAMAGES**

Under no circumstances shall Purchaser, its parent, subsidiaries and affiliates, be liable for any anticipated profits or for incidental, indirect, punitive or consequential damages.

**ARTICLE XIV – ASSIGNMENT AND SUBCONTRACTS**

A. The Parties may not assign any rights or claims, or delegate any duties under the Agreement, in whole or in part, without the prior written consent of the non-assigning party, which may be withheld for any reason. In the event of any assignment or delegation permitted hereunder, Consultant and Purchaser shall continue to be liable for the performance of their respective obligations hereunder. For purposes of the Agreement, the term "assignment" shall include a transfer of rights hereunder, and/or a succession to its obligations hereunder (i) by operation of law, including a merger, consolidation, corporate reorganization, reclassification or liquidation of Consultant or a sale of all or substantially all assets, or (ii) by a change in the control of Consultant or Purchaser. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through ownership of or the right to vote a majority of the voting stock in the case of a corporation, or the comparable interest in the case of any other entity, or by contract, or otherwise. Notwithstanding the foregoing, Purchaser may assign its rights and obligations to any of its subsidiaries or affiliates.

**ARTICLE XV - NON-WAIVER**

The delay or failure of either party to assert or enforce in any instance strict performance of any of the terms of the Agreement or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights at any later time or on any future occasion.

**ARTICLE XVI - PROHIBITION OF PUBLICITY**

Neither Purchaser nor Consultant shall refer to the Agreement or reference the Purchaser, its parent, subsidiaries and affiliates, directly or indirectly, in its advertising or promotional materials without the prior express written consent of the non-referencing Party.

**ARTICLE XVII - CONFIDENTIALITY**

A. Consultant acknowledges that in the course of performing under the Agreement it may have access to and/or be in possession of Confidential Information of Purchaser. "Confidential Information" shall include the Work, Data, drawings, plans, Specifications, calculations, reports, scientific and technical information, formulas, devices, concepts, inventions, designs, methods, techniques, computer software, screens, user interfaces, system designs and documentation, marketing and commercial strategies, information concerning Purchaser's or any of its affiliates' employees, customers, or suppliers, processes, data concepts, know-how, and unique combinations of separate items which individually may or may not be confidential, which information is not generally known to the public and either derives economic value, actual or potential, from not being generally known or has a character such that Purchaser or any of its affiliates has an interest in maintaining its secrecy. Consultant shall hold in confidence, in the same manner as it holds its own Confidential Information of like kind, all Confidential Information to which it may have access hereunder, and shall not use Confidential Information for any purpose other than performance of the Work. Access to Confidential Information shall be restricted to Consultant's employees with a need to know such information in connection with the Work. Consultant shall return Data and Confidential Information to Purchaser upon completion of performance of the Agreement.

B. The Parties shall not use or disclose Confidential Information for any reason or purpose without the prior written consent. Consultant may use Confidential Information for the sole purpose of the performance of the Agreement for the benefit of the Purchaser. Consultant will take all precautions and actions to prevent sale, transfer, sublicense, use or disclosure of Confidential Information to any third party.

C. The restrictions set forth in this Article XVII shall not apply to information which: (1) is or has become generally known to, or readily ascertainable by, the public without fault or omission of either party or its employees or agents; or (2) was already known prior to the first disclosure of such information; or (3) was received without restrictions as to its use from a third party who is lawfully in possession and not restricted as to the use thereof; or (4) is required to be disclosed by law or by order of a court of competent jurisdiction; or (5) was independently developed by Consultant through persons who have not had, either directly or indirectly, access to or knowledge of similar information provided by Purchaser.

D. If Consultant is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, Civil Investigative Demand or similar process, or otherwise in compliance with applicable law) to disclose any Confidential Information supplied to Consultant in its course of dealings with Purchaser, Consultant shall provide Purchaser with prompt notice of such request(s) so that Purchaser may seek an appropriate protective order and shall itself use appropriate efforts to limit the disclosure and maintain confidentiality to the maximum extent possible.

E. Consultant shall incorporate the above provisions in all agreements with its subcontractors, agents and assigns.

**ARTICLE XVIII – SEVERABILITY**

If any portion of the Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of the Agreement or an associated Purchase Order, and the parties further agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

**ARTICLE XIX - FORCE MAJEURE**

With the exception of any amount that may be due Consultant pursuant to the Agreement or Purchase Order, neither party shall be liable to the other for any expenses, loss or damage resulting from delays, disruption, interferences, hindrances, impacts, or prevention of performance arising from causes beyond its reasonable control including by fire, flood, accident, epidemic, strikes, civil commotion, governmental or military authority, insurrection, riots, embargoes or acts of God or public enemy. In the event of any delay, disruption, interference, hindrance, or impact arising by reason of any of the foregoing events, the time for performance shall be extended by a period of time equal to the time lost by reason thereof. The affected party will notify the other party as soon as reasonably practical (but no later than within forty-eight (48) hours) of the affected party becoming aware of a force majeure occurrence as defined herein which will or has caused a delay, disruption, interference, hindrance, or impact. Within a reasonable period of time of such occurrence, the affected party will further define the precise cause or causes, the measures taken or to be taken to minimize, the time table by which the measures will be implemented, the duration of the delay, disruption, interference, hindrance, or impact, the extension of time for performance of the Agreement and documented evidence that supports the claim. The non-affected party will review the claim and advise the affected party in writing of the decision regarding the claim for extension of time for performance of the Agreement.

**ARTICLE XX – SALES TAX**

Taxes, if any, shall be shown separately on any bids or invoices sent to Purchaser. Direct Payment Permit Numbers authorizing purchase of tangible personal property without payment of the tax at the time of purchase, have been issued to Purchaser. The Permit

Numbers are: 98001123 for Ohio Edison Co.; 128 for Pennsylvania Power Co.; 98002722 for FirstEnergy Nuclear Operating Co.; 98000312 for The Cleveland Electric Illuminating Co.; 98001495 for The Toledo Edison Co.; DP-210-485-010 for Jersey Central Power and Light Co.; 127 for Pennsylvania Electric Company Co.; 135 for Metropolitan Edison Co.; 98-002723 for FirstEnergy Generation Corp.; issued but unnumbered for Potomac Edison Co (MD); 290 for West Penn Power Co. (PA); 94-2-002521 for Allegheny Communications Connect Inc. (WV); 94-2-002482 for Allegheny Energy Supply Co. LLC (WV); 91-1-024150 for Monongahela Power Co. (WV); 91-1-086241 for Potomac Edison Co. (WV); L2000193792 for PATH Allegheny Transmission Co. (WV); L1375690752 for Trans-Allegheny Interstate Line Co. (WV); and 91-1-064620 for West Penn Power Co (WV). Upon request a Sales and Use Tax Exemption Certificate is available for Allegheny Energy Supply Company, LLC in Maryland and Pennsylvania and for Trans-Allegheny Interstate Line Co in Pennsylvania. In Michigan, a Michigan Sales and Use Tax Certificate of Exemption shall be made available upon request. Purchaser agrees to maintain adequate records of all purchases and pay tax on the taxable items directly to the Treasurer of each respective State. In Maryland, Sales and Use Tax Regulations 03.06.01.32-2 and 03.06.01.19.C.(3) provide for tax-exempt purchase of materials used in a production activity by contractors performing real property construction, improvements, alterations and repairs. In order to qualify for tax exemption, the property must be used directly and predominantly in the production activity of generating electricity for sale. Contract bids should be submitted accordingly. The successful bidder will be issued a Maryland Sales and Use Tax Exemption Certificate upon request to permit tax-exempt purchase of qualifying materials. In Ohio, Direct Payment Permits do not apply to construction contracts under which the contractor is considered to be the consumer and liable for the tax on materials incorporated into a structure or improvement as provided in Section 5739.01 (B) Ohio Revised Code. Pennsylvania Direct Payment Permits do not apply to construction contracts under which a contractor is considered to be the consumer and liable for the tax on materials incorporated into the property of Pennsylvania companies. Pennsylvania Sales and Use Tax Regulations Sections 31.11 through 31.16 provide for tax-exempt purchase of materials by a contractor for those materials that will be incorporated into and become a part of the property of Pennsylvania companies. In order to qualify, the property must be directly used in the rendition of the Public Utility Service. Contract bids should be submitted accordingly. The successful bidder will be issued a properly executed "Certification" form upon request to permit tax-exempt purchase of qualifying materials. In West Virginia, Direct Payment Permits apply to contractors performing construction contracting services. West Virginia Sales and Use Tax Regulation Section 11-15-9-(b)(2), and Administrative Notice 2007-19, provide for tax exemption for services, machinery, supplies and materials directly used or consumed in the activities of communications (applies to Allegheny Communications Connect Inc. only), generation/production/selling of electric power, provision of a public utility service, operation of a utility service/utility business or transmission of electricity by wires. Contract bids should be submitted accordingly. The successful bidder will be issued a WV Contractor Tax Exemption Instructions form upon request for items qualifying for tax exemption.

*Questions concerning Pennsylvania or New Jersey sales taxes should be directed to the FirstEnergy Service Company, at (973) 401-8383. Questions about Ohio sales taxes (and states other than Pennsylvania or New Jersey), should be directed to the FirstEnergy Service Company, at (330) 384-5334.*

**ARTICLE XXI – GOVERNING LAW**

Any and all matters of dispute between the parties, whether arising from the Agreement itself, or arising from alleged extra-contractual facts prior to, during or subsequent to formation of the Agreement, shall be governed, construed, and enforced in accordance with the laws of the State of Ohio regardless of the theory upon which such matter is asserted. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. Any legal suit, action, or proceeding to collect payment due hereunder from Purchaser, or otherwise arising out of or relating to the Agreement, may be (and, if against Purchaser, must exclusively be) instituted in a State or Federal Court in the County of Summit, State of Ohio, and Consultant waives any objection which it may have now or hereafter to the laying of the venue of any such suit, action or proceeding and hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

**ARTICLE XXII - INTERPRETATION**

The following principles of interpretation shall apply to the Agreement: (i) paragraph headings and captions are inserted for convenience only and shall not be considered in construing intent; (ii) neither Purchaser nor Consultant shall be considered to be the party responsible for the drafting of any particular provision of the Agreement; (iii) the words "hereof," "herein," "hereunder," and words of similar import shall refer to the Agreement as a whole and not to any particular provision hereof; (iv) the word "including" means "including, but not limited to" and shall be interpreted as broadly as possible; (v) words in the singular include the plural and vice versa; (vi) all references to "days" shall be calendar days (and not merely business days, unless the Agreement so states); (vii) any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction and the provision that is prohibited or unenforceable shall be reformed or modified to reflect the parties' intent to the maximum extent permitted by applicable legal requirements; and (viii) if any conflict arises between a term defined in this document and a term (defined or otherwise) contained in another document comprising a part of the Agreement, the conflict shall be resolved in favor of the more specific defined term unless the context clearly indicates otherwise or such a resolution would deny or dilute Purchaser's rights or benefits under the Agreement.

