

Large Filing Separator Sheet

Case Number : 03-93-EL-ATA

03-2079-EL-AAM

03-2080-EL-AAM

03-2081-EL-ATA

05-724-EL-UNC

05-725-EL-UNC

06-1068-EL-UNC

06-1069-EL-UNC

06-1085-EL-UNC

File Date : 6/22/2009

Section : 1 of 2

Number of Pages : 200

Description of Document : Response

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
2009 JUN 22 PM 3:38
PUCO

| | | | |
|-------------------------------------|---|-----------|----------------|
| In the Matter of the | : | Case Nos. | 03-0093-EL-ATA |
| Consolidated Duke Energy Ohio, Inc. | : | | 03-2079-EL-AAM |
| Rate Stabilization Plan Remand and | : | | 03-2080-EL-AAM |
| Rider Adjustment Cases | : | | 03-2081-EL-ATA |
| | : | | 05-0724-EL-UNC |
| | : | | 05-0725-EL-UNC |
| | : | | 06-1068-EL-UNC |
| | : | | 06-1069-EL-UNC |
| | : | | 06-1085-EL-UNC |

DUKE ENERGY – OHIO, INC.'S
RESPONSE TO THE COMMISSION'S JUNE 1, 2009 ENTRY

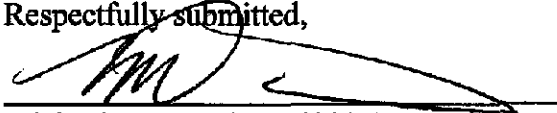
On June 1, 2009, the Public Utilities Commission of Ohio ("Commission" or "PUCO"), issued an order that stated; Duke Energy – Ohio, Inc.'s ("Duke") must file, in the public docket in these cases, those pages under the protective order that have now been made public by *Williams v. Duke Energy International, Inc.*, Civil Action 1:08-cv-046 ("*Williams*"), no later than June 22, 2009, so that the released information can now be included as part of the public record in the Commission's docket.

Duke has reviewed the documents filed in the *Williams* case and hereby submits those documents, as redacted in the *Williams* case. In addition, Duke has created an Attachment which describes the documents disclosed in the *Williams* case, identifies by exhibit name where that document exists in this Commission's record, and identifies the documents by PUCO bates page numbers previously assigned to the documents. As in the *Williams* case, the customer's account numbers remain protected and therefore remain

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redacted in each document disclosed. Finally, the Attachment also identifies where references to these documents are contained within OCC's Initial Post-Remand Brief.

Respectfully submitted,



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Attorneys for DUKE ENERGY-OHIO, INC.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically upon parties, their counsel, and others through use of the following email addresses this 22nd day of June, 2009.

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Cinergy Corp.

Duke Energy Retail Services, LLC
mdortch@kravitzllc.com


Michael D. Dortch

| <u>PUCO Bates Starting #</u> | <u>PUCO Bates Ending #</u> | <u>Exhibit Name</u> | <u>Description</u> |
|---|---------------------------------------|----------------------------------|---|
| 87 | 102 | Whitlock Deposition Exhibit # 12 | February, 2005 AK Steel Contract |
| 121 | 135 | Whitlock Deposition Exhibit # 17 | December, 2004 General Motors Contract |
| 147 | 162 | Whitlock Deposition Exhibit # 20 | January, 2005 Jewish Hospital Contract |
| | | | |
| 215 | 217 | Hixon Testimony | Terms restated in an option agremnt |
| | | | |
| 275 | 275 | OCC Ex. 5(A), Attachment 7 | OHA/CG&E Settlement Terms |
| | | | |
| 323 | 336 | Hixon Exhibit # 17 | February, 2005 AK Steel Contract |
| 337 | 353 | " " | December, 2004 GE Contract |
| 354 | 371 | " " | December, 2004 Marathon Contract |
| 372 | 386 | " " | December, 2004 General Motors Contract |
| 387 | 400 | " " | January, 2005 BP Contract |
| 401 | 413 | " " | December, 2004 Mercy Hospital of Fairfield Contract |
| 414 | 426 | " " | December, 2004 Tri-Health Hospital Contract |
| 427 | 440 | " " | December, 2004 Mercy Franciscan Hospital Contract |
| 441 | 454 | " " | January, 2005 Middletown Regional Contract |

| | | | |
|------|------|------------------------------------|--|
| 455 | 467 | " " | January, 2005 Ford Contract |
| 468 | 480 | " " | January, 2005 Summit Behavioral Contract |
| 481 | 497 | " " | January, 2005 P&G Contract |
| 498 | 512 | " " | January, 2005 Air Products Contract |
| 513 | 525 | " " | January, 2005 Christ Hospital Contract |
| 526 | 541 | " " | January, 2005 Jewish Hospital Contract |
| 542 | 558 | " " | January, 2005 Children's Hospital Contract |
| 559 | 572 | " " | December, 2004 Drake Contract |
| 573 | 586 | " " | December, 2004 Mount Airy Contract |
| 587 | 600 | " " | December, 2004 Mercy Anderson Contract |
| 601 | 613 | " " | December, 2004 Mercy Clermont Contract |
| 614 | 627 | " " | December, 2004 McCullough-Hyde Contract |
| 628 | 641 | " " | December, 2004 Deaconess Hospital Contract |
| | | | |
| 1008 | 1022 | George Deposition Exhibit # 13 | December, 2004 General Motors Contract |
| | | | |
| 1217 | 1230 | Ziolokowski Deposition Exhibit # 7 | February, 2005 AK Steel Contract |
| | | | |

| | | | |
|------|------|---|---|
| 1769 | 1769 | OCC's Initial Post-Remand Brief, Hearing Phase I | Reference to terms of an option agreement |
| 1780 | 1780 | OCC's Initial Post-Remand Brief, Hearing Phase I | Reference to terms of an option agreement |
| | | | |
| 1929 | 1929 | OCC's Rely Post-Remand Brief, Hearing Phase I | Reference to terms of an option agreement |
| 1932 | 1932 | OCC's Rely Post-Remand Brief, Hearing Phase I | Reference to terms of an option agreement |
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OPTION AGREEMENT

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

AK STEEL CORPORATION

This Option Agreement (the "Agreement") is entered into as of this 2nd day of February, 2005 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and AK Steel Corporation ("AK Steel"), a Delaware corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, AK Steel operates steel manufacturing facilities in Middletown, Ohio and purchases electric power service from The Cincinnati Gas & Electric Company (CG&E) on metered accounts listed on Exhibit C.

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 AK Steel desire to establish terms and conditions 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

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ownership of ten (10) percent or more.

"Base Contract Price" means the price in \$US as set forth in Exhibit B to be paid by AK Steel to CRS for the purchase of Generation and Transmission service under this Agreement.

"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.

"Maximum Demand" means AK Steel's combined maximum annual demands for all of AK Steel's accounts listed on Exhibit C with Cincinnati Gas & Electric ("CG&E") for the twelve months ending December 31, 2004.

"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.

"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 that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by AK Steel is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that AK Steel shall purchase all of its retail Energy requirements for its facility from CRS and that AK Steel shall not resell any of the Energy provided hereunder to any third party.

"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 AK Steel to the Delivery Point.

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ARTICLE II
OPTION

- 2.1 AK Steel currently purchases its generation electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs or will provide notice by December 30, 2004 that it will purchase generation electric service from CG&E starting no later than December 31, 2005 in accordance with applicable CG&E tariff requirements. AK Steel hereby grants to CRS the exclusive option, upon thirty (30) days notice, to provide generation electric service for all of AK Steel's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option"). In the event that an Electric Choice Insufficient Return Notice Fee is incurred by AK Steel due to switching back to CG&E standard tariffed service prior to January 31, 2005, an amount equivalent to said fee will be paid to AK Steel by CRS.
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for AK Steel granting CRS this option, CRS agrees to pay AK Steel each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). The Parties agree that if AK Steel defaults or is delinquent, after any applicable cure period, in any of its payments to any Cinergy affiliated company for any service provided to AK Steel, then CRS has the right to offset the Option Payment due hereunder with any amounts that are owed by AK Steel to the Cinergy affiliated company.
- 2.4 Because this is an exclusive Option, in the event AK Steel leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, a power sale agreement between CRS and AK Steel will be negotiated. The power sale agreement shall include generally accepted terms and conditions relating to the sale of competitive retail electric generation service, including, among others, the following terms:

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- a. Energy Quantity and Type. CRS shall provide AK Steel with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than AK Steel's Maximum Demand ("Quantity"). If during the Term of this Agreement, AK Steel has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to AK Steel above the Quantity set forth herein.
- 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. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.
- c. Base Contract Price. The Base Contract Price is set forth in Exhibit 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. Neither CRS nor AK Steel shall seek to modify the Base Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008.
- f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.
- g. Adjusted Base Contract Price. If CRS exercises this option, then the combined net generation cost paid to CRS and CG&E will be an amount equivalent to Big G, plus FPP (excluding emission allowances) plus IMF up to 4% of little g. In addition, there will be transmission charges to be paid to CRS as set forth in Exhibit B.

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 January 1, 2005 through and

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including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").

- 4.2 Agreement Termination. This Agreement terminates if the Commission in the ongoing CG&E fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in CG&E's service territory served by any Cinergy company. This Agreement shall also terminate if a court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement. Before termination of this Agreement, the Parties agree to use best efforts to fulfill the intent of this Agreement by negotiating amendments to this Agreement that put the Parties in substantially the same overall economic positions as created under the PUCO's Order dated November 23, 2004 in Case No. 03-93-EL-ATA and this Agreement.
- 4.3 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. CRS shall submit the Option Payment to AK Steel by check or wire transfer within forty-five (45) days after the end of each calendar year quarter. The payment shall be submitted to an account or address designated by AK Steel:

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 materially 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 five (5) Business Days after written notice 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

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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 five (5) Business Days after written notice 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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

ARTICLE VII
DUTY TO MITIGATE

- 7.1 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.
- 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

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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 AK Steel. 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 ninety (90) 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) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in

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accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) 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; (g) 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 (h) 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 AK Steel'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. 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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone - 513-287-2633
Fax - 513-287-1902

To AK Steel:

David F. Boehm, Esq.

