

Large Filing Separator Sheet

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03-2079-EL-AAM
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05-724-EL-UNC
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CONFIDENTIAL PROPRIETARY
TRADE SECRET

EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

EXHIBIT B:

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

Exhibit C:

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]

[REDACTED]

Customer Group: [REDACTED]

[REDACTED]

This agreement pertains to the following [REDACTED]

[REDACTED]

OPTION AGREEMENT

CONFIDENTIAL PROPRIETARY
TRADE SECRET

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

[REDACTED]
This Option Agreement (the "Agreement") is entered into as of this [REDACTED]
(the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware
limited liability company, and Children's [REDACTED] ("Counterparty"), a [REDACTED]
corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [REDACTED]
[REDACTED] located within the retail delivery service territory of The Cincinnati Gas
& Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a
Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of
electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,
the Parties agree as follows:

ARTICLE I
DEFINITIONS

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

"Affiliate" means, with respect to any person, any other person (other than an individual) that,
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under
common control with, such person. For this purpose, "control" means the direct or indirect
ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for
business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing
time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means [REDACTED]

Cinergy Corporate Records

04016274



Document Code _____

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[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

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

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

ARTICLE III CRES POWER CONTRACT TERMS

3.1 [REDACTED]

a. Energy Quantity and Type. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

c. Term. The term of the power sale agreement shall [REDACTED]

ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V BILLING

- 5.1 Payment. [REDACTED]

ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any

- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]
- 6.3 Other Termination Events. [REDACTED]

ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

[REDACTED]

To Counterparty:

[REDACTED]

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TRADE SECRET

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated [REDACTED] as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

[REDACTED]

As to clause 9.7:

[REDACTED]

Exhibit A:

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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CONFIDENTIAL PROPRIETARY
TRADE SECRET

CONFIDENTIAL PROPRIETARY
TRADE SECRET

Customer Group:

232

58 8381

CONFIDENTIAL PROPRIETARY
TRADE SECRET

EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL PROPRIETARY
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Exhibit C:

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]

OPTION AGREEMENT

CONFIDENTIAL PROPRIETARY
TRADE SECRET

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

[REDACTED]
This Option Agreement (the "Agreement") is entered into as of this [REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and [REDACTED] ("Counterparty"), a [REDACTED] corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [REDACTED] is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I
DEFINITIONS

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

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means [REDACTED]

Cinergy Corporate Records

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CONFIDENTIAL PROPRIETARY
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[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

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

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

will take electric service from CG&E in accordance with applicable CG&E tariff requirements.

2.2

2.3

2.4

2.5

ARTICLE III CRES POWER CONTRACT TERMS

3.1

a.

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest.

e. Term.

ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] through and including [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V BILLING

5.1 Payment.

[insert account information]

ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]
- 6.3 Other Termination Events. [REDACTED]

ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

To Counterparty:

[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

508369

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TRADE SECRET

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

As to clause 9.7:

CINERGY CORP

508369

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TRADE SECRET

Exhibit A:

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

588369

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TRADE SECRET

EXHIBIT B:

Customer Group: [REDACTED]

[REDACTED] e

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

58 8369

CONFIDENTIAL PROPRIETARY
TRADE SECRET

50 8339

Exhibit C:
Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]
[REDACTED]

OPTION AGREEMENT
BY AND BETWEEN
CINERGY RETAIL SALES, LLC
AND

CONFIDENTIAL PROPRIETARY
TRADE SECRET

[REDACTED]
This Option Agreement (the "Agreement") is entered into as of this [REDACTED] day of [REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and [REDACTED] ("Counterparty"), a [REDACTED] corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [REDACTED]
[REDACTED] within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I
DEFINITIONS

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

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means [REDACTED]

Cinergy Corporate Records

04016269



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TRADE SECRET

[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

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

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

will take electric service from CG&E in accordance with applicable CG&E tariff requirements.

2.2

2.3

2.4

2.5

ARTICLE III CRES POWER CONTRACT TERMS

3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:

a. Energy Quantity and Type.