**ARTICLE XXIII - EXECUTION AND COUNTERPARTS**

The Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

**FIRSTENERGY SERVICE COMPANY**
76 South Main Street
Akron, Ohio 44308

By: _____
Its: Exec. Vice President
Date: January 8, 2013

**SUSTAINABILITY FUNDING ALLIANCE OF OHIO, INC.**
492 East Mound Street
Columbus, Ohio 43215

By: Samuel C. Randazzo
Its: Owner
Date: January 8, 2013

FirstEnergy

SUSTAINABILITY FUNDING ALLIANCE
OF OHIO INCORPORATED
21 EAST STATE STREET 17TH FLOOR
COLUMBUS OH 43215

**Purchase Order**

PO number/date
55116871 / 03/06/2013
Contact person/Telephone
Vince Laguardia/330-384-4544
Contact person Email
VLAGUARDIA
@FIRSTENERGYCORP.COM
Our fax number
330-245-5727

Your number with us
210032291

Valid from:
01/08/2013
Valid to :
12/31/2013

Please deliver to:
Various Plants
44309

Freight Charges & FOB Terms: No freight, FOB destination
Terms of payt.: Within 30 days Due net Currency USD

"Purchaser" is FirstEnergy Service Company on its own behalf and on behalf of its affiliates. The ship-to address may name either the Purchaser as named above and/or a subsidiary or affiliate company of the Purchaser. If more than one company is identified as the purchaser, the liability of each company named shall be several and not joint and shall be limited to such company's interest as identified therein.

External Contacts:
Attn:Samuel C. Randazzo
Ph:(614) 469-8000
Email:Sam@mwncmh.com

Buyer Contact:
Vincent Laguardia
Ph: 330-384-4544
Fax: 330-245-5727
vlaguardia@firstenergycorp.com

Technical questions please call Donald Schneider at 330-315-7205.

Brief Description: Misc Consulting Services for FirstEnergy Solutions

The contract period of performance shall be from January 8, 2013 through December 31, 2013.

| SUSTAINABILITY FUNDING ALLIANCE<br>COLUMBUS OH 43215 | PO number/date<br>55116871 / 03/06/2013 | Page<br>2 |
|---|---|---|

Invoicing:

Questions about invoices or payments or electronic payment/presentment may be directed to the Accounts Payable help desk at (814)539-3200.

FirstEnergy's vision is a paperless, automated procure-to-pay process. Our objective is one hundred (100) percent adoption of electronic presentment and payment by our suppliers.

Suppliers performing work with FirstEnergy are expected to enroll in and use the J. P. Morgan Order-To-Pay (Xign) Network to submit invoices electronically to FirstEnergy and to receive payment electronically from FirstEnergy.

Supplier acknowledges that timely submission of invoices is critical for effective budget and financial planning for FirstEnergy.

We encourage you to enroll with J. P. Morgan Order-To-Pay (Xign) our third party provider for electronic payment and presentment and their Discount Manager program. To enroll please go to http://firstenergy.xign.net. Select "ENROLL NOW" and then select the "I DO NOT HAVE AN ENROLLMENT CODE" option. Plan ahead as enrollment takes several business days to complete prior to invoicing in the J.P. Morgan Order-to-Pay (Xign) website.

In the event Supplier does not choose to support FirstEnergy's vision for a paperless procure-to-pay process, all invoices rendered under this purchase order shall be sent directly to:

FirstEnergy
Attn: Donald Schneider (A-WAC-B3)
341 White Pond Drive
Akron, OH 44320

The invoice must include the following:
- Purchase order number
- Line item number

| Item | FE Material No. | Order qty. | Unit | Price per unit | Net value |
|---|---|---|---|---|---|
| 00001 | | | | | |

Provide consulting services for FirstEnergy Solutions on an as needed, as requested basis by authorized FirstEnergy employees. Supplier will provide pricing on mutually agreed to scopes of work on a project-to-project basis prior to work commencing.

This Purchase Order is governed by the attached "FirstEnergy Service Company- General Terms and Conditions" signed by Mark T. Clark and Samuel C. Randazzo on 1/8/2013

Gifts and Gratuities/Conflicts of Interest

Purchaser's employees are subject to conflicts of interest and gifts and gratuities policies, which generally prohibit such employees and/or their family members from giving or receiving gifts, favors, services, or privileges (including travel and entertainment, and discounts that would not be available to the general public) from existing or potential customers, suppliers, or contractors that are more than a nominal value, or that exceed the level of standard business courtesies, and the acceptance of cash, gift certificates, or loans in any amount. The conflicts of interest policy generally prohibits Purchaser's employees and/or their family members from serving as an officer, director, employee, consultant, agent, of, or owning any beneficial interest in, an organization which has a business relationship with FirstEnergy as a supplier or contractor, if the employee is in a position to influence decisions concerning the relationship. The entire text of these policies may be found within the Supply Chain Section at www.firstenergycorp.com. Suppliers and prospective suppliers to Purchaser are expected to be aware of and comply with these policies in their dealings with FirstEnergy employees and their family members. Any suspected or actual violations of these policies should be reported; and, may be reported anonymously and confidentially by a customer, supplier, contractor, or employee by calling the Employee Concerns Line (1-800-683-3625), 24 hours a day, 7 days a week.

| SUSTAINABILITY FUNDING ALLIANCE<br>COLUMBUS OH 43215 | PO number/date<br>55116871 / 03/06/2013 | Page<br>4 |
|---|---|---|

Supplier or Contractor to execute this order and return a copy to the appropriate address below:
The Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

FirstEnergy Service Company
Attn: Vincent LaGuardia(A-GO-09)
76 South Main Street
Akron, Ohio 44308-1890

Supplier or Contractor to retain a copy for Supplier's/Contractor's records.

Supplier or Contractor acknowledges receipt of and agreement to this writing and the terms
contained herein and in the attached terms and conditions.

Name: _____ Date: _____
(Authorized Supplier/Contractor Signature)

(Print) Name: _____ Title: _____

Name: _____ Date: _____
(Authorized Purchasing Representative Signature)

(Print) Name: _Vincent LaGuardia_____ Title: __SC Specialist__

**FIRSTENERGY SERVICE COMPANY – GENERAL TERMS AND CONDITIONS**
**FOR PURCHASE OF PROFESSIONAL OR CONSULTING SERVICES**

**ARTICLE I - DEFINITIONS**

The following capitalized terms, when used in the Agreement, shall have the meanings given below unless in any particular instance the context clearly indicates otherwise:

A. "Consultant" means the party engaged to perform the Work under the terms of the Agreement.
B. "Data" means material that includes documentation, manuals, maps, plans, schedules, programs, specifications, software, reports, drawings, designs and other relevant information.
C. "Purchaser" means FirstEnergy Service Company for itself or as an authorized agent of the affiliate company or companies set forth on the face of the Agreement for which the Work shall be performed.
D. "Parties" means Consultant and Purchaser.
E. "Purchaser's Site" includes locations owned or leased by Purchaser to which the Work is to be delivered or where the Work is to be carried out (if it is not to be performed at the facility of Consultant or others).
F. "Specifications" means the portion of the Agreement that describes the products and services to be delivered by Consultant. Should any conflict occur between the Specifications and any other provision of the Agreement, the Specifications shall take precedence only when and to the extent that such does not result in any way in the dilution or diminution of the rights or benefits of the Purchaser under the Agreement.
F. "Work" is defined in Article IV.

**ARTICLE II – TERMS OF AGREEMENT**

A. Agreement. The terms and conditions set forth in this document, together with the Purchase Order and all attachments including but not limited to the attached term sheet (Attachment A), exhibits, revisions, Specifications and supplements thereof, shall constitute the complete and entire agreement between Purchaser and Consultant (the "Agreement"). In case of any error, inconsistency or omission in the various documents and/or provisions comprising the Agreement, the matter will be submitted immediately to Purchaser, without whose decision said discrepancy shall not be adjusted by Consultant. If any conflict arises between a term defined in this document and a term (defined or otherwise) contained in another document comprising a part of the Agreement, the conflict shall be resolved in favor of the more specific defined term unless the context clearly indicates otherwise or such a resolution would deny or dilute Purchaser's rights or benefits under the Agreement.
B. Offer and Acceptance. Consultant's and Purchaser's acknowledgement, commencement of performance, or any conduct which recognizes the existence of a contract shall constitute acceptance by Consultant of the Agreement and all of its terms and conditions. Acceptance of the Agreement is expressly limited to assent to all of the terms and conditions of the Agreement. Additional or different terms provided in Consultant's acceptance of Purchaser's offer which vary in any degree from any of the terms herein or the Agreement may be accepted by Purchaser and thereby become part of the Agreement.
C. Integration; Modification. The Parties intend the Agreement to constitute the complete, exclusive and fully integrated statement of their agreement concerning the subject matter hereof. As such, the Agreement is the sole repository of their agreement and the parties are not bound by any other agreements of whatsoever kind or nature. No amendment, modification, or rescission of the Agreement shall be enforceable unless the same is in writing and signed by the party against whom the terms of such amendment, modification, or rescission are sought to be enforced.
D. Non-Exclusivity. The Agreement is not exclusive, and Purchaser and Consultant may at its sole discretion contract with others to perform such work as is herein contemplated, or may perform such work with its own forces, except as otherwise provided in Attachment A.
E. Audit. Purchaser shall have the right to audit books and records of Consultant upon reasonable notice for the purpose of confirming the amount due Consultant under the Agreement provided such books and records are associated with services provided by Consultant to Purchaser. Consultant, Consultant's subcontractors and any other entity used by Consultant in the performance of the Agreement shall preserve all such records for a period of three (3) years after final payment hereunder. Upon request, Consultant shall provide Purchaser with sufficient information related to prices of services to enable Purchaser to comply with accounting regulation of the Federal Energy Regulatory Commission (FERC). Consultant shall provide for such right to audit by Purchaser in all contracts with subcontractors and other entities relating to the Agreement.
F. Modifications. In the event that Purchaser requires modifications or changes to the Work after it has been performed, which modifications or changes are through no fault of Consultant, or in the event that Purchaser desires additional Work not covered by the Agreement, Consultant shall, upon Consultant's consent, only perform such Work as ordered by Purchaser in writing, and shall be paid for such Work as may be agreed to in writing between the Parties.

**ARTICLE III - CONSULTANT'S PERSONNEL**

A. Relationship of Parties. In performing the Work, Consultant shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Purchaser. As an independent contractor, Consultant shall determine the means and methods for performing the Work satisfactorily, and shall have full responsibility for complying with the Agreement. Nothing in the Agreement or in the performance of the Work shall be construed to create a partnership, joint venture or other joint business arrangement between Purchaser and Consultant. At all times, Consultant shall perform Work based on Consultant's independently formed views and opinions and strive to assist Purchaser identify and pursue strategies, plans and outcomes that will enhance Purchaser's ability and opportunity to understand the perspective of larger ultimate consumers and how Purchaser can provide value to such consumers through the provision of goods and services.
B. Employees. Consultant represents that it will employ for the Work only persons known by Consultant to be experienced, qualified, reliable and trustworthy. At Purchaser's request, the credentials of any of Consultant's employees assigned to perform the Work shall be submitted to Purchaser in advance of such assignment. During the performance of the Work, Purchaser may object to any Consultant employee who, in Purchaser's opinion, does not meet these criteria. In such case, Consultant shall, at its expense and risk, immediately replace or remove such employee. Notwithstanding the foregoing, the Parties shall be responsible for all acts or omissions (negligent or otherwise) of agents, employees and subcontractors.
C. Background Checks. Consultant shall make commercial best efforts to ensure that Consultant's employees assigned to the Work do not have criminal records and are not involved in criminal activity which could create a risk to Purchaser, Purchaser's, customers, or employees. Upon actual knowledge of a criminal record or involvement in criminal activity, Consultant shall

immediately remove said employee or employees from the Work. Purchaser, at any time, may request Consultant to verify that an employee or employees does not possess a criminal record. Prior to the start of Work and in the event Consultant has any employees authorized as part of the Work, the Consultant shall provide certification pursuant to a North American Electric Reliability Corporation (NERC) Critical Infrastructure Protective (CIP) compliant documented personnel risk assessment and training program that each of Consultant's employees, who are authorized as part of the Work to have electronic or unescorted physical access to Critical Cyber Assets (as the same are identified by Purchaser from time to time): (i) have submitted to a background check consisting of at a minimum an identity verification (e.g., Social Security Number verification in the U.S.) and a seven (7) year criminal check within the past seven (7) years whereby no evidence of a criminal record or criminal activity was discovered; or (ii) have been subject to a seven-year cycle re-check of the background check; and (iii) have received the Purchaser-sponsored Security Awareness training or will receive such training prior to accessing Critical Cyber Assets. These requirements are subject to audit and certification by Consultant upon request by Purchaser. Consultant shall inform Purchaser immediately, but no greater than within thirty (30) minutes, via email and phone call, if a Consultant's employee having authorized cyber or authorized unescorted physical access to Critical Cyber Assets is terminated for cause. Further, Consultant shall inform Purchaser within forty-eight (48) hours, via email and phone call, if a Consultant's employee having authorized cyber or authorized unescorted physical access to Critical Cyber Assets is voluntarily terminated; is transferred to a position where they no longer require access to the Purchaser's CIP assets; or when the access rights of a Consultant's employee to Critical Cyber Assets needs to be changed or removed.