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Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513.421.2255 Fax: 513.421.2764

- 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 the agreement between CRS and AK Steel dated November 22, 2004. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

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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

AK STEEL CORPORATION

By: [Signature]
Title: VP & General Counsel
Date: MAY 2, 2005

By: [Signature]
Title: Senior Vice President
Date: 03/21/05

FORM APPROVED
[Signature]
ATTORNEY

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EXHIBIT B:
Customer Group: AK Steel Corporation
CRS Generation and Transmission Rates for Former Rate TS Standard Service Customers

Net Monthly Bill

Computed in accordance with the following charges. (Kilovolt amperes are abbreviated as kVA and kilowatt-hours are abbreviated as kWh):

Generation Charges

(b) Demand Charge

First 50,000 KVA \$8.3830 per kVA
Additional KVA \$6.0430 per kVA

(b) Energy Charge

Billing Demand times 360 \$0.014404 per kWh
Additional kilowatt-hours \$0.016381 per kWh

(d) Fuel Charge

The Fuel Charge shall be equal to the Fuel and Purchase Power (PPP) charge excluding Emission Allowance Expense imposed by CG&E.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (4) Network Transmission Services
- (5) MISO Schedule Charges
- (6) Net Congestion Charges

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Exhibit C:
Customer Group: AK Steel Corporation
Customer Account List

This agreement pertains to the following AK Steel Corporation accounts:

[REDACTED]

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Quarterly Option Payment Calculation**

The CRS option payment made quarterly for the period January 1, 2005 through December 31, 2008 or the date upon which the option is exercised whichever comes first, will be equivalent to the following calculation:

The actual amount paid by AK Steel Corporation to The Cincinnati Gas and Electric Company during the applicable calendar quarter under its market-based standard service offer (MBSSO) generation rate approved by the Commission in Case No. 00-93-EL-ATA. The MBSSO generation rate includes all charges related to generation service, but excludes transmission and distribution.

Less the following amount:

The applicable tariffed unbundled generation rate approved by the Commission in Case No. 99-1658-EL-ETP and also known as "Big G" shown in the tariff schedule below:

| Tariff Schedule | Demand Charge (\$ per kW) | | | Energy Charge (\$ per kWh) | | |
|-----------------|---------------------------|-------------|------------|----------------------------|-------------|------------|
| | First Step | Second Step | Additional | First Step | Second Step | Additional |
| DM ¹ | N/A | N/A | N/A | \$0.070728 | \$0.018173 | \$0.009004 |
| DP | \$6.9150 | \$5.4450 | N/A | \$0.028898 | \$0.017782 | N/A |
| DS | \$7.6574 | \$6.0574 | N/A | \$0.028568 | \$0.016366 | N/A |
| TS | \$8.3830 | \$6.0430 | N/A | \$0.019994 | \$0.016481 | N/A |

¹ DM only shows summer seasonal rates.

Plus

Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense

Plus

Infrastructure Maintenance Fund (IMF) up to an amount equal to 4% of "Big G"

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EXHIBIT B:
Customer Group: AK Steel Corporation
CRS Generation Rates for Former Rate DP Standard Service Customers

Net Monthly Generation And Transmission Bill Will Be The Following Plus IMF Up To 4% Of Little g

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh);

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$6.9150 per kW
Additional kilowatts \$5.4450 per kW

(b) Energy Charge

Billing Demand times 300 \$0.022048 per kWh
Additional kilowatt-hours \$0.017682 per kWh

(c) Fuel Charge

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission Allowance Expense imposed by CG&E.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following POCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

GENERAL MOTORS, INC.

This Option Agreement (the "Agreement") is entered into as of this twentieth (20th) day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and General Motors, Inc. ("GM"), a Delaware limited liability company (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, General Motors, Inc. for the purposes of this agreement only refers to General Motors, Inc., West Chester Operation 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, GM desires to grant an option to CRS to provide electric service and CRS desires to provide electric service pursuant to the terms outlined herein;

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.

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EXHIBIT

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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 GM 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 GM is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that GM shall purchase all of its retail Energy requirements for its facility from CRS and that GM shall not resell any of the Energy provided hereunder to any third party.

"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.

"GM's Maximum Demand" means GM's combined maximum demand for all of GM's accounts listed on Exhibit C with The Cincinnati Gas & Electric Company as of January 1, 2005.

"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 GM to the Delivery Point.

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ARTICLE II
OPTION

- 2.1 GM currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates, or will provide NOTICE by December 30, 2004 that it will take electric service from CG&E in accordance with applicable CG&E tariff requirements. GM hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of GM's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for GM granting CRS this option, CRS agrees to pay GM each calendar month of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). CRS shall work in good faith with GM to establish procedures so that the Option Payment is properly distributed to each applicable GM account.
- 2.4 Because this is an exclusive Option, in the event GM leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS ^{EXERCISE (AT)} exercises its option, the power sale agreement between CRS and GM shall include, among others, the following terms:
 - a. Energy Quantity and Type. CRS shall provide GM with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than GM's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of the Agreement, GM has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of the Agreement and CRS shall have no obligation to provide Energy and Capacity to GM above the Quantity set forth herein.
 - b. Transmission Service and Charges. Transmission service and charges will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff. Unless otherwise agreed

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by GM, the transmission service charge shall be equal to transmission charges approved by the Public Utilities Commission of Ohio for the otherwise standard offer rate schedule applicable to each participating GM account or successors to such rate schedule.

- c. Contract Price. The Contract Price is set forth in Exhibits A and B.
- d. Changes 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. Neither CRS nor GM shall seek to modify the Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008 provided that GM may terminate this Agreement in its entirety, including any contract with CRS, upon twelve (12) months written notice provided that such termination shall be effective for all GM accounts and for this entire agreement.

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 January 1, 2005 through and including December 31, 2008, 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. CRS shall submit the Option Payment to GM within fifteen (15) days after the end of each calendar month. The payment shall be submitted to the following account or address:

General Motors, Inc.
NAO Util Payment Dept. C/O EUSB
PO Box 319022
Chicago, IL 60631

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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 five (5) Business Days after written notice 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 five (5) Business Days after written notice 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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. If performance by either Party under this Agreement becomes subject to regulation of any kind whatsoever under any law, rule, regulation, order or similar provision to a greater or different extent than that existing on the Effective Date and such regulation either renders this Agreement illegal or unenforceable or contrary to regulatory authority, then such Party shall have the right upon thirty (30) days notice to terminate this Agreement without further liability. FERC's determination that CG&E is

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prohibited from selling wholesale power to CRS pursuant to CG&E's tariff shall allow CRS to terminate this Agreement in its sole discretion with thirty (30) days written notice and without further liability.

**ARTICLE VII
LIMITATIONS; DUTY TO MITIGATE**

7.1 Indemnity CRS AGREES TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND GM ITS OFFICERS, DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN PART CRS'S EMPLOYEES, AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

GM AGREES TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND CRS, ITS OFFICERS, DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN PART GM'S EMPLOYEES, AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

7.2 ~~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.

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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.

- 7.3 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

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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) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) 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; (g) 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 (h) 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,

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conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without GM's consent provided such assignment is to any other direct or indirect subsidiary of Cincergy Corp. and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. This Agreement shall be assignable by GM without CRS' consent provided such assignment is to any other direct or indirect subsidiary of GM and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than GM. 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. 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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone -513-287-2633
Fax-513-287-1902

To GM:

Philip A. Leach
Energy & Utility Services Group
Worldwide Facilities Group
PCC-Central
Mail Code 483-520-168
2000 Centerpoint Parkway
Pontiac, MI 48341

Phone: (248) 753-1763
Fax: (248) 753-6225

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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 GM dated November 8, 2004. Nothing in this Agreement shall affect the terms and conditions agreed to by Cinergy and the Industrial Energy Users-Ohio pursuant to the agreement dated May 8, 2000 related to the settlement of certain issues in PUCO Case No. 99-1658-EL-ETP.

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

GENERAL MOTORS, INC.

By: _____

By: _____

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TRADE SECRET

Vice President & General Counsel
Title: *Commercial Services Unit* Title: *DIRECTOR Energy & Utility Service*
Date: *January 7, 2005* Date: *December 21, 2004*

As to clause 9.7:

CINERGY CORP.

By: 

Title: *Vice President, Regulatory and Legislative Strategy*

Date: *January 7, 2005*

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Title: _____

Title: DIRECTOR ENERGY & UTILITY SERVICES

Date: _____

Date: DECEMBER 21, 2004

As to clause 9.7:

CINERGY CORP.

By: [Signature]

Title: _____

Date: _____

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TRADE SECRET

Exhibit A:
Customer Group: General Motors, Inc.
Quarterly Option Payment Calculation

The CAS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- Regulatory Transition Charge (RTC)
- Annually Adjusted Component of FOLR Charge (AAC)
- Fuel and Purchase Power (FPP) -- includes Emission Allowance Expense
- 50% of System Reliability Tracker (SRT)
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "file g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

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EXHIBIT B:
Customer Group: General Motors, Inc.

CRS Generation Rates for former Rate DS Standard Service Customers

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$7.6574 per kW
Additional kilowatts \$6.0574 per kW

(b) Energy Charge

Billing Demand times 300 \$0.019576 per kWh
Additional kilowatt-hours \$0.016266 per kWh

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

Rate Stabilization Charge

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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Exhibit C:
Customer Group: General Motors, Inc.
Customer Account List

This agreement pertains to the following General Motors, Inc. accounts:

[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

JEWISH HOSPITAL

This Option Agreement (the "Agreement") is entered into as of this 25th day of January 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Jewish Hospital ("Counterparty"), a _____ corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Jewish Hospital is a member of the Ohio Hospitals Association 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 Counterparty's combined maximum demand for all

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of Counterparty's accounts as of January 1, 2005.

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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, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"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. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III CRS 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. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
 - 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

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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. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- c. Term. The term of the power sale agreement shall be through December 31, 2008.

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 January 1, 2005 through and including December 31, 2008, 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. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

[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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

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

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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

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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

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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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone - 513-287-2633

Fax - 513-287-1902

To Counterparty:

Bill Studi
Phone - 513-686-5815

Alternate:

Sam Cordray
513-686-5130

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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-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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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: [Signature]

Title: VP General Counsel

Date: 1/25/05

By: Bill Studdt

Title: Manager

Date: 1-05-05

As to clause 9.7:

CINERGY CORP.