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]

e. Term. The term of the power sale agreement shall be through [REDACTED]

ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V BILLING

- 5.1 Payment. [REDACTED]

[REDACTED]
(insert account information)
[REDACTED]

ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]
- 6.3 Other Termination Events. [REDACTED]

ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form' provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

To Counterparty:

[REDACTED]

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-BTP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [REDACTED]

By: [REDACTED]

Title: [REDACTED]

Title: [REDACTED]

Date: [REDACTED]

Date: [REDACTED]

As to clause 9.7:

CINERGY CORP.

By: [REDACTED]

Title: [REDACTED]

Date: [REDACTED]

Exhibit A:

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

508376

CONFIDENTIAL PROPRIETARY
TRADE SECRET

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TRADE SECRET

Exhibit C:

Customer Group:

This agreement pertains to the following

OPTION AGREEMENT

BY AND BETWEEN

CONFIDENTIAL PROPRIETARY
TRADE SECRET

CINERGY RETAIL SALES, LLC

AND

[REDACTED]

This Option Agreement (the "Agreement") is entered into as of this [REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and [REDACTED] ("Counterparty"), a [REDACTED] corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [REDACTED] and is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I
DEFINITIONS

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

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means [REDACTED]

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04016270



Document Code

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"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

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

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

ARTICLE III
CRES POWER CONTRACT TERMS

3.1 [REDACTED]

a. Energy Quantity and Type. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest.

- e. Term. The term of the power sale agreement shall be through

ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V BILLING

- 5.1 Payment.

[insert account information]

ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]
- 6.3 Other Termination Events. [REDACTED]

ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

To Counterparty:

[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party, provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

CONFIDENTIAL PROPRIETARY
TRADE SECRET

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

As to clause 9.7:

CINERGY CORP

508377-1

CONFIDENTIAL PROPRIETARY
TRADE SECRET

Exhibit A:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

508377

[REDACTED]

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

508377

CONFIDENTIAL PROPRIETARY
TRADE SECRET

50 8377

CONFIDENTIAL PROPRIETARY
TRADE SECRET

Exhibit C:

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]
[REDACTED]

50 8378

OPTION AGREEMENT

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

CONFIDENTIAL PROPRIETARY
TRADE SECRET

[REDACTED]
This Option Agreement (the "Agreement") is entered into as of this [REDACTED]
(the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware
limited liability company, [REDACTED] ("Counterparty"), [REDACTED]
(each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [REDACTED]
and is located within the retail delivery service territory of The Cincinnati Gas & Electric
Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a
Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of
electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,
the Parties agree as follows:

ARTICLE I
DEFINITIONS

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

"Affiliate" means, with respect to any person, any other person (other than an individual) that,
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under
common control with, such person. For this purpose, "control" means the direct or indirect
ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for
business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing
time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means [REDACTED]

Cinergy Corporate Records

04016271

[REDACTED]

Document Code

279

13

CONFIDENTIAL PROPRIETARY
TRADE SECRET

[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

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

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

ARTICLE III CRES POWER CONTRACT TERMS

3.1 [REDACTED]

a. Energy Quantity and Type. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]

c. Term. The term of the power sale agreement shall be through [REDACTED]

ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V BILLING

- 5.1 Payment. [REDACTED]

[insert account information] [REDACTED]

ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]
- 6.3 Other Termination Events. [REDACTED]

ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

To Counterparty:

[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty [REDACTED] as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

Date:

As to clause 9.7:

CINERGY CORP.

CONFIDENTIAL PROPRIETARY
TRADE SECRET

Exhibit A:

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit C:

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]
[REDACTED]

50 8379

OPTION AGREEMENT

BY AND BETWEEN

CONFIDENTIAL PROPRIETARY
TRADE SECRET

CINERGY RETAIL SALES, LLC

AND

[REDACTED]
This Option Agreement (the "Agreement") is entered into as of this [REDACTED]
[REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware
limited liability company, and [REDACTED] ("Counterparty"), a not for
profit corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [REDACTED]
[REDACTED] is located within the retail delivery service territory of The Cincinnati Gas
& Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a
Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of
electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,
the Parties agree as follows:

ARTICLE I
DEFINITIONS

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

"Affiliate" means, with respect to any person, any other person (other than an individual) that,
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under
common control with, such person. For this purpose, "control" means the direct or indirect
ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for
business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing
time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means [REDACTED]

Cinergy Corporate Records

04016272



Document Code

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CONFIDENTIAL PROPRIETARY
TRADE SECRET

[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

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

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

ARTICLE III CRES POWER CONTRACT TERMS

3.1 [REDACTED]

a. Energy Quantity and Type. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]

- e. Term. The term of the power sale agreement shall be through [REDACTED]

ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V BILLING

- 5.1 Payment. [REDACTED]

ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:

- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.

- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]

- 6.3 Other Termination Events. [REDACTED]

ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE

EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in

which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its

knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

To Counterparty:

[REDACTED]
[REDACTED]

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TRADE SECRET

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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CONFIDENTIAL PROPRIETARY
TRADE SECRET

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

[REDACTED]

As to clause 9.7:

CINERGY CORP

[REDACTED]

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Exhibit A:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Exhibit C:

Customer Group:

This agreement pertains to the following

OPTION AGREEMENT

BY AND BETWEEN

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CINERGY RETAIL SALES, LLC

AND
[REDACTED]

This Option Agreement (the "Agreement") is entered into as of this [REDACTED] (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Deaconess Hospital ("Counterparty"), a [REDACTED] corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [REDACTED] is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I
DEFINITIONS

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

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means [REDACTED]

Cinergy Corporate Records

04016266



Document Code

306

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[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

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

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

ARTICLE III CRES POWER CONTRACT TERMS

3.1 [REDACTED]

a. Energy Quantity and Type. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest.

e. Term. The term of the power sale agreement shall be through

ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V BILLING

- 5.1 Payment.

(insert account information)

ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

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- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]
- 6.3 Other Termination Events. [REDACTED]

ARTICLE VII
LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form' provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

To Counterparty:

[REDACTED]

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TRADE SECRET

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

CONFIDENTIAL PROPRIETARY
TRADE SECRET

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

As to clause 9.7:

CINERGY CORP.

Exhibit A:

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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TRADE SECRET

EXHIBIT B:

Customer Group:

[REDACTED]

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TRADE SECRET

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CONFIDENTIAL PROPRIETARY
TRADE SECRET

Exhibit C:

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]

[REDACTED]