D. Substance Abuse. The Parties agree to comply with all applicable state and federal laws regarding drug-free workplace, as well as Purchaser's rules and regulations concerning the same. The Parties are responsible for ensuring that all employees and subcontractors, while working on Purchaser's Site, will not be under the influence, purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

E. Gifts and Gratuities/Conflicts of Interest. Purchaser's parent company ("FirstEnergy") enforces policies governing the conduct of Purchaser's employees in carrying out its business activities, including contact with third-party business partners. The conflicts of interest and gifts and gratuities policies generally prohibit the employees of all FirstEnergy subsidiaries and/or their family members from giving or receiving gifts, favors, services, or privileges (including travel or entertainment) from existing or potential customers, suppliers, or contractors that are more than a nominal value, or that exceed the level of standard business courtesies, and the acceptance of cash, gift certificates, or loans in any amount. The conflicts of interest policy generally prohibits employees of all FirstEnergy subsidiaries or their family members from serving as an officer, director, employee, consultant, agent, or buyer of a beneficial interest in an organization which has a business relationship with FirstEnergy as a supplier or contractor, if the employee is in a position to influence decisions concerning the relationship. The entire text of these policies may be found within the Supply Chain Section at www.firstenergycorp.com. Suppliers and prospective suppliers to Purchaser are expected to be aware of and comply with these policies in their dealings with FirstEnergy employees and their family members. *Any suspected or actual violations of these policies should be reported; and, may be reported anonymously and confidentially by a customer, supplier, contractor, or employee by calling the Employee Concerns Line (1-800-683-3625), 24 hours a day, 7 days a week.*

F. Access to Purchaser's Site. Personnel of Consultant and its employees, agents, subcontractors and suppliers shall enter and exit Purchaser's Site only by the entrances designated from time to time by Purchaser. Consultant shall comply with all of Purchaser's protection and safety rules for any Purchaser Site at which the Work is performed, and with all instructions and directives from Purchaser's Site manager or their designees. In the event that Consultant is working at Purchaser's Site, Consultant may be one of several vendors working at such Site, and shall cooperate fully with Purchaser and other vendors, and shall plan and perform the Work in such a manner so as not to interfere with the activities or operations of Purchaser or other vendors. Purchaser will establish priorities and, at the request of other vendors, resolve interferences.

G. Safety and Health. The Parties shall conduct their operations in a manner to avoid risk of bodily harm to persons or damage to property. The Parties shall take all precautions necessary and shall be responsible for the safety of the Work and the safety and adequacy of the manner and methods it employs in performing the Work and shall not require any employee or representative performing hereunder to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety. Consultant shall ensure that while any agents, employees, subcontractors or invitees of Consultant are on Purchaser's Site, they will conform to and comply with all applicable safety and health laws, ordinances, rules, regulations, orders and all other requirements (including, without limitation, standards under the Occupational Safety and Health Act and Purchaser's safety requirements).

**ARTICLE IV – SCOPE OF WORK**

Consultant agrees to provide Purchaser with professional or consulting services as specified in the Agreement, which shall include, but are not limited to providing all services, material, equipment, Data, tools, supplies, technical information, reports, studies, deliverables, products, outcomes, results, information, new discoveries, inventions, improvements, technical consulting or other technical services, design services, analytical services, quality assurance, supervision and direction of work or performance of labor, and all other facilities and services which are necessary for the complete performance of the Agreement by the Consultant (the "Work"). Time is of the essence to all Work performed under the Agreement and all of Purchaser's actions that must be completed to permit Consultant to perform the Work.

**ARTICLE V – COMPENSATION AND TERMS OF PAYMENT**

A. Compensation for the Work performed shall be as described on the face of the Agreement the associated Purchase Order or both.

B. For Work to be performed on a time and materials basis, each invoice must: (a) detail by activity the man-hours worked by Consultant; (b) detail by activity the labor cost; (c) detail the direct reimbursable costs in connection with the Work; (d) indicate the cumulative cost to date for all activities; (e) indicate the total monthly cost of the Work; and (f) include other information reasonably required by Purchaser.

C. Each invoice shall, after approval by the Purchaser, be processed for payment in accordance with the terms of payment as set forth on the face of the Agreement, for the amount of each approved invoice less any monies retained, if any, per the terms of payment or under Section D below. Payments made by Purchaser shall not be deemed evidence of acceptance by Purchaser of the Work procured in the Agreement.

1. Unless otherwise set forth herein, payment terms for Work performed on a time and materials basis are 2% 10 Net 45 Days. Payment dates shall be calculated from the date of receipt of invoice or acceptance of the Work by Purchaser, whichever is later unless Payment occurs according to alternative terms specified in the Agreement or the associated Purchase Order. Payments by Purchaser shall not be deemed evidence of acceptance by Purchaser of the Work.
2. Electronic Invoices. Unless exempted by Purchaser, Consultant shall utilize the Purchaser's then-current Electronic Invoice Presentment and Payment Program to submit invoices and receive payment electronically from Purchaser.

D. Withholding.

If Purchaser has a claim under the Agreement, regardless of when it is discovered, including a claim that: (a) Consultant's invoice is erroneous; (b) the Work is deficient, defective or incomplete; (c) a third party claim has been asserted or there is reasonable evidence indicating the possibility of such a claim; (d) Consultant fails to make a payment as and when due to a subcontractor or supplier for materials, labor or equipment; (e) Purchaser, another Consultant, subcontractor, or other party suffers damage or injury which is attributable to Consultant; or (f) Consultant has failed to supply any affidavit, release or waiver of lien which Purchaser may require pursuant to law; then Purchaser may withhold payment of, or set off the amount of its claim, costs, or losses against any amount invoiced by Consultant. If any monies are so withheld, they shall be paid only when, without cost to the Purchaser, the cause of such withholding has been eliminated to the satisfaction of Purchaser. Moreover, if any monies are so withheld, Purchaser shall not be responsible for any interest payment to Consultant.

E. Consultant is deemed to be self-employed; and accordingly, no sums are contemplated to be withheld from Consultant's compensation to cover the payment of income taxes, FICA (social security), FUTA (unemployment compensation) or other taxes. Consultant agrees to file all required federal, state and local income tax and other tax returns (including, without limitation, all required declarations of estimated tax) covering Consultant's compensation hereunder. Consultant agrees to pay all such taxes and contributions when due; and Consultant hereby indemnifies Purchaser and holds it harmless from and against any and all loss, cost and liability whatsoever incurred by or claimed against Purchaser for any failure of Consultant to comply herewith.

**ARTICLE VI - STANDARD OF CARE AND PERFORMANCE**

A. Standard of Care. Consultant expressly warrants that all Work performed hereunder shall be: (i) conducted in a manner consistent with the highest generally accepted level of care and skill ordinarily exercised by professionals and other persons performing work of a nature similar to that which Consultant is performing; (ii) performed safely, lawfully, efficiently and properly, and otherwise in a good and workmanlike manner; (iii) in strict conformity with the requirements of the Agreement, including, without limitation, all specific design standards and the specific Specifications and drawings incorporated into said Agreement; and (iv) of good workmanship and quality, free from defects (including, without limitation, defects in design, material, workmanship and title), and fit for the purposes intended by Purchaser as set forth in the Agreement. Consultant further warrants that all equipment used in connection with performance of the Work shall be in safe and proper working order. Consultant acknowledges and agrees that Purchaser is relying upon Consultant's special and unique abilities and the accuracy, competence and completeness of Consultant's Work.

B. Performance. Consultant represents and warrants that it is technically, physically, financially and legally ready, willing, competent and able to perform, and capable of performing, the Work. Consultant represents, warrants and covenants that it has, and will have throughout the term of the Agreement, the requisite personnel, competence, skill and physical resources to perform the Work, and that it has, and shall maintain, the capability, experience, registrations, and permits required to perform the Work.

C. Consultant shall cure any breach of the foregoing warranties at no cost to Purchaser and shall reimburse Purchaser for any damages that may be incurred by Purchaser as a result of reliance by Purchaser, its employees, agents, other consultants or subcontractors on such Work or anticipated performance by Consultant. The costs of transporting, repairing, replacing, removing or installing material to make the Work comply with the above performance standards, warranties and requirements shall be borne by Consultant. If Consultant should fail to cure such breach or if Purchaser determines that Consultant will be unable to cure such breach before the scheduled time of completion, Purchaser may correct such breach itself or through a third party and charge Consultant for the costs incurred therefor.

**ARTICLE VII - INTELLECTUAL PROPERTY RIGHTS**

A. Ownership of Work and Data. The Work and all Data associated with the Work, whether or not patentable, registrable as a copyrightable work, or registrable as a trademark or service mark, shall become the property of Purchaser and Purchaser shall own all intellectual property rights therein (including the rights to any patent, trademark or service mark, trade secret, and copyright therein). Consultant hereby agrees that any materials and works of authorship conceived or written by Consultant during the term of the Agreement that pertain in any material respect to the Work shall be done as "work made for hire" as defined and used in the Copyright Act of 1976, 17 USC §1 et seq., and that Purchaser, as the entity for which the work is prepared, shall own all right, title and interest in and to such materials, including the entire copyright therein. To the extent that any such materials are not deemed to be a "work made for hire," Consultant will assign to Purchaser ownership of all right, title, and interest in and to such materials, including ownership of the entire copyright therein.

B. Infringement. Consultant warrants that the goods and services provided by Consultant hereunder are and will be original, do not and will not infringe on or misappropriate any United States or foreign patent, copyright, trademark, or other intellectual property rights of any third party, and have not previously been and will not be assigned, licensed or otherwise encumbered. If the Work or any portion thereof is held to constitute an infringement or misappropriation of the intellectual property rights of a third party, Consultant shall, at its expense and within a reasonable time, either (1) secure for Purchaser the right to use the Work or any portion thereof which is said to be infringing by procuring for Purchaser a license or otherwise, or (2) replace the Work or such portion thereof with non-infringing Work that meets the requirements of the Agreement, or (3) remove such infringing Work or such portion thereof, as Purchaser may elect, and refund the sums paid therefor by Purchaser, together with any out-of-pocket costs incurred by Purchaser in connection with its purchase and use of the infringing Work, all without damage or injury to Purchaser's other property.