By: [Signature]

Title: VP & Gen. Counsel

Date: Jan. 25, 2005

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Exhibit A:
Customer Group: Jewish Hospital
Quarterly Option Payment Calculation

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mil per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

Customer Group: Jewish Hospital
(RTP Agreement)
Quarterly Option Payment Calculation

The CRS option payment will be equivalent to the following calculation:

Actual Amount paid to The Cincinnati Gas & Electric Company under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA and the terms and conditions under of their RTP Service Agreements for Supply of Electric Energy dated October 25, 2000 and the applicable CG&E tariff rates then in effect.

Less the sum of following:

The calculated rate under the RTP Service Agreement between Jewish Hospital and The Cincinnati Gas & Electric Company dated November 13, 1996 and the applicable CG&E tariff rates then in effect.

Plus

Rate Stabilization Charge (RSC) paid to CG&E

Plus

Annually Adjusted Component of POLR Charge (AAC) paid to CG&E

Plus

Fuel and Purchase Power (FPP) paid to CG&E - excluding Emission Allowance Expense

Plus

Infrastructure Maintenance Fund (IMF) Charge paid to CG&E in excess of 4% of "little g"

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EXHIBIT B:

Customer Group: Jewish Hospital

CRS Generation and Transmission Rates for former Rate DP Standard Service Customers

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$7.6574 per kW
Additional kilowatts \$6.0574 per kW

(b) Energy Charge

Billing Demand times 300 \$0.019576 per kWh
Additional kilowatt-hours \$0.016266 per kWh

Emission Allowance Charges

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

Rate Stabilization Charge

Georgia Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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EXHIBIT B:
Customer Group: Jewish Hospital
CRS Generation Rates for Former Rate DS Standard Service Customers

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(b) Demand Charge

First 1,000 kilowatts \$7.6574 per kW
Additional kilowatts \$6.0574 per kW

(b) Energy Charge

Billing Demand times 360 \$0.018576 per kWh
Additional kilowatt-hours \$0.015266 per kWh

Emission Allowance Charges

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

Rate Stabilization Charge

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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EXHIBIT B:
Customer Group: Jewish Hospital
CRS Generation Rates for Former Rate DP Real Time Pricing Customers
(Consistent with RTP Rider in effect prior to the Transition Case)

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Real Time Pricing Program Charge \$150.00

Generation Charges

(c) Demand Charge

First 1,000 kilowatts \$10.7950 per kW
Additional kilowatts \$9.3350 per kW

(b) Energy Charge

Billing Demand times 300 \$0.01905 per kWh
Additional kilowatt-hours \$0.00720 per kWh

Real Time Pricing Incremental Cost Calculated Monthly

Universal Service Fund Charge \$0.000244 per kWh

Energy Fuel Component Charge \$0.012738 per kWh

Emission Allowance Charges

Customer will pay monthly an amount equivalent to the emission allowance expense component of the FUCO approved CG&E fuel clause.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

Rate Stabilization Charge

Cinergy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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Exhibit C:
Customer Group: Jewish Hospital
Customer Account List

This agreement pertains to the following Jewish Hospital accounts:

[REDACTED]

Customer Group: Jewish Hospital
Customer Account List (RTP Account)

This agreement pertains to the following Jewish Hospital accounts:

[REDACTED]

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OPTION AGREEMENT

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

AK STEEL CORPORATION

This Option Agreement (the "Agreement") is entered into as of this 2nd day of February, 2005 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and AK Steel Corporation ("AK Steel"), a Delaware corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, AK Steel operates steel manufacturing facilities in Middletown, Ohio and purchases electric power service from The Cincinnati Gas & Electric Company (CG&E) on metered accounts listed on Exhibit C.

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 AK Steel desire to establish terms and conditions 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

Cinergy Corporate Records

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Document Code

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ownership of ten (10) percent or more.

"Base Contract Price" means the price in \$US as set forth in Exhibit B to be paid by AK Steel to CRS for the purchase of Generation and Transmission service under this Agreement.

"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.

"Maximum Demand" means AK Steel's combined maximum annual demands for all of AK Steel's accounts listed on Exhibit C with Cincinnati Gas & Electric ("CG&E") for the twelve months ending December 31, 2004.

"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.

"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 that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by AK Steel is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that AK Steel shall purchase all of its retail Energy requirements for its facility from CRS and that AK Steel shall not resell any of the Energy provided hereunder to any third party.

"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 AK Steel to the Delivery Point.

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ARTICLE II
OPTION

- 2.1 AK Steel currently purchases its generation electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs or will provide notice by December 30, 2004 that it will purchase generation electric service from CG&E starting no later than December 31, 2005 in accordance with applicable CG&E tariff requirements. AK Steel hereby grants to CRS the exclusive option, upon thirty (30) days notice, to provide generation electric service for all of AK Steel's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option"). In the event that an Electric Choice Insufficient Return Notice Fee is incurred by AK Steel due to switching back to CG&E standard tariffed service prior to January 31, 2005, an amount equivalent to said fee will be paid to AK Steel by CRS.
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for AK Steel granting CRS this option, CRS agrees to pay AK Steel each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). The Parties agree that if AK Steel defaults or is delinquent, after any applicable cure period, in any of its payments to any Cinergy affiliated company for any service provided to AK Steel, then CRS has the right to offset the Option Payment due hereunder with any amounts that are owed by AK Steel to the Cinergy affiliated company.
- 2.4 Because this is an exclusive Option, in the event AK Steel leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, a power sale agreement between CRS and AK Steel will be negotiated. The power sale agreement shall include generally accepted terms and conditions relating to the sale of competitive retail electric generation service, including, among others, the following terms:

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- a. Energy Quantity and Type. CRS shall provide AK Steel with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than AK Steel's Maximum Demand ("Quantity"). If during the Term of this Agreement, AK Steel has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to AK Steel above the Quantity set forth herein.
- 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. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.
- c. Base Contract Price. The Base Contract Price is set forth in Exhibit 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. Neither CRS nor AK Steel shall seek to modify the Base Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008.
- f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.
- g. Adjusted Base Contract Price. If CRS exercises this option, then the combined net generation cost paid to CRS and CG&E will be an amount equivalent to Big G, plus FPP (excluding emission allowances) plus IMF up to 4% of little g. In addition, there will be transmission charges to be paid to CRS as set forth in Exhibit B.

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 January 1, 2005 through and

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including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").

- 4.2 Agreement Termination. This Agreement terminates if the Commission in the ongoing CG&E fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in CG&E's service territory served by any Cinergy company. This Agreement shall also terminate if a court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement. Before termination of this Agreement, the Parties agree to use best efforts to fulfill the intent of this Agreement by negotiating amendments to this Agreement that put the Parties in substantially the same overall economic positions as created under the PUCO's Order dated November 23, 2004 in Case No. 03-93-EL-ATA and this Agreement.

- 4.3 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. CRS shall submit the Option Payment to AK Steel by check or wire transfer within forty-five (45) days after the end of each calendar year quarter. The payment shall be submitted to an account or address designated by AK Steel:

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 materially 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 five (5) Business Days after written notice 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

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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 five (5) Business Days after written notice 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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

ARTICLE VII
DUTY TO MITIGATE

- 7.1 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.
- 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

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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 AK Steel. 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 ninety (90) 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) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in

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accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) 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; (g) 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 (h) 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 AK Steel'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. 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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone - 513-287-2633
Fax - 513-287-1902

To AK Steel:

David F. Boehm, Esq.

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Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513.421.2255 Fax: 513.421.2764

- 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 the agreement between CRS and AK Steel dated November 22, 2004. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

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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

AK STEEL CORPORATION

By: [Signature]

By: [Signature]

Title: VP of Sales

Title: Sales Vice President

Date: MAY 2, 2005

Date: 03/21/05

FORM APPROVED
[Signature]
ATTORNEY

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EXHIBIT B:

Customer Group: AK Steel Corporation

CRS Generation and Transmission Rates for Former Rate TS Standard Service Customers

Net Monthly Bill

Computed in accordance with the following charges. (Kilovolt amperes are abbreviated as kVA and kilowatt-hours are abbreviated as kWh):

Generation Charges

(b) Demand Charge

First 50,000 KVA \$8.3830 per kVA
Additional KVA \$6.0430 per kVA

(b) Energy Charge

Billing Demand times 300 \$0.014404 per kWh
Additional kilowatt-hours \$0.016381 per kWh

(d) Fuel Charge

The Fuel Charge shall be equal to the Fuel and Purchase Power (PPP) charge excluding Emission Allowance Expense imposed by CG&E.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (4) Network Transmission Services
- (5) MISO Schedule Charges
- (6) Net Congestion Charges

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Exhibit C:
Customer Group: AK Steel Corporation
Customer Account List

This agreement pertains to the following AK Steel Corporation accounts:



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TRADE SECRET**Exhibit A:****Customer Group: AK Steel Corporation
Quarterly Option Payment Calculation**

The CRS option payment made quarterly for the period January 1, 2005 through December 31, 2008 or the date upon which the option is exercised whichever comes first, will be equivalent to the following calculation:

The actual amount paid by AK Steel Corporation to The Cincinnati Gas and Electric Company during the applicable calendar quarter under its market-based standard service offer (MBSSO) generation rate approved by the Commission in Case No. 03-93-EL-ATA. The MBSSO generation rate includes all charges related to generation service, but excludes transmission and distribution.

Less the following amount:

The applicable tariffed unbundled generation rate approved by the Commission in Case No. 99-1658-EL-ETP and also known as "Big G" shown in the tariff schedule below:

| Tariff Schedule | Demand Charge (\$ per kW) | | | Energy Charge (\$ per kWh) | | |
|-----------------|---------------------------|-------------|------------|----------------------------|-------------|------------|
| | First Step | Second Step | Additional | First Step | Second Step | Additional |
| DM ¹ | N/A | N/A | N/A | \$0.020728 | \$0.018173 | \$0.009004 |
| DP | \$6.9150 | \$3.4450 | N/A | \$0.028898 | \$0.017782 | N/A |
| DS | \$7.6574 | \$6.0574 | N/A | \$0.028568 | \$0.016366 | N/A |
| TS | \$8.3830 | \$6.0430 | N/A | \$0.019994 | \$0.016481 | N/A |

¹ DM only shows summer seasonal rates.