Duke Energy Ohio AGREEMENTS		03-93-EL-ATA (Remand)							
From	Type	Document	Super	Party 1	Multiple?	Ref No	Begin	End	
DERs	Super Agr	Agreement		CRS	Y		341	346	
DERs	Super Agr	Agreement	5/28/04	CRS	Y		334	340	
DERs	Option Agr	Option Agreement		CRS		508367	50	64	
DERs	Super Agr	Agreement		CRS	Y		341	346	
DERs	Super Agr	Agreement	5/28/04	CRS	Y		334	340	
DERs	Option Agr	Option Agreement		CRS		508368	32	40	
DERs	Super Agr	Agreement		CRS	Y		327	332	
DERs	Super Agr	Agreement	5/19/04	CRS	Y		320	326	
DERs	Option Agr	Option Agreement		CRS		508386	176	190	
DERs	Super Agr	Agreement		CRS	Y		327	332	
DERs	Super Agr	Agreement	5/19/04	CRS	Y		320	326	
DERs	Option Agr	Option Agreement		CRS		508388	1	14	
DERs	Super Agr	Agreement	5/19/04	CRS	Y		320	326	
DERs	Option Agr	Option Agreement		CRS		508384	65	78	
DERs	Super Agr	Agreement		CRS	Y		327	332	
DERs	Super Agr	Agreement	5/19/04	CRS	Y		320	326	
DERs	Option Agr	Option Agreement		CRS		508390	133	145	
DERs	Super Agr	Agreement		CRS	Y		327	332	
DERs	Super Agr	Agreement	5/19/04	CRS	Y		320	326	
DERs	Option Agr	Option Agreement		CRS		508387	15	31	
DERs	Super Agr	Letter re: 1/20/05 Agr.	1/20/05	CRS	Y		333	333	
DERs	Super Agr	Copy of Page 333	1/20/05	CRS	Y		386	386	
DERs	Super Agr	Agreement		CRS	Y		327	332	
DERs	Super Agr	Agreement	5/19/04	CRS	Y		320	326	
DERs	Option Agr	Option Agreement		CRS		508389	159	175	
DERs	Super Agr	Letter re: 1/20/05 Agr.	1/20/05	CRS	Y		333	333	
DERs	Super Agr	Copy of Page 334	1/20/05	CRS	Y		386	386	
DERs	Super Agr	Agreement		CRS	Y (a)		347	352	
DERs	Super Agr	Agreement (signature 1/18/04)	5/19/04	CRS	Y (a)		353	357	
DERs	Option Agr	Option Agreement		CRS		508381	220	236	
DERs	Option Agr	Option Agreement		CRS		508372	191	203	
DERs	Option Agr	Option Agreement		CRS		508373	306	318	
DERs	Option Agr	Option Agreement		CRS		508369	237	250	
DERs	Option Agr	Option Agreement		CRS		508371	204	220	
DERs	Option Agr	Option Agreement		CRS		508370	292	305	
DERs	Option Agr	Option Agreement		CRS		508378	279	291	
DERs	Option Agr	Option Agreement		CRS		508374	79	91	
DERs	Option Agr	Option Agreement		CRS		508377	265	278	
DERs	Option Agr	Option Agreement		CRS		508376	251	264	
DERs	Option Agr	Option Agreement		CRS		508375	105	118	
DERs	Option Agr	Option Agreement		CRS		508382	119	133	
DERs	Option Agr	Option Agreement		CRS		508380	146	158	
DERs	Option Agr	Option Agreement		CRS		508383	92	104	
DERs	Super Agr	Superseded Agreement	12/14/00	CRS			1173	1179	
DERs	Super Agr	Superseded Agreement	7/7/04	CRS			1180	1187	
DERs	Agreement	Agreement	11/22/04	CRS			1188	1195	

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All Accounts
CRS Option Payment for First Quarter 2005

Account Number	Option Payment Components			Insufficient Notice Fee (Incurred for failing service by 10/1/2005)	Total
	Fuel & Purchase Power	One (1) Mll per kWh of Generation	Annually Adjusted Component	Infrastructure Maintenance Fund in Excess of 4%	

Option Payment = \$ [REDACTED]

Remit payment to the following:

[REDACTED]

Return to: Accounts Payable (EM860)

Paying Company: (Circle One Only)

010	070	100	500
CG&E	ULH&P	PSI Energy	Cinergy Corp.
			Chargy Services

[illegible]**TOTAL**

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44-38861-1A 405

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Payment Reference
(AP Use Only)

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TRADE SECRET

Cinergy Corp.

Mail to: Accounts Payable (EM860)

REQUEST FOR ACH/WIRE TRANSFER PAYMENT

Paying Company (Circle One)

CG&E PSI Energy Cinergy Services
ULH&P Cinergy Corp. Other _____

Date _____

Vendor Name _____

Street Address _____

City _____

Vendor Tax I.D. _____

PAYMENT DISTRIBUTION

Amount	Resp. Corp.	Resp. Cntr.	Work Code	LOB	Reference (Veh. #, Emp. #, Sub-Ledger #)	LOC	SVC	DCE
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____

TOTAL

Preparer _____ Employee No. _____

Telephone No. _____

Approved by _____ Title _____

Approver Passport ID# _____

Bank Name _____

Account Number _____

Account Name if Different than Vendor Name _____

Due Date _____

AS Accounts
CRS Option Payment 2nd Quarter 2006

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GRADE SECRET

COLE MESSRO Components

Account Number	Generation Charge	Fuel & Purchase Power per Btu	System Reliability Tracker	Annually Adjusted Component	Rate Substitution Charge	Infrastructure Maintenance Fund	Regulatory Transition Charge	Total CO2E MESSRO	Less the Following	750 G	Fuel & Purchase Power (But Not)	Infrastructure Maintenance Fund up to 4%	Total Option Payment
----------------	-------------------	-------------------------------	----------------------------	-----------------------------	--------------------------	---------------------------------	------------------------------	-------------------	--------------------	-------	---------------------------------	--	----------------------