C. Data Furnished by Purchaser. All Data furnished by Purchaser in connection with the Work shall remain Purchaser's exclusive property. Consultant shall not use Purchaser-furnished Data for any purpose other than for the Work. Consultant shall: (1) sign and deliver a written itemized receipt for all Purchaser-furnished Data and shall be responsible for its safekeeping, and (2) return such Purchaser-furnished Data and all copies thereof to Purchaser upon completing the Work.

**ARTICLE VIII - INDEMNITY**

A. Consultant's Indemnity. Consultant shall indemnify, defend, and hold harmless Purchaser, its parent, subsidiaries and affiliates, and each of their respective agents, officers, employees, successors, assigns, and indemnitees (the "Indemnified Parties"), from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Consultant's obligations under this Article VIII) (collectively, "Losses"), which any of the Indemnified Parties may suffer or incur in whole or in part arising out of or in any way related to the Work performed or to be performed, the presence of Consultant and/or its subcontractors at Purchaser's Site, and/or the actions or omissions of Consultant and/or its subcontractors, including, without limitation, Losses relating to: (1) actual or alleged bodily or mental injury to or death of any person, including, without limitation, any person employed by Purchaser, by Consultant, or by any subcontractor; (2) damage to or loss of use of property of Purchaser, Consultant, any subcontractor, or any third party; (3) any contractual liability owed by Purchaser to a third party; (4) any breach of or inaccuracy in the covenants, representations, and warranties made by Consultant under the Agreement; and/or (5) any violation by Consultant or any subcontractor of any ordinance, regulation, rule, or law of the United States or any political subdivision or duly constituted public authority; subject, however, to the limitations provided in Section VIII(B) (for Work performed in Pennsylvania), or Section VIII(C) (for Work performed in states other than Pennsylvania). Purchaser shall be entitled to control the defense of any action indemnified hereunder, with legal counsel of its own choosing.

B. WITH RESPECT TO WORK PERFORMED OR TO BE PERFORMED WITHIN THE COMMONWEALTH OF PENNSYLVANIA, Consultant's indemnity obligations under Section VIII(A) shall apply in each case whether or not caused or contributed to by the fault or negligence of any or all of the Indemnified Parties, and Consultant expressly agrees that Consultant will indemnify, defend, and hold harmless the Indemnified Parties in connection with Section VIII(A) even if any such Losses are caused in whole or in part by the sole or concurrent negligence of one or more of the Indemnified Parties. Consultant agrees to waive and release any rights of contribution, indemnity, or subrogation it may have against any of the Indemnified Parties as a result of an indemnity claim asserted by another Indemnified Party under Section VIII(A). Section VIII(A) is intended to be an express written contract to indemnify as contemplated under Section 303(b) of the Pennsylvania Workers' Compensation Act (or any successor to such provision).

C. WITH RESPECT TO WORK PERFORMED OR TO BE PERFORMED AT ANY LOCATION WHICH IS NOT WITHIN THE COMMONWEALTH OF PENNSYLVANIA, Consultant's indemnity obligations under Section VIII(A) shall not apply to any Losses to the extent such Losses are found to have been initiated or proximately caused by or resulting from the negligence or willful misconduct of any of the Indemnified Parties.

D. Waiver of Immunities. If an employee of Consultant or its subcontractor, or such employee's heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death to such employee, brings an action at law against any Indemnified Party, then Consultant, for itself, its successors, assigns, and subcontractors, hereby expressly waives any provision of any workers' compensation act or other similar law whereby Consultant could preclude its joinder by such Indemnified Party as an additional defendant, or avoid liability for damages, contribution, defense, or indemnity in any action at law, or otherwise. Consultant's obligation to Purchaser herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Consultant under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Consultant or anyone employed directly or indirectly by Consultant or anyone for whose acts Consultant may be liable.

E. No Impairments. Consultant's obligations under this Article VIII shall not be limited to the extent of any insurance available to or provided by Consultant. Consultant's obligations to defend Purchaser shall survive any judicial determination invalidating, in whole or in part, the indemnity provision of the Agreement.

**ARTICLE IX - INSURANCE**

Consultant's Insurance. Consultant agrees to secure and maintain in force minimum policies of insurance of the types listed below and shall furnish to Purchaser, prior to starting Work and throughout the duration of the Work, certificates of insurance evidencing current coverage listed below.

1.

2. Automobile Liability insurance, including non-ownership and hired car endorsement, with minimum limits of $,300,000 per occurrence, combined single limit.

3. 4.

Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

C. Lapse of Coverage. In the event of cancellation or lapse of or prohibited change in any policy for which a certificate is required to be furnished under the Agreement, Purchaser shall have the right to suspend the Work until the policy and certificates in evidence thereof are reinstated or arrangements acceptable to Purchaser are made pending issuance of new policies and certificates. If any such insurance shall be about to lapse or be canceled, Consultant shall, at least thirty (30) days before coverage thereunder ceases, obtain a new policy with like coverage, and if Consultant fails to do so, Purchaser may obtain insurance protecting it from the hazards covered by such lapsed or cancelled policy, and all premiums and expenses of such insurance shall be charged against Consultant and shall be a legitimate deduction from any sum due it from Purchaser.

D. Waiver of Subrogation. Consultant and any of its subcontractors shall waive and hereby waives any rights of subrogation which they or any of their insurers may have against Purchaser, its affiliates, and each non-affiliated company disclosed in the Agreement, their respective agents or employees.

E. Performance Bond. Purchaser may, at any time, require Consultant to secure a performance bond with such conditions and limits as may be prescribed by Purchaser. Purchaser shall reimburse Consultant for the cost of such bond.

**ARTICLE X - TERM AND TERMINATION**

A. Purchaser may terminate the Agreement at any time, including with respect to any Work in process, if (a) Consultant fails to obtain, or maintain as valid, any license, permit or approval required to allow lawful performance of the Work; (b) Purchaser determines, in its sole discretion, that Consultant is not complying with any law; (c) Consultant fails to perform the Work in accordance with the acceptable practices and customary diligence of the profession or industry of which Consultant is a member or in a timely way; (d) Consultant breaches any material term or condition of the Agreement; or (e) Purchaser determines, in its

sole discretion, that Consultant is not financially stable or responsible. Notice of termination pursuant to this Paragraph X(A) shall be in writing and shall be effective upon receipt thereof.

B. Purchaser may terminate the Agreement, or suspend Consultant's performance of the Work, in whole or in part, at any time without cause and for its own convenience, by giving Consultant ten (10) days written notice, and with no further recourse to Consultant, other than payment for Work completed and all reimbursable expenses incurred through and including the effective date of termination. In the event that Purchaser terminates the Agreement without cause or for any other reason except for the reason specified in paragraph X.A herein, Purchaser shall continue to pay Consultant in accordance with Attachment A to the Agreement.

C. After receiving a notice of termination or suspension and except as otherwise directed by Purchaser, Consultant shall: (1) stop the Work on the date and to the extent specified therein; (2) place no further orders or subcontracts except as may be necessary for completing such portions of the Work as have not been terminated or suspended; (3) terminate all orders and subcontracts to the extent that they relate to the portions of the Work terminated (or suspend all orders and subcontracts to the extent that they relate to the portions of the Work suspended); (4) take such action as may be necessary or as directed by Purchaser to protect and preserve all property related to the Work which is in Consultant's possession and any other items in which Purchaser has or may acquire an interest; and (5) Consultant shall return all equipment, supplies, identification cards, etc. to Purchaser upon termination.

D. If Consultant fails to render the Work by the time specified in the Agreement, Purchaser reserves the right, without liability and in addition to its other rights and remedies at law or equity, to cancel all or any part of the Work by notice effective when received by Consultant as to Work not yet rendered.

**ARTICLE XI – COMPLIANCE WITH LAWS, REGULATIONS, AND PERMITS**

A. During the performance of the Agreement, the Parties shall strictly comply with all federal, state and local laws, rules or regulations and executive orders applicable to the Work.

B. Purchaser is required to include, and Consultant shall comply with, the below listed clauses from the Federal Acquisition Regulations (48 CFR Chapter 1), as amended from time to time ("FAR") incorporated herein by reference, *if the applicable criteria specified in the FAR and identified parenthetically below, are met*. Additionally, *if Consultant's subcontracts meet such criteria, Consultant shall include the terms or substance of the applicable clause in its subcontracts.* If the provisions of this paragraph C conflict with the balance of the Agreement, this paragraph C shall prevail.

1. 52.202-1 Definitions (required when the Agreement exceeds $100,000);
2. 52.203-5 Covenant Against Contingent Fees (required when the Agreement exceeds $100,000);
3. 52.203-7 Anti-Kickback Procedures (required when the Agreement exceeds $100,000 and is for other than commercial items);
4. 52.203-13 Contractor Code of Business Ethics and Conduct (required in all subcontracts under the Agreement that exceed $5,000,000 and the Performance Period is 120 Days or more);
5. 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (ARRA) (required in the Agreement and in all subcontracts that are funded, in whole or in part, with ARRA funds and are for commercial items or commercial components);
6. 52.219-8 Utilization of Small Business Concerns (required in all subcontracts under the Agreement that exceed $100,000 and are for commercial items);
7. 52.219-9 Small Business Subcontracting Plan (required in all subcontracts that offer subcontracting possibilities, and are required to contain 52.219-8 clause and the Agreement exceeds $550,000);
8. 52.219-16 Liquidated Damages - Subcontracting Plan (required in all subcontracts that contain 52.219-9 clause and the Agreement exceeds $550,000);
9. 52.222-26 Equal Opportunity (required in the Agreement and in all subcontracts for commercial items or commercial components; unless the Agreement is exempt from all requirements of Executive Order 11246 [Equal Employment Opportunity]);
10. 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (required in the Agreement and in all subcontracts for commercial items or commercial components);
11. 52.222-36 Affirmative Action for Workers with Disabilities (required in the Agreement and in all subcontracts exceeding $10,000; unless the work and recruitment of workers will occur outside the United States and its territories);
12. 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (required in the Agreement and in all subcontracts for commercial items or commercial components that contain 52.222-35 clause);
13. 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues (required in the Agreement and in all subcontracts exceeding $100,000);
14. 52.222-50 Combating Trafficking in Persons (required in the Agreement and in all subcontracts for commercial items or commercial components that will be performed outside the United States);
15. 52.222-54 Employment Eligibility Verification (required in the Agreement and in all subcontracts exceeding $100,000; unless either the work will be performed outside the United States, or the performance period is less than 120 days, or the Agreement is only for commercially available off-the-shelf items or COTS items, or the Agreement is for commercial services that are part of the purchase of the COTS item);
16. 52.225-13 Restrictions on Certain Foreign Purchases;
17. 52.233-3 Protest after Award (required when the Agreement exceeds $100,000);
18. 52.233-4 Applicable Law after Breach of Contract;
19. 52.241-2 Order of Precedence – Utilities;
20. 52.241-4 Change in Class of Service;
21. 52.241-5 Contractor's Facilities;
22. 52.242-13 Bankruptcy (required when the Agreement exceeds $100,000);
23. 52.244-6 Subcontracts for Commercial Items (required in the Agreement and in all subcontracts);

24. 52.247-64 Preference for Privately Owned U.S. – Flag Commercial Vessels (required in the Agreement and in all subcontracts for commercial items or commercial components involving ocean transportation of supplies subject to the Cargo Preference Act of 1954);
25. 52.252-2 Clauses Incorporated by Reference. As prescribed in 52.107(b), insert the following clause: "Clauses Incorporated By Reference (Feb 1998) This Agreement incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of a clause may be accessed electronically at https://www.acquisition.gov/far/";
26. The following clauses have been reproduced verbatim in the Agreement (via a standard message) and each may also be accessed electronically at https://www.acquisition.gov/far/: Limitation of Government Liability; 52.216-25 Contract Definition; 52.223-14 Toxic Chemical Release Reporting; 52.233-2 Service of Protest; 52.241-3 Scope and Duration of Contract.