Plus

Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense

Plus

Infrastructure Maintenance Fund (IMF) up to an amount equal to 4% of "Big G"

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EXHIBIT B:
Customer Group: AK Steel Corporation
CRS Generation Rates for Former Rate DP Standard Service Customers

Net Monthly Generation And Transmission Bill Will Be The Following Plus DMF Up To 4% Of Little g

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh);

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$6.9150 per kW
Additional kilowatts \$5.4450 per kW

(b) Energy Charge

Billing Demand times 300 \$0.022048 per kWh
Additional kilowatt-hours \$0.017682 per kWh

(c) Fuel Charge

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission Allowance Expense imposed by CG&E.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

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OPTION AGREEMENT
BY AND BETWEEN
CINERGY RETAIL SALES, LLC
AND
GENERAL ELECTRIC COMPANY, acting through
GE TRANSPORTATION

This Option Agreement (the "Agreement") is entered into as of this 31 day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and General Electric Company, acting through its Transportation-Aircraft Engines Operating Component ("GE"), a New York corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, GE operates an aircraft engine manufacturing and testing facility and purchases electric power service from The Cincinnati Gas & Electric Company (CG&E) on metered accounts listed on Exhibit C.

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 GE desire to establish terms and conditions 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.

Cinergy Corporate Records
04016279



Document Code

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"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.

"Base Contract Price" means the price in \$US as set forth in Exhibit B to be paid by GE to CRS for the purchase of Generation and Transmission service under this Agreement.

"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.

"Maximum Demand" means GE's combined maximum annual demands for all of GE's accounts listed on Exhibit C with Cincinnati Gas & Electric ("CG&E") for the twelve months ending December 31, 2004.

"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.

"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 that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by GE is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that GE shall purchase all of its retail Energy requirements for its facility from CRS and that GE shall not resell any of the Energy provided hereunder to any third party.

"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.

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

ARTICLE II OPTION

- 2.1 GE currently purchases its generation electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs or will provide notice by December 30, 2004 that it will purchase generation electric service from CG&E starting no later than December 31, 2005 in accordance with applicable CG&E tariff requirements. GE hereby grants to CRS the exclusive option, upon thirty (30) days notice, to provide generation electric service for all of GE's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option"). In the event that an Electric Choice Insufficient Return Notice Fee is incurred by GE due to switching back to CG&E standard tariffed service prior to January 31, 2005, an amount equivalent to said fee will be paid to GE by CRS.
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for GE granting CRS this option, CRS agrees to pay GE each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). The Parties agree that if GE defaults or is delinquent, after any applicable cure period, in any of its payments to any Cinergy affiliated company for any service provided to GE, then CRS has the right to offset the Option Payment due hereunder with any amounts that are owed by GE to the Cinergy affiliated company.
- 2.4 Because this is an exclusive Option, in the event GE leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, a power sale agreement between CRS and GE will be negotiated. The power sale agreement shall include generally accepted terms and

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conditions relating to the sale of competitive retail electric generation service, including, among others, the following terms:

- a. Energy Quantity and Type. CRS shall provide GE with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than GE's Maximum Demand ("Quantity"). If during the Term of this Agreement, GE has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to GE above the Quantity set forth herein.
- 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. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.
- c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.
- d. Change in 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. Neither CRS nor GE shall seek to modify the Base Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008.
- f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.
- g. Adjusted Base Contract Price. If CRS exercises this option, then the combined net generation cost paid to CRS and CG&E will be an amount equivalent to Big G, plus FPP (excluding emission allowances) plus IMF up to 4% of little g. In addition, there will be transmission charges to be paid to CRS as set forth in Exhibit B.

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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 January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 Agreement Termination. This Agreement terminates if the Commission in the ongoing CG&E fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in CG&E's service territory served by any Cinergy company. This Agreement shall also terminate if a court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement. Before termination of this Agreement, the Parties agree to use best efforts to fulfill the intent of this Agreement by negotiating amendments to this Agreement that put the Parties in substantially the same overall economic positions as created under the PUCO's Order dated November 23, 2004 in Case No. 03-93-EL-ATA and this Agreement.
- 4.3 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. CRS shall submit the Option Payment to GE by check or wire transfer within forty-five (45) days after the end of each calendar year quarter. The payment shall be submitted to an account or address designated by GE:

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 materially 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 five (5) Business Days after written notice

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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 five (5) Business Days after written notice 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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

ARTICLE VII DUTY TO MITIGATE

- 7.1 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.

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- 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 GE. 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 ninety (90) 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

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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) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) 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; (g) 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 (h) 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 GE'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. 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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone - 513-287-2633
Fax - 513-287-1902

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To GE:

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513.421.2255 Fax: 513.421.2764

AND

David M. Swigart
GE Transportation
1 Neumann Way, Mail Drop E-70
Cincinnati, Ohio 45215-6301
Ph: 513.243.4870 Fax: 513.243.9390
Email: Dave.Swigart@ae.ge.com

- 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, leaders, 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

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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 the agreement between CRS and GE dated November 22, 2004. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

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

GE

By: [Signature]

By: H.F. Woolard

Title: [Signature]

Title: Manager, Facilities CoE & ME CoE

Date: 1/20/05

Date: 1/20/05

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Exhibit A:

Customer Group: GE Aircraft Engines Quarterly Option Payment Calculation

The CRS option payment made quarterly for the period January 1, 2005 through December 31, 2008 or the date upon which the option is exercised whichever comes first, will be equivalent to the following calculation:

The actual amount paid by GE Aircraft Engines to The Cincinnati Gas and Electric Company during the applicable calendar quarter under its market-based standard service offer (MBSSO) generation rate approved by the Commission in Case No. 03-93-EL-ATA. The MBSSO generation rate includes all charges related to generation service, but excludes transmission and distribution.

Less the following amount:

The applicable tariffed unbundled generation rate approved by the Commission in Case No. 99-1658-EL-ETP and also known as "Big G" shown in the tariff schedule below:

| Tariff Schedule | Demand Charge (\$ per kW) | | | Energy Charge (\$ per kWh) | | |
|-----------------|---------------------------|-------------|------------|----------------------------|-------------|------------|
| | First Step | Second Step | Additional | First Step | Second Step | Additional |
| DM ¹ | N/A | N/A | N/A | \$0.070728 | \$0.018173 | \$0.009804 |
| DP | \$6.9150 | \$5.4450 | N/A | \$0.028898 | \$0.017782 | N/A |
| DS | \$7.6574 | \$6.0574 | N/A | \$0.028568 | \$0.016366 | N/A |
| TS | \$8.3830 | \$6.0430 | N/A | \$0.019994 | \$0.016481 | N/A |

¹ DM only shows summer seasonal rates

Plus

Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense

Plus

Infrastructure Maintenance Fund (IMF) up to an amount equal to 4% of "line g"

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TRADE SECRET**EXHIBIT B:****Customer Group: GE Aircraft Engines
CRS Generation and Transmission Rates for Former Rate DM Standard
Service Customers**

Net Monthly Generation And Transmission Bill Will Be The Following Plus MF Up To 4% Of Line g
Computed in accordance with the following charges. (Kilowatt of demand is
abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges**(a) Summer**

First 2,800 kilowatt-hours \$0.050562 per kWh
Next 3,200 kilowatt-hours \$0.014952 per kWh
Additional kilowatt-hours \$0.006520 per kWh

(b) Winter

First 2,800 kilowatt-hours \$0.046480 per kWh
Next 3,200 kilowatt-hours \$0.014969 per kWh
Additional kilowatt-hours \$0.006191 per kWh

(c) Fuel Charge

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission
Allowance Expense imposed by CG&E.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all
applicable transmission charges that they would pay to CG&E as a
standard tariff customer. Transmission charges to be paid include, but are
not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

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EXHIBIT B:

**Customer Group: GE Aircraft Engines
CRS Generation and Transmission Rates for Former Rate DS Standard Service
Customers**

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$7.6574 per kW
Additional kilowatts \$6.0574 per kW

(b) Energy Charge

Billing Demand times 300 \$0.019576 per kWh
Additional kilowatt-hours \$0.016266 per kWh

(c) Fuel Charge

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission Allowance Expense imposed by CG&E.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (4) Network Transmission Services
- (5) MISO Schedule Charges
- (6) Net Congestion Charges

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TRADE SECRET**EXHIBIT B:****Customer Group: GE Aircraft Engines****CRS Generation and Transmission Rates for Former Rate TS Real Time Pricing Customers****Net Monthly Bill**

Computed in accordance with the following charges. (Kilovolt amperes are abbreviated as kVA and kilowatt-hours are abbreviated as kWh);

Real Time Pricing Program Charge \$150.00

Load Management Rider Customer Charge..... \$100.00

Generation Charges**(b) Demand Charge**

First 50,000 kVA \$8.3830 per kVA

Additional kVA \$6.0430 per kVA

(b) Energy Charge

Billing Demand times 300 \$0.014404 per kWh

Additional kilowatt-hours \$0.016381 per kWh

Real Time Pricing Incremental Cost Calculated Monthly
(Based on CBL and WBL in CG&E RTP Agreement)

Energy Efficiency Revolving Loan Program \$0.00108 per kWh

Universal Service Fund Charge

Billing Demand times 300 \$0.000487 per kWh

Additional kilowatt-hours \$0.000469 per kWh

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (7) Network Transmission Services
- (8) MISO Schedule Charges
- (9) Net Congestion Charges

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EXHIBIT B:

**Customer Group: GE Aircraft Engines
CRS Generation and Transmission Rates for Former Rate TS Standard Service
Customers**

Net Monthly Bill

Computed in accordance with the following charges. (Kilovolt amperes are abbreviated as kVA and kilowatt-hours are abbreviated as kWh):

Generation Charges

(c) Demand Charge

First 50,000 KVA \$8.3830 per kVA
Additional KVA \$6.0430 per kVA

(b) Energy Charge

Billing Demand times 300 \$0.814404 per kWh
Additional kilowatt-hours \$0.016381 per kWh

(e) Fuel Charge

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission Allowance Expense imposed by CG&E.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (10) Network Transmission Services
- (11) MISO Schedule Charges
- (12) Net Congestion Charges

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Exhibit C:
Customer Group: General Electric. (Non-RTP Accounts)
Customer Account List

This agreement pertains to the following General Electric accounts:

| | | |
|---|------------|------------------------|
| 11 25 Merchant St | [REDACTED] | not GE it is COR ELLIS |
| 111 Merchant St | [REDACTED] | not GE it is COR ELLIS |
| 123 Merchant St | [REDACTED] | |
| 199 Container P [REDACTED] | [REDACTED] | |
| Evendale Lighting | [REDACTED] | |
| Evendale "TS" | [REDACTED] | |
| 9220 Glades Dr [REDACTED] | [REDACTED] | |
| Crescent Rd W [REDACTED] | [REDACTED] | |
| Edison Dr [REDACTED] | [REDACTED] | |
| 10270 St Rita Ln (QTC) | [REDACTED] | |

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Exhibit C:
Customer Group: General Electric. (RTP Accounts)
Customer Account List

This agreement pertains to the following General Electric accounts:

[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

MARATHON ASHLAND PETROLEUM LLC

This Option Agreement (the "Agreement") is entered into as of this twentieth (20th) day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Marathon Ashland Petroleum LLC ("MAP"), a Delaware limited liability company (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, MAP's facilities are situated throughout southwestern Ohio (reference Exhibit C) and are 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, MAP desires to grant an option to CRS to provide electric service and CRS desires to provide electric service pursuant to the terms outlined herein;

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.