[REDACTED]

Option Payment = \$ 1,035,795.45

Remit payment to the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



to: Accounts Payable (EM860)

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TRADE SECRET

REQUEST FOR INVOICE PAYMENT

Paying Company: (Circle One Only)

010

CG&E
070

100

100
ULH&P

008

Cinergy Corp.
500

Cinema Services

[illegible]

TOTAL

Page 1 of 2

44-38861-R 4-05

[REDACTED]
CRS Option Payment for January 2006

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TRADE SECRET

Option Payment Components

\$

\$

\$

\$

\$

Option Payment = [REDACTED]

Remit payment to the following:

[REDACTED]

[REDACTED]

Ohio Consumers' Counsel
Fifth Set Interrogatories
Duke Energy Ohio, Inc.
Case No. 03-93-EL-ATA
Following Remand
Date Received: February 9, 2007
Response Due: February 209, 2007

OCC-INT-05-RI103

REQUEST:

Regarding the [REDACTED] Option Agreement by "Cinergy Retail Sales, LLC. ('CRS') with [REDACTED] "50" in documents provided at the [REDACTED] and the [REDACTED] CRS with [REDACTED]

- a. Who were the persons responsible for the decision to have CRS and Cinergy enter into each agreement (i.e., identify each person)?
- b. When was the decision made to have CRS and Cinergy enter into each agreement?
- c. For each person identified in response to part (a) above, at the time each agreement was executed, what was each person's company of employment (i.e., identify the company), job title, job duties, and responsibility related to each agreement?
- d. Why were Option Agreements entered into, rather than continue the [REDACTED]

RESPONSE:

Objection. This question is not calculated to lead to the discovery of relevant evidence. [REDACTED] was a deponent for DERS, not DE-Ohio. Without waiving its objection DE-Ohio makes the following representations:

a-c. DE-Ohio was not a party to the DERS decision making process.

d. DE-Ohio is not privy to the reasoning of DERS or the counterparties on this subject. Based on its attendance of the depositions [REDACTED] and its receipt of the contracts through the discovery process, DE-Ohio states, on information and belief, that the Commission made material amendments to the alternate proposal effectively rejecting it and terminating the [REDACTED] referred to above. Upon

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termination DERS had an obligation to enter into discussions to see if the parties could negotiate contracts permitting the parties to be in substantially the same economic position as they were in the [REDACTED] Although neither party was under an obligation to enter any further contract the parties agreed on the terms and conditions of the option contracts.

WITNESS RESPONSIBLE: N/A

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Sent: Monday, July 24, 2006 1:12 PM
To: [REDACTED]
Subject: FW: CRES Payments

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TRADE SECRET

FYI. This is the CRES 101 that I got from Rates.

From: [REDACTED]
Sent: Monday, May 15, 2006 10:19 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: CRES Payments

[REDACTED]

These are all native-load, retail customers located in the DE Ohio (CG&E) service territory. As described below, the original plan was to have them become "shoppers" in accordance with Ohio Electric Customer Choice, and they would receive their generation service from the newly-formed Cinergy CRES. At the last minute, Cinergy deemed the contracts to be too risky, and negotiated the payments instead.

[REDACTED]

From: [REDACTED]
Sent: Monday, May 15, 2006 10:11 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: CRES Payments

Thank you very much for the background. I do have one follow up question. We went through the budget with [REDACTED] last week and he has asked to start seeing the CRES payments as part of his native load budget since it is related to the RSP. It sounds like from your history explanation it is related to full requirements customers which we call non-native. Why would the non-native customers intervene on rates that would not affect them or are you considering those customers as part of the retail load? Thanks again, [REDACTED]

From: [REDACTED]
Sent: Thursday, May 11, 2006 4:03 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: CRES Payments

[REDACTED]

Here is the history behind the so-called "CRES" payments:

During late 2003, the Public Utilities Commission of Ohio asked all of the electric investor-owned utilities in the State of Ohio to prepare and submit Rate Stabilization Plans. At that time, we were still in our Market Development Period following the implementation of electric Customer Choice in January 2001. During the Market Development Period,

electric rates were frozen, and the original plan was for all of the utilities to offer market-based rates following the end of the Market Development period. The Market Development period was scheduled to end no later than 12/31/05.