C. Consultant shall comply with the Department of Commerce Export Administration Regulations ("EAR") in 15 CFR Chapter VII, subchapter C, including 15 CFR Section 734.2 which prohibits the export or release of controlled technology and/or software to foreign nationals within the United States who are not lawfully admitted to the United States for permanent residence. Consultant shall confirm that these regulations either do not apply to Consultant's activities under the terms of the Agreement or that Consultant has procedures to ensure compliance. If Consultant is directly or indirectly employing a foreign national not currently lawfully admitted to the United Sates for permanent residence to perform work under the Agreement, Consultant warrants to Purchaser that such employment does not violate the foregoing regulations.

D. Foreign Corrupt Practices Act ("FCPA"). The following provisions shall apply to Consultant (unless it is a foreign concern) if it performs or obtains any of the Work in a foreign country:
   1. All payments to Consultant shall be by check or bank transfer only. No payment shall be in cash or by bearer instrument and no payment shall be made to any corporation or person other than Consultant. All payments due hereunder shall be made to Consultant at its principal place of business in the United States, even if Consultant performs or obtains the Work in a foreign country.
   2. Consultant represents that it is familiar with the FCPA and its purposes as they may relate to the Work; and that, in particular, it is familiar with the prohibition against paying or giving of anything of value, either directly or indirectly, by an American company to an official of a foreign government for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with that government, to assist a company in obtaining or retaining business for or with, or directing business to, any person.
   3. Consultant represents that none of its partners, purchasers, principals, and staff members are officials, officers, or representatives of any government or political party or candidates for political office. Consultant shall not use any part of its compensation for any purpose, and shall take no action, that would constitute a violation of any law of the United States (including the FCPA) or of any jurisdiction where it performs services or manufactures or sells goods. Purchaser represents that it does not desire and will not knowingly request any Work by Consultant that would or might constitute any such violation.
   4. Purchaser may terminate the Agreement for default at any time, without any liability or obligation beyond that set forth herein, if it believes, in good faith, that Consultant has violated this Article. Any action by Consultant which would or might constitute a violation of the FCPA, or a request for such action from Consultant's representative, shall result in immediate termination of the Agreement for default. Should Consultant ever receive, directly or indirectly, from any Purchaser representative a request that Consultant believes will or might violate the FCPA, Consultant shall immediately notify Purchaser's general counsel.
   5. Purchaser may disclose the existence and terms of the Agreement, including the compensation provisions, at any time, for any reason and to whomever Purchaser's general counsel determines has a legitimate need to know the same including, without limitation, the United States government, the government of any country where the Work is performed or obtained, and any regulatory agency with jurisdiction over Purchaser.

E. To the extent applicable to the Work, Consultant shall comply with the Occupational Safety and Health Act of 1970 and all rules, regulations, standards, requirements, and revisions thereof or adopted pursuant thereto provided they are applicable to Consultant. If applicable, Consultant agrees to comply with all Hazard Communication Standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et seq., as amended, to insure that chemical hazards produced, imported, or used with the workplace are evaluated, and that hazard information is transmitted to affected employees of Consultant, of any subcontractor or of Purchaser.

F. Unless the Agreement otherwise provides, Consultant shall, at its own expense, obtain from appropriate governmental authorities all permits, inspections and licenses which are required for the Work and comply with all rules and regulations of insurance companies which have insured any of the Work.

G. Any costs, fines, penalties, awards, damages or other liabilities associated with any violations of this Article associated with the Work shall be borne and paid by Consultant.

H. If applicable to the Work, Consultant agrees to comply with all Hazard Communication Standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et seq., as amended, to insure that chemical hazards produced, imported, or used with the workplace are evaluated, and that hazard information is transmitted to affected employees of Consultant, of any subcontractor or of Purchaser.

I. Consultant acknowledges and agrees that its employees, if given access to FirstEnergy's (FirstEnergy Corp., its parent, subsidiaries and affiliates) Information and Control Systems, shall be required to sign a Network/Systems Access Agreement governing Consultant's and such employees' use of such systems.

J. Consultant shall comply with all requirements of any governmental regulatory codes of conduct applicable to the Work.

**ARTICLE XII - SET-OFF**

Purchaser shall be entitled at all times to set-off any amount owing from Consultant to Purchaser or any affiliate of Purchaser against any amount payable by Purchaser hereunder, and in no event shall Purchaser be liable for interest.

**ARTICLE XIII – LIMITATION OF LIABILITY/DAMAGES**

Under no circumstances shall Purchaser, its parent, subsidiaries and affiliates, be liable for any anticipated profits or for incidental, indirect, punitive or consequential damages.

**ARTICLE XIV – ASSIGNMENT AND SUBCONTRACTS**

A. The Parties may not assign any rights or claims, or delegate any duties under the Agreement, in whole or in part, without the prior written consent of the non-assigning party, which may be withheld for any reason. In the event of any assignment or delegation permitted hereunder, Consultant and Purchaser shall continue to be liable for the performance of their respective obligations hereunder. For purposes of the Agreement, the term "assignment" shall include a transfer of rights hereunder, and/or a succession to its obligations hereunder (i) by operation of law, including a merger, consolidation, corporate reorganization, reclassification or liquidation of Consultant or a sale of all or substantially all assets, or (ii) by a change in the control of Consultant or Purchaser. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through ownership of or the right to vote a majority of the voting stock in the case of a corporation, or the comparable interest in the case of any other entity, or by contract, or otherwise. Notwithstanding the foregoing, Purchaser may assign its rights and obligations to any of its subsidiaries or affiliates.

**ARTICLE XV - NON-WAIVER**

The delay or failure of either party to assert or enforce in any instance strict performance of any of the terms of the Agreement or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights at any later time or on any future occasion.

**ARTICLE XVI - PROHIBITION OF PUBLICITY**

Neither Purchaser nor Consultant shall refer to the Agreement or reference the Purchaser, its parent, subsidiaries and affiliates, directly or indirectly, in its advertising or promotional materials without the prior express written consent of the non-referencing Party.

**ARTICLE XVII - CONFIDENTIALITY**

A. Consultant acknowledges that in the course of performing under the Agreement it may have access to and/or be in possession of Confidential Information of Purchaser. "Confidential Information" shall include the Work, Data, drawings, plans, Specifications, calculations, reports, scientific and technical information, formulas, devices, concepts, inventions, designs, methods, techniques, computer software, screens, user interfaces, system designs and documentation, marketing and commercial strategies, information concerning Purchaser's or any of its affiliates' employees, customers, or suppliers, processes, data concepts, know-how, and unique combinations of separate items which individually may or may not be confidential, which information is not generally known to the public and either derives economic value, actual or potential, from not being generally known or has a character such that Purchaser or any of its affiliates has an interest in maintaining its secrecy. Consultant shall hold in confidence, in the same manner as it holds its own Confidential Information of like kind, all Confidential Information to which it may have access hereunder, and shall not use Confidential Information for any purpose other than performance of the Work. Access to Confidential Information shall be restricted to Consultant's employees with a need to know such information in connection with the Work. Consultant shall return Data and Confidential Information to Purchaser upon completion of performance of the Agreement.

B. The Parties shall not use or disclose Confidential Information for any reason or purpose without the prior written consent. Consultant may use Confidential Information for the sole purpose of the performance of the Agreement for the benefit of the Purchaser. Consultant will take all precautions and actions to prevent sale, transfer, sublicense, use or disclosure of Confidential Information to any third party.

C. The restrictions set forth in this Article XVII shall not apply to information which: (1) is or has become generally known to, or readily ascertainable by, the public without fault or omission of either party or its employees or agents; or (2) was already known prior to the first disclosure of such information; or (3) was received without restrictions as to its use from a third party who is lawfully in possession and not restricted as to the use thereof; or (4) is required to be disclosed by law or by order of a court of competent jurisdiction; or (5) was independently developed by Consultant through persons who have not had, either directly or indirectly, access to or knowledge of similar information provided by Purchaser.

D. If Consultant is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, Civil Investigative Demand or similar process, or otherwise in compliance with applicable law) to disclose any Confidential Information supplied to Consultant in its course of dealings with Purchaser, Consultant shall provide Purchaser with prompt notice of such request(s) so that Purchaser may seek an appropriate protective order and shall itself use appropriate efforts to limit the disclosure and maintain confidentiality to the maximum extent possible.

E. Consultant shall incorporate the above provisions in all agreements with its subcontractors, agents and assigns.

**ARTICLE XVIII – SEVERABILITY**

If any portion of the Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of the Agreement or an associated Purchase Order, and the parties further agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

**ARTICLE XIX - FORCE MAJEURE**

With the exception of any amount that may be due Consultant pursuant to the Agreement or Purchase Order, neither party shall be liable to the other for any expenses, loss or damage resulting from delays, disruption, interferences, hindrances, impacts, or prevention of performance arising from causes beyond its reasonable control including by fire, flood, accident, epidemic, strikes, civil commotion, governmental or military authority, insurrection, riots, embargoes or acts of God or public enemy. In the event of any delay, disruption, interference, hindrance, or impact arising by reason of any of the foregoing events, the time for performance shall be extended by a period of time equal to the time lost by reason thereof. The affected party will notify the other party as soon as reasonably practical (but no later than within forty-eight (48) hours) of the affected party becoming aware of a force majeure occurrence as defined herein which will or has caused a delay, disruption, interference, hindrance, or impact. Within a reasonable period of time of such occurrence, the affected party will further define the precise cause or causes, the measures taken or to be taken to minimize, the time table by which the measures will be implemented, the duration of the delay, disruption, interference, hindrance, or impact, the extension of time for performance of the Agreement and documented evidence that supports the claim. The non-affected party will review the claim and advise the affected party in writing of the decision regarding the claim for extension of time for performance of the Agreement.