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Cinergy Corporate Records

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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 MAP 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 MAP is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that MAP shall purchase all of its retail Energy requirements for its facility from CRS and that MAP shall not resell any of the Energy provided hereunder to any third party.

"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.

"MAP's Maximum Demand" means MAP's combined maximum demand for all of MAP's accounts listed on Exhibit C with The Cincinnati Gas & Electric Company as of January 1, 2005.

"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 MAP to the Delivery Point.

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ARTICLE II
OPTION

- 2.1 MAP currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates, or will provide NOTICE by December 30, 2004 that it will take electric service from CG&E in accordance with applicable CG&E tariff requirements. MAP hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of MAP's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for MAP granting CRS this option, CRS agrees to pay MAP each calendar month of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). CRS shall work in good faith with MAP to establish procedures so that the Option Payment is properly distributed to each applicable MAP account.
- 2.4 Because this is an exclusive Option, in the event MAP leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, the power sale agreement between CRS and MAP shall include, among others, the following terms:
 - a. Energy Quantity and Type. CRS shall provide MAP with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than MAP's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of the Agreement, MAP has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of the Agreement and CRS shall have no obligation to provide Energy and Capacity to MAP above the Quantity set forth herein.
 - b. Transmission Service and Charges. Transmission service and charges will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff. Unless otherwise agreed

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by MAP, the transmission service charge shall be equal to transmission charges approved by the Public Utilities Commission of Ohio for the otherwise standard offer rate schedule applicable to each participating MAP account or successors to such rate schedule.

- 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. Neither CRS nor MAP shall seek to modify the Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008 provided that MAP may terminate this Agreement in its entirety, including any contract with CRS, upon twelve (12) months written notice provided that such termination shall be effective for all MAP accounts and for this entire agreement.

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 January 1, 2005 through and including December 31, 2008, 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. CRS shall submit the Option Payment to MAP within fifteen (15) days after the end of each calendar month. The payment shall be submitted to the following account or address:

Mailing address for facilities under organization code SSA
Speedway SuperAmerica LLC
P.O. Box 1530
Springfield, OH 45501

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Attn: Kevin Majewski - Room 81222

Mailing address for facilities under organization code TTM

Marathon Ashland Petroleum LLC
539 South Main Street
Findlay, OH 45840
Attn: Everett Boldridge - Room 477M

Mailing address for facilities under organization code PTC

Pilot Travel Centers LLC
P.O. Box 10146
Knoxville, TN 37939
Attn: Jack Stalker

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 five (5) Business Days after written notice 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 five (5) Business Days after written notice 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

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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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. If performance by either Party under this Agreement becomes subject to regulation of any kind whatsoever under any law, rule, regulation, order or similar provision to a greater or different extent than that existing on the Effective Date and such regulation either renders this Agreement illegal or unenforceable or contrary to regulatory authority, then such Party shall have the right upon thirty (30) days notice to terminate this Agreement without further liability. FERC's determination that CG&E is prohibited from selling wholesale power to CRS pursuant to CG&E's tariff shall allow CRS to terminate this Agreement in its sole discretion with thirty (30) days written notice and without further liability.

ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

7.1 Indemnity CRS AGREES TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND MAP ITS OFFICERS, DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN PART CRS'S EMPLOYEES, AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

MAP AGREES TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND CRS, ITS OFFICERS, DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN PART MAP'S EMPLOYEES, AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

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

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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.

- 7.3 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

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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;

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(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) 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; (g) 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 (h) 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 MAP's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. This Agreement shall be assignable by MAP without CRS' consent provided such assignment is to any other direct or indirect subsidiary of MAP and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than MAP. 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. 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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone -513-287-2633
Fax-513-287-1902

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To MAP:

James A. Ebert
539 South Main Street
Findlay, OH 45840
Phone: 419-421-3433
Fax: 419-421-3809

- 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 supercedes and replaces in its entirety the agreement between CRS and MAP dated November 8, 2004. Nothing in this Agreement shall affect the terms and conditions agreed to by Cinergy and the Industrial Energy Users-Ohio pursuant to the agreement dated May 8, 2000 related to the settlement of certain issues in PUCO Case No. 99-1658-EL-ETP.

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

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CINERGY RETAIL SALES, LLC

MARATHON ASHLAND PETROLEUM LLC

By: [Signature]
Title: _____
Date: _____

By: [Signature]
Title: Manager, Energy Supply
Date: Dec. 20, 2004

As to clause 9.7:

CINERGY CORP.

By: [Signature]
Title: _____
Date: _____

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CINERGY RETAIL SALES, LLC

MARATHON ASHLAND PETROLEUM LLC

By: [Signature]
Title: Vice President and General Counsel
Date: January 7, 2005

By: [Signature]
Title: Manager, Energy Supply
Date: Dec. 20, 2004



As to clause 9.7:

CINERGY CORP.

By: [Signature]
Title: Vice President, Regulatory and Legislative Strategy
Date: January 7, 2005

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Exhibit A:
Customer Group: Marathon Ashland, Inc.
Quarterly Option Payment Calculation

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- Regulatory Transition Charge (RTC)
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) -- includes Emission Allowance Expense
- 50% of System Reliability Tracker (SRT)
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "like g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

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TRADE SECRET**EXHIBIT B:****Customer Group: Marathon Ashland, Inc****a) CRS Generation Rates for Former Rate DM Standard Service Customers****Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges**(a) Summer**

| | |
|----------------------------------|--------------------|
| First 2,800 kilowatt-hours | \$0.058562 per kWh |
| Next 3,200 kilowatt-hours | \$0.014932 per kWh |
| Additional kilowatt-hours | \$0.006520 per kWh |

(b) Winter

| | |
|----------------------------------|--------------------|
| First 2,800 kilowatt-hours | \$0.046480 per kWh |
| Next 3,200 kilowatt-hours | \$0.014969 per kWh |
| Additional kilowatt-hours | \$0.006191 per kWh |

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

Rate Stabilization Charge

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

b) CRS Generation Rates for Former Rate DP Standard Service Customers**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges**(a) Demand Charge**

| | |
|-----------------------------|-----------------|
| First 1,000 kilowatts | \$6.9150 per kW |
| Additional kilowatts | \$5.4550 per kW |

(b) Energy Charge

| | |
|--------------------------------|--------------------|
| Billing Demand times 300 | \$0.022048 per kWh |
|--------------------------------|--------------------|

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Additional kilowatt-hours \$0.017682 per kWh

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

Rate Stabilization Charge

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

c) CRS Generation Rates for former Rate DS Standard Service Customers

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$7.6574 per kW
Additional kilowatts \$6.0574 per kW

(b) Energy Charge

Billing Demand times 300 \$0.019576 per kWh
Additional kilowatt-hours \$0.016266 per kWh

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

Rate Stabilization Charge

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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Exhibit C:
Customer Group: Marathon Ashland, Inc.
Customer Account List

This agreement pertains to the following Marathon Ashland, Inc. accounts:

| <u>ORG</u> | <u>UNIT #</u> | <u>EDU ACCOUNT #</u> |
|------------|---------------|----------------------|
| SSA | 1026 | [REDACTED] |
| SSA | 1033 | [REDACTED] |
| SSA | 1083 | [REDACTED] |
| SSA | 1086 | [REDACTED] |
| SSA | 1181 | [REDACTED] |
| SSA | 1183 | [REDACTED] |
| SSA | 1191 | [REDACTED] |
| SSA | 1197 | [REDACTED] |
| SSA | 1218 | [REDACTED] |
| SSA | 1221 | [REDACTED] |
| SSA | 1224 | [REDACTED] |
| SSA | 1251 | [REDACTED] |
| SSA | 1259 | [REDACTED] |
| SSA | 1409 | [REDACTED] |
| SSA | 1547 | [REDACTED] |
| SSA | 3081 | [REDACTED] |
| SSA | 3405 | [REDACTED] |
| SSA | 3764 | [REDACTED] |
| SSA | 4009 | [REDACTED] |
| SSA | 5071 | [REDACTED] |
| SSA | 5074 | [REDACTED] |
| SSA | 5075 | [REDACTED] |
| SSA | 5098 | [REDACTED] |
| SSA | 5211 | [REDACTED] |
| SSA | 5212 | [REDACTED] |
| SSA | 5218 | [REDACTED] |
| SSA | 5265 | [REDACTED] |
| SSA | 5268 | [REDACTED] |
| SSA | 5276 | [REDACTED] |

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| | | |
|-----|--------|------------|
| SSA | 5405 | [REDACTED] |
| SSA | 5409 | [REDACTED] |
| SSA | 5415 | [REDACTED] |
| SSA | 5416 | [REDACTED] |
| SSA | 6336 | [REDACTED] |
| SSA | 7560 | [REDACTED] |
| SSA | 9310 | [REDACTED] |
| SSA | 9336 | [REDACTED] |
| SSA | 9367 | [REDACTED] |
| SSA | 9383 | [REDACTED] |
| SSA | 9573 | [REDACTED] |
| SSA | 9574 | [REDACTED] |
| SSA | 9575 | [REDACTED] |
| SSA | 9576 | [REDACTED] |
| SSA | 9576 | [REDACTED] |
| SSA | 9579 | [REDACTED] |
| SSA | 9581 | [REDACTED] |
| SSA | 9582 | [REDACTED] |
| SSA | 9585 | [REDACTED] |
| SSA | 9595 | [REDACTED] |
| SSA | 9598 | [REDACTED] |
| SSA | 9609 | [REDACTED] |
| SSA | 9610 | [REDACTED] |
| SSA | 9633 | [REDACTED] |
| SSA | 9637 | [REDACTED] |
| SSA | 9641 | [REDACTED] |
| SSA | 9649 | [REDACTED] |
| SSA | 9659 | [REDACTED] |
| SSA | 9674 | [REDACTED] |
| SSA | 9680 | [REDACTED] |
| SSA | 9682 | [REDACTED] |
| SSA | 9682 | [REDACTED] |
| SSA | 9693 | [REDACTED] |
| SSA | 9707 | [REDACTED] |
| SSA | 9781 | [REDACTED] |
| TTM | 430026 | [REDACTED] |
| TTM | 430026 | [REDACTED] |

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| | | |
|-----|--------|------------|
| TTM | 550015 | [REDACTED] |
| TTM | 550015 | [REDACTED] |
| TTM | 550015 | [REDACTED] |
| TTM | 550024 | [REDACTED] |
| TTM | 550024 | [REDACTED] |
| PTC | PTC009 | [REDACTED] |
| PTC | PTC009 | [REDACTED] |

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

GENERAL MOTORS, INC.