By 2003, the PUCO and other groups became concerned that the competitive electric retail market in Ohio was not sufficiently robust to prevent wild price swings under pure competition and market pricing. The problems in California and the subsequent Enron meltdown also colored their feelings. As a result, they asked the utilities to offer Rate Stabilization Plans in lieu of pure market pricing.

CG&E (Duke Energy Ohio) filed its RSP (known as the Electric Reliability and Rate Stabilization Plan, ERRSP) during the first half of 2004. A number of large customers, some represented by industry groups, intervened in the filing. CG&E's and the PUCO's goal was to obtain rapid approval of the RSP such that the new rates could go into effect on 1/1/2005. The interveners represented a roadblock, however. To eliminate this roadblock and prevent a formal hearing, CG&E negotiated special conditions with the interveners and ultimately reached agreements with them.

The original settlement agreement with the interveners called for Cinergy to form a "CRES" (Certified Retail Electric Supplier - the State of Ohio must certify all retail electric providers in terms of creditworthiness, etc.). The Cinergy CRES was to provide generation service for the interveners at pre-specified, contractual rates. At the last minute (i.e., December 2004), Cinergy's top management decided that the CRES settlement was too risky, and Cinergy essentially decided to not follow through with the contract. To prevent lawsuits for breach of contract, Cinergy entered into negotiations with each of the parties and agreed to make monthly or quarterly payments in lieu of offering generation service from the CRES.

So as you can see, the "CRES" customers are actually full-requirement customers of Duke Energy Ohio, but they receive payments from the Company instead of receiving generation service from the Cinergy CRES (the Cinergy CRES does not have any retail customers, [REDACTED]).

The payments for each group of the "CRES" customers differ from each other. Generally speaking, the contracts with each group specify that the customers belonging to that group will receive refunds of various RSP riders (e.g., Rider AAC, Rider FPP, Rider IMF, Rider SRT, etc.). Each month or quarter, I prepare statements that show the amount of money that is to be refunded to each customer, and the payments are made from the CBU's (non-regulated generation) budget.

These payments will last through [REDACTED] at which point the ERRSP will terminate.

By the way, the "CRES" customers include some of the [REDACTED]

Hope this helps.

[REDACTED]
Rate Services
[REDACTED]

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TRADE SECRET

From: [REDACTED]
Sent: Thursday, May 11, 2006 3:08 PM
To: [REDACTED]
Subject: FW: CRES Payments

[REDACTED]
Can you respond to [REDACTED] question? You and [REDACTED] are the only ones I'm aware of who know this stuff.

From: [REDACTED]
Sent: Thursday, May 11, 2006 3:00 PM

To: [REDACTED]
Subject: CRES Payments

Do you have anything that tells or can you briefly describe the concept behind the CRES payments? We are budgeting around \$22M annually for this out of our non-native segment. How was that number derived, who does it go to, and does it last until the end of 2008? Just trying to get a little more educated on this. Thanks [REDACTED]

[REDACTED]

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TRADE SECRET

EXHIBIT C-3

DUKE ENERGY RETAIL SALES, LLC

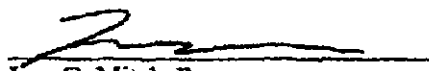
OFFICER CERTIFICATION OF FINANCIAL STATEMENT

LON C. MITCHELL, JR.

I, Lon C. Mitchell, Jr. do hereby certify that I am Vice President, Chief Financial Officer, and Treasurer of Duke Energy Retail Sales, LLC.

I further certify that I have reviewed the attached Financial Statements of Duke Energy Retail Sales, LLC, and that such Financial Statements are accurate and complete to the best of my knowledge, information and belief.

Dated this 22nd day of August, 2006.