**ARTICLE XX – SALES TAX**

Taxes, if any, shall be shown separately on any bids or invoices sent to Purchaser. Direct Payment Permit Numbers authorizing purchase of tangible personal property without payment of the tax at the time of purchase, have been issued to Purchaser. The Permit

Numbers are: 98001123 for Ohio Edison Co.; 128 for Pennsylvania Power Co.; 98002722 for FirstEnergy Nuclear Operating Co.; 98000312 for The Cleveland Electric Illuminating Co.; 98001495 for The Toledo Edison Co.; DP-210-485-010 for Jersey Central Power and Light Co.; 127 for Pennsylvania Electric Company Co.; 135 for Metropolitan Edison Co.; 98-002723 for FirstEnergy Generation Corp.; issued but unnumbered for Potomac Edison Co (MD); 290 for West Penn Power Co. (PA); 94-2-002521 for Allegheny Communications Connect Inc. (WV); 94-2-002482 for Allegheny Energy Supply Co. LLC (WV); 91-1-024150 for Monongahela Power Co. (WV); 91-1-086241 for Potomac Edison Co. (WV); L2000193792 for PATH Allegheny Transmission Co. (WV); L1375690752 for Trans-Allegheny Interstate Line Co. (WV); and 91-1-064620 for West Penn Power Co (WV). Upon request a Sales and Use Tax Exemption Certificate is available for Allegheny Energy Supply Company, LLC in Maryland and Pennsylvania and for Trans-Allegheny Interstate Line Co in Pennsylvania. In Michigan, a Michigan Sales and Use Tax Certificate of Exemption shall be made available upon request. Purchaser agrees to maintain adequate records of all purchases and pay tax on the taxable items directly to the Treasurer of each respective State. In Maryland, Sales and Use Tax Regulations 03.06.01.32-2 and 03.06.01.19.C.(3) provide for tax-exempt purchase of materials used in a production activity by contractors performing real property construction, improvements, alterations and repairs. In order to qualify for tax exemption, the property must be used directly and predominantly in the production activity of generating electricity for sale. Contract bids should be submitted accordingly. The successful bidder will be issued a Maryland Sales and Use Tax Exemption Certificate upon request to permit tax-exempt purchase of qualifying materials. In Ohio, Direct Payment Permits do not apply to construction contracts under which the contractor is considered to be the consumer and liable for the tax on materials incorporated into a structure or improvement as provided in Section 5739.01 (B) Ohio Revised Code. Pennsylvania Direct Payment Permits do not apply to construction contracts under which a contractor is considered to be the consumer and liable for the tax on materials incorporated into the property of Pennsylvania companies. Pennsylvania Sales and Use Tax Regulations Sections 31.11 through 31.16 provide for tax-exempt purchase of materials by a contractor for those materials that will be incorporated into and become a part of the property of Pennsylvania companies. In order to qualify, the property must be directly used in the rendition of the Public Utility Service. Contract bids should be submitted accordingly. The successful bidder will be issued a properly executed "Certification" form upon request to permit tax-exempt purchase of qualifying materials. In West Virginia, Direct Payment Permits apply to contractors performing construction contracting services. West Virginia Sales and Use Tax Regulation Section 11-15-9-(b)(2), and Administrative Notice 2007-19, provide for tax exemption for services, machinery, supplies and materials directly used or consumed in the activities of communications (applies to Allegheny Communications Connect Inc. only), generation/production/selling of electric power, provision of a public utility service, operation of a utility service/utility business or transmission of electricity by wires. Contract bids should be submitted accordingly. The successful bidder will be issued a WV Contractor Tax Exemption Instructions form upon request for items qualifying for tax exemption.

*Questions concerning Pennsylvania or New Jersey sales taxes should be directed to the FirstEnergy Service Company, at (973) 401-8383. Questions about Ohio sales taxes (and states other than Pennsylvania or New Jersey), should be directed to the FirstEnergy Service Company, at (330) 384-5334.*

**ARTICLE XXI – GOVERNING LAW**

Any and all matters of dispute between the parties, whether arising from the Agreement itself, or arising from alleged extra-contractual facts prior to, during or subsequent to formation of the Agreement, shall be governed, construed, and enforced in accordance with the laws of the State of Ohio regardless of the theory upon which such matter is asserted. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. Any legal suit, action, or proceeding to collect payment due hereunder from Purchaser, or otherwise arising out of or relating to the Agreement, may be (and, if against Purchaser, must exclusively be) instituted in a State or Federal Court in the County of Summit, State of Ohio, and Consultant waives any objection which it may have now or hereafter to the laying of the venue of any such suit, action or proceeding and hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

**ARTICLE XXII - INTERPRETATION**

The following principles of interpretation shall apply to the Agreement: (i) paragraph headings and captions are inserted for convenience only and shall not be considered in construing intent; (ii) neither Purchaser nor Consultant shall be considered to be the party responsible for the drafting of any particular provision of the Agreement; (iii) the words "hereof," "herein," "hereunder," and words of similar import shall refer to the Agreement as a whole and not to any particular provision hereof; (iv) the word "including" means "including, but not limited to" and shall be interpreted as broadly as possible; (v) words in the singular include the plural and vice versa; (vi) all references to "days" shall be calendar days (and not merely business days, unless the Agreement so states); (vii) any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction and the provision that is prohibited or unenforceable shall be reformed or modified to reflect the parties' intent to the maximum extent permitted by applicable legal requirements; and (viii) if any conflict arises between a term defined in this document and a term (defined or otherwise) contained in another document comprising a part of the Agreement, the conflict shall be resolved in favor of the more specific defined term unless the context clearly indicates otherwise or such a resolution would deny or dilute Purchaser's rights or benefits under the Agreement.

**ARTICLE XXIII - EXECUTION AND COUNTERPARTS**

The Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

**FIRSTENERGY SERVICE COMPANY**
76 South Main Street
Akron, Ohio 44308

By: [signature]
Its: Exec. Vice President
Date: January 8, 2013

**SUSTAINABILITY FUNDING ALLIANCE OF OHIO, INC.**
492 East Mound Street
Columbus, Ohio 43215

By: Samuel C. Randazzo
Its: Owner
Date: January 8, 2013

**Consulting Services Agreement Term Sheet**
**Attachment A to General Terms and Conditions**

| | |
|---|---|
| Parties: | FirstEnergy Service Company ("FESC")<br>Sustainability Funding Alliance of Ohio Inc.[1] ("SFA")<br>Business Location<br>492 East Mound Street, Columbus, Ohio 43215<br>Mailing Address<br>1101 Broadview Avenue, Columbus, Ohio 43212 |
| Term: | The term is five (5) years starting 1-1-13 subject to extension by mutual agreement. The consulting relationship shall not be exclusive except Consultant shall not consult for any other electric utility or CRES provider (exclusive of IEU-Ohio). |
| Compensation | Annual amount paid monthly to SFA by FESC *via* Purchase Order covering the full initial term[2] as follows: |

| | |
|---|---|
| Year One | $300,000 ($25,000 per month |
| Year Two | $300,000 ($25,000 per month |
| Year Three | $500,000 ($41,666 per month) |
| Year Four | $500,000 ($41,666 per month) |
| Year Five | $500,000 ($41,666 per month) |

- $1750 per month allowance for in-state (Ohio) expenses, reimbursement for out of pocket costs incurred in conjunction with activities outside Ohio.
- Following the end of each year, SFA shall invoice FESC against the specified Purchase Order for hours worked by Sam Randazzo in excess of the annual amount specified below at an hourly rate of $450 per hour and FESC shall pay such invoice within 30 days. (Parties shall work in good faith to address compensation for excess hours for other than Sam Randazzo should such excess hours occur).
- FESC shall have the right to terminate the agreement without cause at any time by providing SFA a written termination notice to SFA no less than 30 days prior to the effective date of such termination. If FESC terminates for any reason, it shall, upon such termination, pay SFA the monthly expense allowance for the balance of the year in which the termination occurs plus: 90% of the total of all unpaid annual amounts if the termination occurs in year one; 85% of the total of all unpaid annual amounts if the termination occurs in year two; 80% of the total of all unpaid annual amounts if the termination occurs in year three; 75% of the total of all unpaid annual amounts if the termination occurs in year four; and, 70% of the total of all unpaid annual amounts if the termination occurs in year five.

[1] SFA is a corporation owned by S.C. Randazzo. It has no employees.
[2] The monthly amount shall be paid routinely on or before the 15th day of each month in accordance with the Purchase Order covering the term.

Annual Time Commitment Expectations

| | |
|---|---|
| Year One | 780 hours[3] |
| Year Two | 780 hours[4] |
| Year Three | 900 hours[5] |
| Year Four | 900 hours[6] |
| Year Five | 900 hours[6] |

"Work" Defined from time to time by the President and/or the VP, Sales & Marketing of FirstEnergy Solutions Corp.

[3] Not to exceed 80 hours in any month absent consent by SFA. At least one half of the annual amount of the expected hours for each year shall be spent at a location specified by FESC in or around Akron, Ohio.
[4] Not to exceed 80 hours in any month absent consent by SFA.
[5] Not to exceed 95 hours in any month

# MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT (**"Agreement"**), is entered into by and between the undersigned parties (referred to herein individually as a **"Party"** and collectively as the **"Parties"**), effective as of the dates set forth below.

## RECITALS:

**A.** Each of the Parties may disclose to the other(s) certain proprietary and confidential information in connection with possible business opportunities and transactions, including the following (the **"Permitted Use"**):

Consultant's Permitted Use: Providing to FirstEnergy consulting services under Consulting Services Agreement (**"Consulting Agreement"**) dated the same date as this Mutual Confidentiality Agreement.

FirstEnergy's Permitted Use: Planning and performing product development, public and governmental relations, marketing, promotional, and sales activities, corporate organization and communications, and other business activities of FirstEnergy and its affiliates, including implementing activities recommended by Consultant.

**B.** In this Agreement, **"Confidential Information"** means marketing and commercial strategies, business, tax, and financial information, information concerning the Disclosing Party's or any of its affiliates' customers or suppliers, scientific and technical information, devices, designs, drawings, methods, computer programs and software, processes, data concepts, and know-how, and unique combinations of separate items which individually may or may not be confidential, which information is not generally known to the public and either derives economic value, actual or potential, from not being generally known or has a character such that the Disclosing Party or any of its affiliates has an interest in maintaining its secrecy. The existence and terms of the Consulting Agreement shall be considered Confidential Information.

**C.** With respect to each disclosure of Confidential Information under this Agreement, **"Disclosing Party"** shall mean the Party who discloses Confidential Information to the other Party or Parties; **"Receiving Party"** shall mean the Party or Parties who receive Confidential Information from the Disclosing Party; and **"Representative"** means, as to a Party, the directors, officers, employees, Affiliates, consultants, subcontractors, agents, or other representatives of such Party.

FOR GOOD AND VALUABLE CONSIDERATION, the Parties agree as follows:

1. The Receiving Party: (a) shall maintain in confidence, any and all Confidential Information which the Receiving Party may directly or indirectly receive from the Disclosing Party, its officers, directors, agents or employees, including any Confidential Information that the Receiving Party may directly or indirectly receive as a result of tours of the Disclosing Party's offices or manufacturing facilities; (b) shall not, without the prior written consent of a duly authorized representative of the Disclosing Party, disclose any Confidential Information to any third person or entity, except Representatives of the Receiving Party who require access to the Confidential Information for the proper performance of their assigned duties with respect to the Permitted Use, and who shall be advised of the confidential nature of the information and the confidentiality provisions set out herein; and (c) shall use any Confidential Information disclosed to it by the Disclosing Party solely for the Permitted Use. The Receiving Party shall take all reasonable and appropriate measures to safeguard the Confidential Information from theft, loss and negligent disclosure to others.

2. No Party may use the name, trade name, trademark, logo, acronym or other designation of the other Party(ies) in connection with any press release, advertising, publicity materials or otherwise without the prior written consent of such other Party(ies) and no Party may publically identify the Consulting Agreement or the nature of the Work to be preformed thereunder without the prior written consent of the other Party which shall not be unreasonably withheld.

3. The obligations of the Receiving Party with respect to Confidential Information disclosed hereunder shall survive for a period of three (3) years after termination of the relationship between the Parties for which this Agreement is executed.

4. The obligations of the Receiving Party under this Agreement shall not apply with respect to Confidential Information received by the Receiving Party if the Receiving Party can establish by documentary evidence that such Confidential Information:

(a) is or has become generally known to, or readily ascertainable by, the public without the fault or omission of the Receiving Party or its employees or agents;

(b) was known to the Receiving Party (or to a parent, subsidiary, or affiliate of Receiving Party) prior to the first disclosure of such information by Disclosing Party;

(c) was received by the Receiving Party without restrictions as to its use from a third party who is lawfully in possession and not restricted as to the use thereof;

(d) is required to be disclosed by law or by order of a court of competent jurisdiction, or

(e) was independently developed by the Receiving Party (or by a parent, subsidiary, or affiliate of Receiving Party) through persons who have not had, either directly or indirectly, access to or knowledge of similar information provided by the Disclosing Party.