This Option Agreement (the "Agreement") is entered into as of this twentieth (20th) day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS"), a Delaware limited liability company, and General Motors, Inc. ("GM"), a Delaware limited liability company (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, General Motors, Inc. for the purposes of this agreement only refers to General Motors, Inc., West Chester Operation 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, GM desires to grant an option to CRS to provide electric service and CRS desires to provide electric service pursuant to the terms outlined herein;

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.

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Cinergy Corporate Records

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Document Code

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EXHIBIT

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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 GM 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 GM is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that GM shall purchase all of its retail Energy requirements for its facility from CRS and that GM shall not resell any of the Energy provided hereunder to any third party.

"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.

"GM's Maximum Demand" means GM's combined maximum demand for all of GM's accounts listed on Exhibit C with The Cincinnati Gas & Electric Company as of January 1, 2005.

"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 GM to the Delivery Point.

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ARTICLE II
OPTION

- 2.1 GM currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates, or will provide NOTICE by December 30, 2004 that it will take electric service from CG&E in accordance with applicable CG&E tariff requirements. GM hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of GM's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for GM granting CRS this option, CRS agrees to pay GM each calendar month of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). CRS shall work in good faith with GM to establish procedures so that the Option Payment is properly distributed to each applicable GM account.
- 2.4 Because this is an exclusive Option, in the event GM leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS ^{EXERCISES (FAT)} exercises its option, the power sale agreement between CRS and GM shall include, among others, the following terms:
 - a. Energy Quantity and Type. CRS shall provide GM with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than GM's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of the Agreement, GM has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of the Agreement and CRS shall have no obligation to provide Energy and Capacity to GM above the Quantity set forth herein.
 - b. Transmission Service and Charges. Transmission service and charges will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff. Unless otherwise agreed

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by GM, the transmission service charge shall be equal to transmission charges approved by the Public Utilities Commission of Ohio for the otherwise standard offer rate schedule applicable to each participating GM account or successors to such rate schedule.

- 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. Neither CRS nor GM shall seek to modify the Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008 provided that GM may terminate this Agreement in its entirety, including any contract with CRS, upon twelve (12) months written notice provided that such termination shall be effective for all GM accounts and for this entire agreement.

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 January 1, 2005 through and including December 31, 2008, 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. CRS shall submit the Option Payment to GM within fifteen (15) days after the end of each calendar month. The payment shall be submitted to the following account or address:

General Motors, Inc.
NAO Util Payment Dept. C/O EUSB
PO Box 319022
Chicago, IL 60631

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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 five (5) Business Days after written notice 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 five (5) Business Days after written notice 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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. If performance by either Party under this Agreement becomes subject to regulation of any kind whatsoever under any law, rule, regulation, order or similar provision to a greater or different extent than that existing on the Effective Date and such regulation either renders this Agreement illegal or unenforceable or contrary to regulatory authority, then such Party shall have the right upon thirty (30) days notice to terminate this Agreement without further liability. FERC's determination that CG&E is

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prohibited from selling wholesale power to CRS pursuant to CG&E's tariff shall allow CRS to terminate this Agreement in its sole discretion with thirty (30) days written notice and without further liability.

ARTICLE VII
LIMITATIONS; DUTY TO MITIGATE

7.1 Indemnity CRS AGREES TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND GM ITS OFFICERS, DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN PART CRS'S EMPLOYEES, AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

GM AGREES TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND CRS, ITS OFFICERS, DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN PART GM'S EMPLOYEES, AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

7.2 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,

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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.

- 7.3 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

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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) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) 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; (g) 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 (h) 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,

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conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without GM's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. This Agreement shall be assignable by GM without CRS' consent provided such assignment is to any other direct or indirect subsidiary of GM and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than GM. 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. 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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone -513-287-2633
Fax-513-287-1902

To GM:

Philip A. Leach
Energy & Utility Services Group
Worldwide Facilities Group
PCC-Central
Mail Code 483-520-168
2000 Centerpoint Parkway
Pontiac, MI 48341

Phone: (248) 753-1763
Fax: (248) 753-6225

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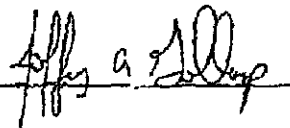

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties 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, leaders, 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 supercedes and replaces in its entirety the agreement between CRS and GM dated November 8, 2004. Nothing in this Agreement shall affect the terms and conditions agreed to by Cinergy and the Industrial Energy Users-Ohio pursuant to the agreement dated May 8, 2000 related to the settlement of certain issues in PUCO Case No. 99-1658-EL-ETP.

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

GENERAL MOTORS, INC.

By: By: 

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Vice President & General Counsel
Title: *Commercial Services Unit* Title: *Director Energy & Utility Service*
Date: *January 7, 2005* Date: *December 21, 2004*

As to clause 9.7:

ENERGY CORP.

By: 

Title: *Vice President Regulatory and Legislative Strategy*

Date: *January 7, 2005*

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Title: _____

Title: DIRECTOR ENERGY & UTILITY SERVICES

Date: _____

Date: December 21, 2004

As to clause 9.7:

CINERGY CORP.

By: [Signature]

Title: _____

Date: _____

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Exhibit A:
Customer Group: General Motors, Inc.
Quarterly Option Payment Calculation

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- Regulatory Transition Charge (RTC)
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (PPP) – includes Emission Allowance Expense
- 50% of System Reliability Tracker (SRT)
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

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EXHIBIT B:
Customer Group: General Motors, Inc.

CRS Generation Rates for former Rate DS Standard Service Customers

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$7.6574 per kW
Additional kilowatts \$6.0574 per kW

(b) Energy Charge

Billing Demand times 300 \$0.019576 per kWh
Additional kilowatt-hours \$0.016266 per kWh

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

Rate Stabilization Charge

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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Exhibit C:
Customer Group: General Motors, Inc.
Customer Account List

This agreement pertains to the following General Motors, Inc. accounts:

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

BP PRODUCTS NORTH AMERICA, INC.

This Option Agreement (the "Agreement") is entered into as of this 1st day of January 2005 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and BP Products North America, Inc. ("BP"), a Maryland corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, BP operates gasoline service stations and purchases electric power service from The Cincinnati Gas & Electric Company (CG&E) on metered accounts listed on Exhibit C.

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 BP desire to establish terms and conditions 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.

Cinergy Corporate Records

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Document Code

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"Base Contract Price" means the price in \$US as set forth in Exhibit B to be paid by BP to CRS for the purchase of Generation and Transmission service under this Agreement.

"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.

"Maximum Demand" means BP's combined maximum annual demands for all of BP's accounts listed on Exhibit C with Cincinnati Gas & Electric ("CG&E") for the twelve months ending December 31, 2004.

"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.

"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 that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by BP is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that BP shall purchase all of its retail Energy requirements for its facility from CRS and that BP shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime leading 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 BP to the Delivery Point.

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ARTICLE II OPTION

- 2.1 BP currently purchases its generation electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs or will provide notice by December 30, 2004 that it will purchase generation electric service from CG&E starting no later than December 31, 2005 in accordance with applicable CG&E tariff requirements. BP hereby grants to CRS the exclusive option, upon thirty (30) days notice, to provide generation electric service for all of BP's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option"). In the event that an Electric Choice Insufficient Return Notice Fee is incurred by BP due to switching back to CG&E standard tariffed service prior to January 31, 2005, an amount equivalent to said fee will be paid to BP by CRS.
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for BP granting CRS this option, CRS agrees to pay BP each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). The Parties agree that if BP defaults or is delinquent, after any applicable cure period, in any of its payments to CG&E or CRS for any service provided to BP, then CRS has the right to offset the Option Payment due hereunder with any amounts that are owed by BP to CG&E or CRS.
- 2.4 Because this is an exclusive Option, in the event BP leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, a power sale agreement between CRS and BP will be negotiated. The power sale agreement shall include generally accepted terms and conditions relating to the sale of competitive retail electric generation service, including, among others, the following terms:
- a. Energy Quantity and Type. CRS shall provide BP with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than BP's Maximum

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Demand ("Quantity"). If during the Term of this Agreement, BP has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to BP above the Quantity set forth herein.

- 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. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.
- c. Base Contract Price. The Base Contract Price is set forth in Exhibit 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. Neither CRS nor BP shall seek to modify the Base Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008.
- f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.
- g. Adjusted Base Contract Price. If CRS exercises this option, then the combined net generation cost paid to CRS and CG&E will be an amount equivalent to Big G, plus FPP (including emission allowances) plus IMF up to 4% of little g. In addition, there will be transmission charges to be paid to CRS as set forth in Exhibit B.

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 January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").