Lon C. Mitchell
Vice President, Chief Financial Officer, Treasurer
Duke Energy Retail Sales, LLC

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EXHIBIT C-3

Duke Energy Retail Sales LLC
Balance Sheet
December 31, 2005

Assets

Accounts Receivable - affiliates	<u>\$ 4,245,431</u>
----------------------------------	---------------------

Liabilities

Accounts Payable - affiliates	\$ 11,172,890
-------------------------------	---------------

Accrued Taxes	(710,115)
---------------	-----------

Other	3,023,158
-------	-----------

Total Liabilities	<u>13,485,933</u>
--------------------------	-------------------

Member's Equity

Retained (Deficit)	<u>(9,240,502)</u>
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Total Liabilities and Member's Equity	<u>\$ 4,245,431.00</u>
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EXHIBIT C-3

Duke Energy Retail Sales LLC
Statement of Income
For the year ended December 31, 2005

Revenues	\$
Operating Expenses	
Option Premium Expense	13,768,812
Administrative and General Expenses	259,480
Operating (Loss)	<u>(14,028,272)</u>
Interest Expense	147,549
(Loss) Before Taxes	<u>(14,175,821)</u>
Income Tax Expense (Benefit)	<u>(4,950,863)</u>
Net Income	<u>\$ (9,224,958)</u>

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EXHIBIT C-3**Duke Energy Retail Sales LLC**
Budgeted Statement of Income
For the year ended December 31, 2006

Revenues	\$ -
Operating Expenses	
Option Premium Expense	22,247,000
Administrative and General Expenses	28,500
Operating (Loss)	<u>(22,275,500)</u>
Interest Expense	800,000
(Loss) Before Taxes	<u>(23,075,500)</u>
Income Tax Expense (Benefit)	<u>(8,076,425)</u>
Net Income	<u>\$ (14,999,075)</u>

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~~TRADE SECRET~~

[REDACTED]
From: [REDACTED]
Sent: Friday, January 28, 2005 2:23 PM
To: [REDACTED]
Subject: FW: RSP Impacts by Year.xls
Attachments: RSP Impacts by Year.xls

Thought I would [REDACTED]

RSP EBIT Impacts on Plan

RSP-RELATED REVENUES

Transmission Cost rider on CAI (MISO tracker)
Distribution Deferral Recovery

AAC Revenues (net switching)
Less: CRES Reimbursement (CRS, LLC)
Net AAC Revenues

FPP (Fuel/EA and PP) Tracker
Less: CRES Reimbursement (CRS, LLC)
Total FPP Tracker

SRT (System Reserve Tracker) Revenues
Less: CRES Reimbursement (CRS, LLC)
Net SRT Revenues

RSC reimbursement to CRES (CRS, LLC)
RTC reimbursement to CRES (CRS, LLC)
1 MWh discount on CRES (CRS, LLC)

IMF (Infrastructure Maintenance) Revenues

Total Revenue Items

RSP-RELATED EXPENSES

Deferral of Distribution Depr., Prop. Tax, and Carrying cost
MISO Expenses
Fuel/PP and EA Costs over Frozen Base Rates
Reserve Purchase Power Costs
Total On-going Expenses

Total Net RSP Impacts

Year to Year Change

EPS estimate

Recovery of CAI only in 2005 All classes 2006-2008
Onset by Amortization of 2004/2005 Deferrals

CAI only in 2005, All classes in 2006-2008 plus rate increases

CAI only in 2005 All in classes in 2006-2008

Assumes full recovery of costs (except CRES)

CAI only in 2005 All in 2006, Rate incr in 2007.

5-year amort. starts in 2006 (not shown is 2004 \$11.2m deferral)
Increase in 2006 to end of MDP deferral on Res
Fuel expense exceeding \$12.45/Mwh in frozen rate

Sincerely,

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Cc:

[REDACTED]
[REDACTED]

Attachment

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED]

_____ this notice in order to place these accounts in the _____
_____ in accordance with the Commission's Order on Rehearing.

On behalf [REDACTED] for your prompt attention to this correspondence.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]