Information which is specific in nature shall not be deemed to be within any of the exceptions listed in subparagraphs (a), (b), (c), (d) or (e) above merely because it is embraced by more general information which is generally available to the public, already in the possession of the Receiving Party, independently developed, or received without restriction from a third party.

5. If the Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, Civil Investigative Demand or similar process, or otherwise in compliance with applicable law) to disclose any Confidential Information supplied to Receiving Party in the course of its dealings with the Disclosing Party, Receiving Party shall provide the Disclosing Party with prompt notice of such request(s) so that the Disclosing Party may seek an appropriate proteclive order.

6. All Confidential Information submitted to Receiving Party under this Agreement will remain the property of the Disclosing Party and may be recalled by the Disclosing Party at any time. Upon the request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party any and all written or printed information, and all copies thereof, containing or reflecting Confidential Information (whether prepared by the Disclosing Party or otherwise), and all documents, memoranda, notes, summaries, analyses,

extracts and other writings whatsoever prepared by the Receiving Party based on the Confidential Information shall be destroyed, and such destruction shall be verified in writing to the Disclosing Party upon specific request, provided that one archival copy may be maintained securely by Receiving Party's legal counsel.

7. Neither the execution of this Agreement nor the furnishing of any Confidential Information under this Agreement shall be construed as granting, either expressly or by implication, estoppel or otherwise, any license under or title to any invention, patent, or copyright now or hereafter owned or controlled by the Disclosing Party. The execution, delivery, and performance of this Agreement shall not create or evidence any obligation of either Party to sell or purchase products or services or to perform any other transaction with the other Party, except as expressly set forth herein.

8. Disclosing Party makes no warranties regarding the accuracy of the Confidential Information. Disclosing Party accepts no responsibility for any expenses, losses or other actual or consequential damages or actions incurred or undertaken by the Receiving Party as a result of the receipt of Confidential Information under this Agreement, even if advised of the possibility thereof.

9. Miscellaneous.

(a) The Receiving Party acknowledges that it is aware that its obligations under the securities laws of the United States (as well as stock exchange regulations) prohibit any person who has material, non public information concerning the Disclosing Party, its parent or affiliates or a possible transaction involving the Disclosing Party, its parent or affiliates, from trading, purchasing or selling the Disclosing Party's, its parent's or its affiliates' securities when in possession of such information and from communicating such information to any other person or entity under circumstances in which it is reasonably foreseeable that such person or entity is likely to purchase or sell such securities in reliance upon such information.

(b) This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all other prior understandings, correspondence and agreements, oral or written, between them. This Agreement may not be altered, amended, or modified in any way except by a written modification signed by all Parties. None of the terms or provisions of this Agreement shall be deemed waived except by a writing signed by the Party which is entitled to the benefits thereof. The failure of any Party to require performance of any provision hereof shall in no manner affect such Party's right at a later time to enforce the same. The waiver by a Party of any provision hereof shall not be deemed to be a continuing waiver of any such provision or a waiver of any other provision hereof. When used herein, the words "include" and "including" shall be construed as "include, without limitation" and "including, without limitation."

(c) Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties hereto, nor is anything in this Agreement intended to relieve or discharge the obligations or liabilities of any third person or give any third person any right of subrogation or action over or against any Party hereto. This Agreement is binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns. This Agreement is not assignable by any Party hereto, directly or indirectly, in whole or in part, without the prior written consent of the other Parties.

(d) If a Party breaches or threatens to breach this Agreement, the Parties acknowledge that there may exist no adequate remedy at law, and hereby agree that the non-defaulting Party shall have the right to seek temporary and permanent injunctive relief to restrain a violation of this Agreement, without the necessity of posting a bond. The right to injunctive relief shall be cumulative and in addition to the right to seek and obtain other remedies, including monetary damages.

(e) If any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, such provision shall be interpreted to call for the protection of the Disclosing Party's rights to the greatest extent which is legal, valid, and enforceable, unless such clause or provision cannot be so interpreted, or a court of competent jurisdiction declines to permit such clause or provision to be so interpreted, in which case such clause or provision shall be severed and the remaining provisions of this Agreement shall continue in full force and effect.

(f) This Agreement shall be construed under and governed by the laws of the State of Ohio.

(g) The relationship of the Parties shall be that of independent contractors, and nothing contained in this Agreement shall be deemed to create any relationship of agency, joint venture or partnership.

(h) This Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

**FIRSTENERGY SERVICE COMPANY**
76 South Main Street
Akron, Ohio 44308

By: _____
Its: Exec. Vice President
Date: January 8, 2013

**SUSTAINABILITY FUNDING ALLIANCE OF OHIO, INC.**
492 East Mound Street
Columbus, Ohio 43215

By: Samuel C. Randazzo
Its: Owner
Date: January 8, 2013

FirstEnergy

SUSTAINABILITY FUNDING ALLIANCE
OF OHIO INCORPORATED
21 EAST STATE STREET 17TH FLOOR
COLUMBUS OH 43215

**Purchase Order**

PO number/date
55116871 / 03/06/2013
Contact person/Telephone
Vince Laguardia/330-384-4544
Contact person Email
VLAGUARDIA
@FIRSTENERGYCORP.COM
Our fax number
330-245-5727

Your number with us
210032291

Valid from:
01/08/2013
Valid to :
12/31/2017

Please deliver to:
Various Plants
44309

Freight Charges & FOB Terms: No freight, FOB destination
Terms of payt.: Within 30 days Due net Currency USD

"Purchaser" is FirstEnergy Service Company on its own behalf and on behalf of its affiliates. The ship-to address may name either the Purchaser as named above and/or a subsidiary or affiliate company of the Purchaser. If more than one company is identified as the purchaser, the liability of each company named shall be several and not joint and shall be limited to such company's interest as identified therein.

External Contacts:
Attn:Samuel C. Randazzo
Ph:(614) 469-8000
Email:Sam@mwncmh.com

Buyer Contact:
Vincent Laguardia
Ph: 330-384-4544
Fax: 330-245-5727
vlaguardia@firstenergycorp.com

Technical questions please call Donald Schneider at 330-315-7205 or James Burk at 330-384-5861.

Brief Description: Misc Consulting Services for FirstEnergy

The contract period of performance shall be from January 8, 2013 through December 31, 2017.

Invoicing:

Questions about invoices or payments or electronic payment/presentment may be directed to the Accounts Payable help desk at (814)539-3200.

FirstEnergy's vision is a paperless, automated procure-to-pay process. Our objective is one hundred (100) percent adoption of electronic presentment and payment by our suppliers.

Suppliers performing work with FirstEnergy are expected to enroll in and use the J. P. Morgan Order-To-Pay (Xign) Network to submit invoices electronically to FirstEnergy and to receive payment electronically from FirstEnergy.

Supplier acknowledges that timely submission of invoices is critical for effective budget and financial planning for FirstEnergy.

We encourage you to enroll with J. P. Morgan Order-To-Pay (Xign) our third party provider for electronic payment and presentment and their Discount Manager program. To enroll please go to http://firstenergy.xign.net. Select "ENROLL NOW" and then select the "I DO NOT HAVE AN ENROLLMENT CODE" option. Plan ahead as enrollment takes several business days to complete prior to invoicing in the J.P. Morgan Order-to-Pay (Xign) website.

In the event Supplier does not choose to support FirstEnergy's vision for a paperless procure-to-pay process, all invoices rendered under this purchase order shall be sent directly to:

FirstEnergy
Attn: Judy Proffit (A-GO-15)
76 South Main
Akron, OH 44308

The invoice must include the following:
- Purchase order number
- Line item number

| Item | FE Material No. | Order qty. | Unit | Price per unit | Net value |
|---|---|---|---|---|---|
| 00001 | | | | | |

Provide consulting services for FirstEnergy on an as needed, as requested basis by authorized FirstEnergy employees as agreed to in Attachment A to the General Terms and Conditions. Compensation as defined in Attachment A.

| SUSTAINABILITY FUNDING ALLIANCE<br>COLUMBUS OH 43215 | PO number/date<br>55116871 / 03/06/2013 | Page<br>3 |
|---|---|---|

This Purchase Order is governed by the attached "FirstEnergy Service Company- General Terms and Conditions" signed by Mark T. Clark and Samuel C. Randazzo on 1/8/2013

Supplier or Contractor to execute this order and return a copy to the appropriate address below:
The Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

FirstEnergy Service Company
Attn: Vincent LaGuardia(A-GO-09)
76 South Main Street
Akron, Ohio 44308-1890

Supplier or Contractor to retain a copy for Supplier's/Contractor's records.

Supplier or Contractor acknowledges receipt of and agreement to this writing and the terms
contained herein and in the attached terms and conditions.

Name: _____ Date: _____
(Authorized Supplier/Contractor Signature)

(Print) Name: _____ Title: _____

Name: _____ Date: _____
(Authorized Purchasing Representative Signature)

(Print) Name: _Vincent LaGuardia_____ Title: __SC Specialist__

Consulting Services Agreement Term Sheet

Second Amended Attachment A to General Terms and Conditions

This agreement is a Second Amendment to Attachment A of the Consulting Services Agreement Term Sheet Attachment A to General Terms and Conditions, executed January 8, 2013 by and between FirstEnergy Service Company ("FESC") and Sustainability Funding Alliance of Ohio, Inc.

WITNESSETH:

Reference is hereby made to that certain Consulting Services Agreement Term Sheet Attachment A to General Terms and Conditions, executed January 8, 2013 by and between FirstEnergy Service Company ("FESC") and Sustainability Funding Alliance of Ohio, Inc. ("SFS") (the "Consulting Agreement") and that certain Consulting Services Agreement Term Sheet Amended Attachment A to General Terms and Conditions (the "Amended Attachment A").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FESC and SFS hereby agree as follows:

1. The payment provisions set forth on the Amended Attachment A are hereby amended and restated in their entirety as follows:

| | | |
|---|---|---|
| Primary Payments: | Annual amount paid monthly to SFS by FESC via Purchase Order Number 55116871, amended as may be necessary and covering the full initial term as follows: | |
| | Year One | $300,000 ($25,000 per month) – paid in full |
| | Year Two | $300,000 ($25,000 per month) – paid in full |
| | Year Three | $900,000 ($41, 666 per month plus a one-time payment of $400,000)[1] – paid in full |
| | Year Four | $500,000 ($41,666 per month) |
| | Year Five | $500,000 ($41,666 per month) |
| Supplemental Term and Payments: | Regardless of any existing provisions in the above-referenced Consulting Agreement, the payment amounts specified in this Supplemental Term and Payments provision as well as the one- | |

[1] The one-time payment for Year Three shall be made by FESC on or before June 1, 2015.

time payment specified above for Year Three shall be immediately and fully due and payable without any reduction in the event FESC elects to terminate the Consulting Agreement. FESC may, at any time, make full payment of the annual amounts set forth below to fully satisfy its payment obligations and thereby terminate any further payment obligation associated with such Supplemental Term and Payments provision. The additional annual amount which shall be fully paid to SFS by FESC in each year of the supplemental term via a conforming Purchase Order is as follows:[2]

| | |
|---|---|
| Year Four (2016) | $1,383,333 |
| Year Five (2017) | $2,766,666 |
| Year Six (2018) | $2,766,666 |
| Year Seven (2019) | $1,633,333 |
| Year Eight (2020) | $600,000 |
| Year Nine (2021) | $600,000 |
| Year Ten (2022) | $600,000 |
| Year Eleven (2023) | $600,000 |
| Year Twelve (2024) | $300,000 |

2. FirstEnergy Service Company executives will participate jointly with the Sustainability Funding Alliance of Ohio, Inc. in meetings with the President of the Senate and Speaker of the House to explain needed adjustments to Senate Bill 310 streamlined opt out to "mercantile customers" for an effective date of January 1, 2017

3. Except as expressly provided herein, all other terms and conditions of the Consulting Agreement shall remain in full force and effect in accordance with the original terms thereof.