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- 4.2 Agreement Termination. This Agreement terminates if the Commission in the ongoing CG&E fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in CG&E's service territory served by any Cinergy company. This Agreement shall also terminate if a court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement. Before termination of this Agreement, the Parties agree to use best efforts to fulfill the intent of this Agreement by negotiating amendments to this Agreement that put the Parties in substantially the same overall economic positions as created under the PUCO's Order dated November 23, 2004 in Case No. 03-93-EL-ATA and this Agreement.
- 4.3 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. CRS shall submit the Option Payment to BP by check or wire transfer within forty-five (45) days after the end of each calendar year quarter. The payment shall be submitted to an account or address designated by BP:

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 materially 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 five (5) Business Days after written notice 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;

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- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice 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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

ARTICLE VII DUTY TO MITIGATE

- 7.1 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.
- 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

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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 BP. 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 ninety (90) 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) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could

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materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) 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 (h) 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 BP'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. 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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone - 513-287-2633
Fax - 513-287-1902

To BP:

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suite 1510

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Cincinnati, Ohio 45202
Ph: 513.421.2255 Fax: 513.421.2764

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, leaders, 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 the agreement between CRS and BP dated November 22, 2004. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

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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

BP

By: 

By: 

Title: Regulatory and Legislative

Title: Energy & Electrical Systems Manager

Date: May 13, 2005

Date: April 1, 2005

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TRADE SECRET**Exhibit A:****Customer Group: BP Products North America
Quarterly Option Payment Calculation**

The CRS option payment made quarterly for the period January 1, 2005 through December 31, 2008 or the date upon which the option is exercised whichever comes first, will be equivalent to the following calculation:

The actual amount paid by BP Products North America to The Cincinnati Gas and Electric Company during the applicable calendar quarter under its market-based standard service offer (MBSSO) generation rate approved by the Commission in Case No. 03-93-EL-ATA. The MBSSO generation rate includes all charges related to generation service, but excludes transmission and distribution.

Less the following amount:

The applicable tariffed unbundled generation rate approved by the Commission in Case No. 99-1658-EL-ETP and also known as "Big G" shown in the tariff schedule below:

| Tariff Schedule | Demand Charge (\$ per kW) | | | Energy Charge (\$ per kWh) | | |
|-----------------|---------------------------|-------------|------------|----------------------------|-------------|------------|
| | First Step | Second Step | Additional | First Step | Second Step | Additional |
| DM ¹ | N/A | N/A | N/A | \$0.070728 | \$0.018173 | \$0.009004 |
| DP | \$6.9150 | \$5.4450 | N/A | \$0.028892 | \$0.017782 | N/A |
| DS | \$7.6574 | \$6.0574 | N/A | \$0.028568 | \$0.016366 | N/A |
| TS | \$8.1830 | \$6.0430 | N/A | \$0.019994 | \$0.016481 | N/A |

¹ DM only shows summer seasonal rates

Plus

Fuel and Purchase Power (FPP) - including Emission Allowance Expense

Plus

Infrastructure Maintenance Fund (IMF) up to an amount equal to 4% of "little g"

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TRADE SECRET**EXHIBIT B:****Customer Group: BP Products North America
CRS Generation and Transmission Rates for Former Rate DM Standard
Service Customers****Net Monthly Generation And Transmission Bill Will Be The Following Plus IMF Up To 4% Of Little g****Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):****Generation Charges****(a) Summer**

| | |
|----------------------------------|--------------------|
| First 2,800 kilowatt-hours | \$0.058562 per kWh |
| Next 3,200 kilowatt-hours | \$0.014952 per kWh |
| Additional kilowatt-hours | \$0.006520 per kWh |

(b) Winter

| | |
|----------------------------------|--------------------|
| First 2,800 kilowatt-hours | \$0.046480 per kWh |
| Next 3,200 kilowatt-hours | \$0.014969 per kWh |
| Additional kilowatt-hours | \$0.006191 per kWh |

(c) Fuel Charge**The Fuel Charge shall be equal to the Fuel and Purchase Power (PPP) charge including Emission Allowance Expense imposed by CG&E.****Transmission Charges****Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:**

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

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EXHIBIT B:

**Customer Group: BP Products North America
CRS Generation and Transmission Rates for Former Rate DS Standard Service
Customers**

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$1.6574 per kW
Additional kilowatts \$6.0574 per kW

(b) Energy Charge

Billing Demand times 300 \$4.819576 per kWh
Additional kilowatt-hours \$0.046266 per kWh

(c) Fuel Charge

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge including Emission Allowance Expense imposed by CG&E.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (4) Network Transmission Services
- (5) MISO Schedule Charges
- (6) Net Congestion Charges

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Exhibit C:
Customer Group: BP Products North America
Customer Account List

This agreement pertains to the following BP Products North America accounts:

[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

MERCY HOSPITAL OF FAIRFIELD

This Option Agreement (the "Agreement") is entered into as of this 29 day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Mercy Hospital of Fairfield ("Counterparty"), a Ohio corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Mercy Hospital of Fairfield is a member of the Ohio Hospitals Association 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 Counterparty's combined maximum demand for all

Cinergy Corporate Records

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of Counterparty's accounts as of January 1, 2005.

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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, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"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. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III CRS 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. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
 - 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

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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. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- c. Term. The term of the power sale agreement shall be through December 31, 2008.

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 January 1, 2005 through and including December 31, 2008, 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. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:
- ROB FELDBAUER V.P. OPS.
MERCY FAIRFIELD [insert account information]
3000 MACK RD.
FAIRFIELD, OHIO
45014

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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

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

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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

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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

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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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202
Phone - 513-287-2633
Fax - 513-287-1902

To Counterparty:

Dick Wiese
Director Facilities Management
Mercy Hospital Clermont
3000 Hospital Drive
Batavia, OH 45103-1998
Phone - 513-732-8568

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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-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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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: [Signature]

Title: VP, Retail Council

Date: 1/25/05

By: Dick Wiese

Title: DIRECTOR FACILITIES

Date: 12/29/04

As to clause 9.7:

CINERGY CORP.

By: [Signature]

Title: VP & Legal Counsel

Date: Dec 25, 2005

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Exhibit A:
Customer Group: Mercy Hospital of Fairfield
Quarterly Option Payment Calculation

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mil per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) – excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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EXHIBIT B:
Customer Group: Mercy Hospital of Fairfield
CRS Generation Rates for Former Rate DS Standard Service Customers

Not Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$7.6574 per kW
Additional kilowatts \$6.0574 per kW

(b) Energy Charge

Billing Demand times 300 \$0.018576 per kWh
Additional kilowatt-hours \$0.015266 per kWh

Emission Allowance Charges

Customer will pay monthly an amount equivalent to the emission allowance expense component of the FUCO approved CG&E fuel clause.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

Rate Stabilization Charge

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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Exhibit C:
Customer Group: Mercy Hospital of Fairfield
Customer Account List

This agreement pertains to the following Mercy Hospital of Fairfield accounts:

[REDACTED]

OUR RECORDS SHOW THIS NUMBER IS:

[REDACTED]

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OPTION AGREEMENT

BY AND BETWEEN

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CINERGY RETAIL SALES, LLC

AND

TRI-HEALTH HOSPITALS

This Option Agreement (the "Agreement") is entered into as of this 29th day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Tri-Health Hospitals ("Counterparty"), a corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Tri-Health Hospitals is a member of the Ohio Hospitals Association and for the purposes of this Agreement consists of Bethesda North Hospital and Good Samaritan Hospital, which are 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.

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"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all of Counterparty's accounts as of January 1, 2005.

"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, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"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

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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. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III CRS 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. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
 - 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.

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- 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. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008.

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 January 1, 2005 through and including December 31, 2008, 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. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

[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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

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

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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,

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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

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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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone - 513-287-2633
Fax - 513-287-1902

To Counterparty:

Rich Hertlein
Bethesda North Hospital
10500 Montgomery Road
Cincinnati, Ohio 45242

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(513) 745-1275

OF

Ken Knight

Good Samaritan Hospital

375 Dixmyth Avenue

Cincinnati, Ohio 45220

(513) 672-4792

- 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-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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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

By: [Signature]
Title: VP General Counsel Commercial Business Unit
Date: 1/25/05

COUNTERPARTY

By: [Signature]
Title: Executive Vice President/COO
Date: 12/30/04

As to clause 9.7:

CINERGY CORP.

By: [Signature]
Title: VP & GEN. COUNSEL
Date: JAN. 25, 2005

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Exhibit A:
Customer Group: Tri-Health Hospitals
Quarterly Option Payment Calculation

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "title g"
- Electric Choice Inefficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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EXHIBIT B:
Customer Group: Tri-Health Hospitals
CRS Generation and Transmission Rates for former Rate DP Standard Service Customers

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh);

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$7.6574 per kW
Additional kilowatts \$6.0574 per kW

(b) Energy Charge

Billing Demand times 300 \$0.019576 per kWh
Additional kilowatt-hours \$0.016266 per kWh

Emission Allowance Charges

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCD approved CG&E fuel clause

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

Rate Stabilization Charge

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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Exhibit C:
Customer Group: Tri-Health Hospitals
Customer Account List

This agreement pertains to the following Bethesda Hospital accounts:

[REDACTED]

This agreement pertains to the following Good Samaritan Hospital account:

[REDACTED]

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OPTION AGREEMENT

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

MERCY FRANCISCAN HOSPITAL WESTERN HILLS

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This Option Agreement (the "Agreement") is entered into as of this 29 day of DECEMBER 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Mercy Franciscan Hospital Western Hills ("Counterparty"), a Ohio corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Mercy Franciscan Hospital Western Hills is a member of the Ohio Hospitals Association 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 Counterparty's combined maximum demand for all

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of Counterparty's accounts as of January 1, 2005.

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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, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"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. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III CRS 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. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
 - 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

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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. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- c. Term. The term of the power sale agreement shall be through December 31, 2008.

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 January 1, 2005 through and including December 31, 2008, 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. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

(insert account information)

JDE LUKRING
DIRECTOR FACILITIES
MERCY FRANCISCAN HOSPITAL
WESTERN HILLS
3131 QUEEN CITY AV.
CINCINNATI, OHIO
45238

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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

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

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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 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

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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

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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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202
Phone - 513-287-2633
Fax - 513-287-1902

To Counterparty:

Dick Wiese
Director Facilities Management
Mercy Hospital Clermont
3000 Hospital Drive
Batavia, OH 45103-1998
Phone - 513-732-8568

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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-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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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: [Signature]
Title: VP of General Counsel
Date: 1/25/05

DICK WIESE
By: [Signature]
Title: DIRECTOR FACILITIES
Date: 12/29/04

As to clause 9.7:

CINERGY CORP.
By: [Signature]
Title: VP & Gen Counsel
Date: Jan 25, 2005

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Exhibit A:
Customer Group: Mercy Franciscan Hospital Western Hills
Quarterly Option Payment Calculation

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (PPP) -- excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "line g".
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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EXHIBIT B:

**Customer Group: Mercy Franciscan Hospital Western Hills
CRS Generation and Transmission Rates for former Rate DP Standard
Service Customers**

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$6.9150 per kW
Additional kilowatts \$5.4450 per kW

(b) Energy Charge

Billing Demand times 300 \$0.821048 per kWh
Additional kilowatt-hours \$0.016682 per kWh

Emission Allowance Charges

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

Rate Stabilization Charge

Cloergy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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Exhibit C:
Customer Group: Mercy Franciscan Hospital Western Hills
Customer Account List

This agreement pertains to the following Mercy Franciscan Hospital Western Hills accounts:

[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

MIDDLETOWN REGIONAL HOSPITAL

This Option Agreement (the "Agreement") is entered into as of this 11 day of January, 2004-2005 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Middletown Regional Hospital ("Counterparty"), a _____ corporation (each individually a "Party" or collectively the "Parties").