IN WITNESS WHEREOF, FESC and SFS have executed this Consulting Services Agreement Term Sheet Amended Attachment A to General Terms and Conditions..

**FirstEnergy Service Company** **Sustainability Funding Alliance of Ohio, Inc.**

_____ _____

**Date:** _____ **Date:** _____

[2] The Supplemental Term and Payments shall be paid by FESC pursuant to a conforming purchase order issued by FESC. The first annual amount shall be paid by FESC on or before July 1, 2016. Each subsequent annual amount shall be paid by FESC on or before July 1 of each year in the supplemental period. SFS and FESC acknowledge that the one-time payment specified above for year three and the annual supplemental amounts specified above are associated with responsibilities undertaken by SFS from the commencement of the original term of the Consulting Agreement.

**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|---|---|---|
| In the Matter of the Review of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm.Code 4901:1-37. | ) ) ) ) ) | Case No. 17-974-EL-UNC |

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY'S RESPONSES AND OBJECTIONS TO THE THIRD SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION OF DOCUMENTS BY INTERSTATE GAS SUPPLY, INC.**

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Pursuant to Rules 4901-1-16 through 4901-1-22 of the Ohio Administrative Code and in accordance with Ohio Rules of Civil Procedure 26, 33, and 34, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies"), hereby submit these Objections and Responses to the Third Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents (the "Requests") served by Interstate Gas Supply, Inc. ("IGS").

## GENERAL OBJECTIONS

The Companies incorporate the following objections into each response below, as if fully restated therein.

1. The Companies object to IGS's attempt to provide definitions and instructions for answering that are broader than or inconsistent with the rules of the Ohio Administrative Code or the Ohio Rules of Civil Procedure. The Companies will respond in accordance with its obligations under those rules.
2. The Companies object to the definition of "Documents" and "Documentation" to the extent it seeks to impose obligations on the Companies that are broader than, or inconsistent with,

**IGS-INT-03-002:** On Page 9, the Audit Report states that FirstEnergy Product's revenue was collected through customers' electric utility bills and that "[t]his is a convenience offered by FEP through the regulated companies to regulated customers that FirstEnergy competitors cannot offer." Regarding this billing capability:

a. When did FirstEnergy begin billing for FirstEnergy Products on the FirstEnergy issued electric utility bill?

b. How much did it cost to implement this billing capability into FirstEnergy's billing system?

c. Who paid for these costs?

d. Are there any ongoing operations or maintenance costs associated with this billing capability?

e. If the answer to d. is in the affirmative, please identify these costs.

f. Please identify each provider of non-electric goods and services that FirstEnergy bills for on the FirstEnergy issued electric utility bill.

g. Does FirstEnergy charge the provider(s) identified in f. for this access?

h. If the answer to g. is in the affirmative, please identify the amount of the charges.

**RESPONSE**:

The Companies object to this Request because it incorrectly assumes that FEP offers products and services to the Companies' customers. The Companies, not FEP, offer products and services to their customers.

Subject to and without waiving any objections, the Companies state as follows with respect to sub-parts (a) through (h):

a. The Companies began billing for FEP on the Companies' electric utility bills in 1996.

b. The system supporting non-commodity products including billing was upgraded and enhanced in 2017 for an approximate cost of $8,000,000. Prior to 2017, the Companies utilized SAP, to bill for non-commodity products and services, but the Companies are not aware of an analysis of the costs of the SAP system associated with billing for non-commodity products and services.

c. The Companies object to this Request as vague and ambiguous in that it does not provide any detail regarding "who" it seeks information in relation to. Subject to and without waiving the foregoing objection, the Companies have not analyzed the treatment of the costs of the SAP system associated with the system's use for billing for non-commodity products and services.

d. Yes.

e. Costs are incurred for ongoing platform licensing, maintenance, and support, including break fix and minor enhancements. In 2020 these costs totaled approximately $530,000, which includes costs to support the Companies' sales of products and services as well as sales of products and services by other FirstEnergy utilities in Pennsylvania, Maryland, and West Virginia.

f. There are no costs of goods and services from providers of non-electric goods and services, other than the Companies, that are billed to customers on the Companies' electric utility bills. Only products and services offered by the Companies have been included on or paid for through customer utility bills. The Companies have decided to no longer solicit or enroll customers for on-bill billing of these products and services, and to discontinue the inclusion of such charges on customers' bills.

g. Not applicable. *See* the Companies' response to IGS-INT-03-002 subpart (f).

h. *See* the Companies' response to IGS-INT-03-002 subpart (g).

**IGS-INT-03-003:** Regarding the products and services provided by FirstEnergy Products and billed through the FirstEnergy utility bill:

a. Does FirstEnergy recover the uncollectible amounts associated with these products and services through its distribution rates, riders, or other recovery mechanism?

b. If so, please identify the amounts for the period of 2016 to 2020 and the recovery mechanism(s).

**RESPONSE**:

The Companies object to this Request because it incorrectly assumes that FEP offers products and services to the Companies' customers. The Companies, not FEP, offer products and services to their customers. Subject to and without waiving any objections, the Companies state that, to the extent this Request seeks information about products and services offered by the Companies, the Companies have not completed the requested analysis but will supplement their response to this Request as necessary.

**IGS-INT-03-004:** On Page 10, the Audit Report states that FirstEnergy "customers can be transferred to the FEP group when they call for customer service-related issues," referred to as soft transfers or warm transfers. Regarding these transfers:

a. What customer classes are offered to be transferred to the FEP group?

b. Is a customer offered the option to be transferred to the FEP group every time they call FirstEnergy?

c. If the answer to b. is in the negative, please identify the scenarios when a customer is offered the option to be transferred to the FEP group.

d. Does FirstEnergy Products only offer Surge Assist and HomeServe Exterior Electrical Line Protection through a warm transfer?

e. If the answer to d. is in the negative, please identify the other products and services that FirstEnergy Products offers through a warm transfer.

f. Is the customer informed that the product(s) and/or service(s) are available from and may be obtained from other suppliers?

g. At what point in the sales process does f. occur?

**RESPONSE**:

The Companies state as follows with respect to sub-parts (a) through (c), (f), and (g): Residential customers can be transferred to the FEP group. If a customer contacts the Companies and affirmatively asks for information about non-commodity products and services, the customer service representative would refer or transfer the customer to a different call center that is dedicated to addressing products and services issues. In addition, at the end of a move-in call, the Companies' customer service representatives offer and may transfer the customer to a different call center to discuss the Companies' connections program, which is also administered by FEP on behalf of the Companies. Customers are not informed that products and/or services are available from and may be obtained from other suppliers.

With respect to sub-parts (d) and (e), the Companies object to this Request because it incorrectly assumes that FEP offers products and services to the Companies' customers. The Companies, not FEP, offer products and services to their customers. Subject to and without waiving any objections, the Companies state that in addition to Surge Assist and HomeServe Exterior Line Protection, the Companies offer cable, internet, phone, and home security services, as well as a Saver's Program with coupons to major retailers.

**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|---|---|---|
| In the Matter of the Review of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code 4901:1-37. | ) ) ) ) ) | Case No. 17-974-EL-UNC |

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY'S RESPONSES AND OBJECTIONS TO THE FOURTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS BY INTERSTATE GAS SUPPLY, INC.**

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Pursuant to Rules 4901-1-16 through 4901-1-22 of the Ohio Administrative Code and in accordance with Ohio Rules of Civil Procedure 26, 33, and 34, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies"), hereby submit these Objections and Responses to the Fourth Set of Interrogatories and Requests for Production of Documents (the "Requests") served by Interstate Gas Supply, Inc. ("IGS").

## GENERAL OBJECTIONS

The Companies incorporate the following objections into each response below, as if fully restated therein.

1. The Companies object to IGS's attempt to provide definitions and instructions for answering that are broader than or inconsistent with the rules of the Ohio Administrative Code or the Ohio Rules of Civil Procedure. The Companies will respond in accordance with its obligations under those rules.
2. The Companies object to the definition of "Documents" and "Documentation" to the extent it seeks to impose obligations on the Companies that are broader than, or inconsistent with, those imposed by the rule of the Ohio Administrative Code and the Ohio Rules of Civil Procedure. The Companies construe the term "documents" to be synonymous in meaning

**IGS-INT-04-004:** Are any direct or indirect overhead, IT, and/or administrative expenses associated with FE Products collected through the Ohio Companies' distribution rates or riders?

**RESPONSE:**

The Companies object to this Request as vague and ambiguous because the phrase "associated with FE products" is undefined and subject to multiple interpretations. The Companies further object to this Request as overbroad and unduly burdensome. As written, this Request seeks to impose an extraordinary and unreasonable burden upon the Companies to individually review each and every "direct or indirect overhead, IT, and/or administrative expense[] associated with FE products" charged to the Companies to determine whether any such expense impacted customer rates.

**I**

**IGS-INT-04-006:** Are products and services offered by FE Products promoted to customers of the Ohio Companies through direct mail? If so, how were the mailing addresses obtained?

**RESPONSE:**

The Companies object to this Request because it incorrectly assumes that FEP offers products and services to the Companies' customers. The Companies, not FEP, offer products and services to their customers. Subject to without waiving the foregoing objection, the Companies state that certain products and services offered by the Companies to their customers with support from FEP are promoted through direct mail. The Companies further state that FEP supports the Companies' marketing and sale of products and services, and therefore the Companies make their customer lists, including customer contact information, available to FEP for that purpose.

**IGS-INT-04-007:** Are products and services offered by FE Products promoted to customers of the Ohio Companies through e-mail? If so, how were the e-mail addresses obtained?

**RESPONSE:**

The Companies object to this Request because it incorrectly assumes that FirstEnergy Products ("FEP") offers products and services to the Companies' customers. The Companies, not FEP, offer products and services to their customers. Subject to without waiving the foregoing objection, the Companies state that certain products and services offered by the Companies to their customers with support from FEP are promoted through email. The Companies further state that FEP supports the Companies' marketing and sale of products and services, and therefore the

Companies make their customer lists, including customer contact information, available to FEP for that purpose.

**IGS-INT-04-008:** Do the Ohio Companies promote products and services that are supported by FE Products through bill inserts included the utility bill? If so, what fees or costs does FE Products pay and what do the Companies do with such fees?

**RESPONSE:**

The Companies object to this Request because the phrase "what do the Companies do with such fees" is vague and ambiguous. Subject to and without waiving the foregoing objection, FEP pays for the cost of printing the inserts and costs incurred by FEP are allocated or assigned to the appropriate legal entities.

**IGS-INT-04-009:** Do the Ohio Companies allow the promotion of products and services that are not supported by FE Products through bill inserts included the utility bill? If so, please identify the product or service and its provider.

**RESPONSE:**

No.

# IGS Attachment F

**CONFIDENTIAL**

Summary: Comments (Redacted) electronically filed by Mr. Evan F. Betterton on behalf of Interstate Gas Supply, Inc.