RECIPIENTS

WHEREAS, Middletown Regional Hospital is a member of the Ohio Hospitals Association 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 Counterparty's combined maximum demand for all

Cinergy Corporate Records

04016275



Document Code _____

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of Counterparty's accounts as of January 1, 2005.

"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, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"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. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III CRS 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. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
 - 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

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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. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- e. Term. The term of the power sale agreement shall be through December 31, 2008.

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 January 1, 2005 through and including December 31, 2008, 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. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

(insert account information) Middletown Regional Hospital
105 McKnight Dr.
Middletown, OH 45044
ATTN: Jim Faze

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:

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- 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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

ARTICLE VII
LIMITATIONS; DUTY TO MITIGATE

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

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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

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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

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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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202
Phone - 513-287-2633
Fax - 513-287-1902

To Counterparty:

John McKimney
Phone - 800-338-4057
Or

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Jim Faze
Phone - 513-428-5102

- 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-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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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: [Signature]
Title: VP General Counsel
Date: 1/25/05

By: [Signature]
Title: Director, Plant Ops
Date: 1/11/05

As to clause 9.7:

CINERGY CORP.
By: [Signature]
Title: VP & Gen. Counsel
Date: Jan 25, 2005

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Exhibit A:
Customer Group: Middletown Regional Hospital
Quarterly Option Payment Calculation

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice: Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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EXHIBIT B:

**Customer Group: Middletown Regional Hospital
CRS Generation and Transmission Rates for former Rate DP Standard Service
Customers**

Net Monthly Bill

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(a) Demand Charge

First 1,000 kilowatts \$7.6574 per kW
Additional kilowatts \$6.0574 per kW

(b) Energy Charge

Billing Demand times 300 \$0.019576 per kWh
Additional kilowatt-hours \$0.016266 per kWh

Emission Allowance Charges

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel charge.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

Rate Stabilization Charge

Geacory Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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Exhibit C:
Customer Group: Middletown Regional Hospital
Customer Account List

This agreement pertains to the following Middletown Regional Hospital accounts:

[REDACTED]

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OPTION AGREEMENT
BY AND BETWEEN
CINERGY RETAIL SALES, LLC
AND
FORD MOTOR COMPANY

This Option Agreement (the "Agreement") is entered into as of this 12 day of January 2005 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Ford Motor Company ("Ford"), a Delaware corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Ford operates manufacturing plants in Southern Ohio and purchases electric power service from The Cincinnati Gas & Electric Company (CG&E) on metered accounts listed on Exhibit C.

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 Ford desire to establish terms and conditions 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

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Cinergy Corporate Records

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ownership of ten (10) percent or more.

"Base Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Ford to CRS for the purchase of Generation and Transmission service under this Agreement.

"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.

"Maximum Demand" means Ford's combined maximum annual demands for all of Ford's accounts listed on Exhibit C with Cincinnati Gas & Electric ("CG&E") for the twelve months ending December 31, 2004.

"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.

"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 that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by Ford is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Ford shall purchase all of its retail Energy requirements for its facility from CRS and that Ford shall not resell any of the Energy provided hereunder to any third party.

"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 Ford to the Delivery Point.

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ARTICLE II
OPTION

- 2.1 Ford currently purchases its generation electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs or will provide notice by December 30, 2004 that it will purchase generation electric service from CG&E starting no later than December 31, 2005 in accordance with applicable CG&E tariff requirements. Ford hereby grants to CRS the exclusive option, upon thirty (30) days notice, to provide generation electric service for all of Ford's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option"). In the event that an Electric Choice Insufficient Return Notice Fee is incurred by Ford due to switching back to CG&E standard tariffed service prior to January 31, 2005, an amount equivalent to said fee will be paid to Ford by CRS.
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Ford granting CRS this option, CRS agrees to pay Ford each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). The Parties agree that if Ford defaults or is delinquent, after any applicable cure period, in any of its payments to any Cinergy affiliated company for any service provided to Ford, then CRS has the right to offset the Option Payment due hereunder with any amounts that are owed by Ford to the Cinergy affiliated company.
- 2.4 Because this is an exclusive Option, in the event Ford leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, a power sale agreement between CRS and Ford will be negotiated. The power sale agreement shall include generally accepted terms and conditions relating to the sale of competitive retail electric generation service, including, among others, the following terms:
- a. Energy Quantity and Type. CRS shall provide Ford with Firm, Full

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Requirements Energy and Capacity up to 3 MWs greater than Ford's Maximum Demand ("Quantity"). If during the Term of this Agreement, Ford has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Ford above the Quantity set forth herein.

- 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. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.
- c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.
- d. Changes 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. Neither CRS nor Ford shall seek to modify the Base Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008.
- f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.
- g. Adjusted Base Contract Price. If CRS exercises this option, then the combined net generation cost paid to CRS and CG&E will be an amount equivalent to Big G, plus FPP (excluding emission allowances) plus IMF up to 4% of little g. In addition, there will be transmission charges to be paid to CRS as set forth in Exhibit B.

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 January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of

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this Agreement ("Term").

- 4.2 Agreement Termination. This Agreement terminates if the Commission in the ongoing CG&E fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in CG&E's service territory served by any Cinergy company. This Agreement shall also terminate if a court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement. Before termination of this Agreement, the Parties agree to use best efforts to fulfill the intent of this Agreement by negotiating amendments to this Agreement that put the Parties in substantially the same overall economic positions as created under the PUCO's Order dated November 23, 2004 in Case No. 03-93-EL-ATA and this Agreement.
- 4.3 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. CRS shall submit the Option Payment to Ford by check or wire transfer within forty-five (45) days after the end of each calendar year quarter. The payment shall be submitted to an account or address designated by Ford:

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 materially 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 five (5) Business Days after written notice 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

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contemplated by it or, to its knowledge, threatened against it; (f) 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; (g) 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 (h) 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 Ford'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. 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:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone - 513-287-2633
Fax - 513-287-1902

To Ford:

David F. Boehm, Esq.
Michael L. Kurtz, Esq.

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Boehm, Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513.421.2255 Fax: 513.421.2764

- 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 the agreement between CRS and Ford dated November 22, 2004. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

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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

FORD

By: [Signature]
Title: VP + General Counsel
Date: MAY 2, 2005

By: [Signature]
Title: Director, E&S
Date: 1/21/05

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CONFIDENTIAL PROPRIETARY
TRADE SECRET**Exhibit A:****Customer Group: Ford Motor Company
Quarterly Option Payment Calculation**

The CRS option payment made quarterly for the period January 1, 2005 through December 31, 2008 or the date upon which the option is exercised whichever comes first, will be equivalent to the following calculation:

The actual amount paid by Ford Motor Company to The Cincinnati Gas and Electric Company during the applicable calendar quarter under its market-based standard service offer (MBSSO) generation rate approved by the Commission in Case No. 03-93-EL-ATA. The MBSSO generation rate includes all charges related to generation service, but excludes transmission and distribution.

Less the following amount:

The applicable tariffed unbundled generation rate approved by the Commission in Case No. 99-1658-JL-BTP and also known as "Big G" shown in the tariff schedule below:

| Tariff Schedule | Demand Charge (\$ per kW) | | | Energy Charge (\$ per kWh) | | |
|-----------------|---------------------------|-------------|------------|----------------------------|-------------|------------|
| | First Step | Second Step | Additional | First Step | Second Step | Additional |
| DM | N/A | N/A | N/A | \$0.070728 | \$0.018173 | \$0.009004 |
| DP | \$6.9150 | \$5.4450 | N/A | \$0.028898 | \$0.017782 | N/A |
| DS | \$7.6574 | \$6.0574 | N/A | \$0.028568 | \$0.016366 | N/A |
| TS | \$8.3830 | \$6.0430 | N/A | \$0.019994 | \$0.016481 | N/A |

1 DM only shows summer seasonal rates

Plus

Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense

Plus

Infrastructure Maintenance Fund (IMF) up to an amount equal to 4% of "little g"

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EXHIBIT B:

**Customer Group: Ford Motor Company
CRS Generation and Transmission Rates for Former Rate TS Standard Service
Customers**

Net Monthly Generation And Transmission Bill Will Be The Following Plus IMF Up To 4% Of Little g

Computed in accordance with the following charges. (Kilovolt amperes are abbreviated as KVA and kilowatt-hours are abbreviated as kWh);

Generation Charges

(a) Demand Charge

First 50,000 KVA \$8.3830 per KVA
Additional KVA \$6.0430 per KVA

(b) Energy Charge

Billing Demand times 300 \$0.014404 per kWh
Additional kilowatt-hours \$0.016381 per kWh

(c) Fuel Charge

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission Allowance Expense imposed by CG&E.

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

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Exhibit C:
Customer Group: Ford Motor Company
Customer Account List

This agreement pertains to the following Ford Motor Company accounts:

[REDACTED] Sharonville
[REDACTED] Batavia

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OPTION AGREEMENT
BY AND BETWEEN
CINERGY RETAIL SALES, LLC

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AND

SUMMIT BEHAVIORAL HEALTHCARE

This Option Agreement (the "Agreement") is entered into as of this 14th day of January 2005 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Summit Behavioral Healthcare ("Counterparty"), an agency of the State of Ohio (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Summit Behavioral Healthcare is a member of the Ohio Hospitals Association 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.

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"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all of Counterparty's accounts as of January 1, 2005.

"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, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"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.

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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. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III
CRS 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. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.

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- 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. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale shall be through June 30, 2005, renewable by mutual agreement for successive periods running from July 1, 2005 through June 30, 2007 and from July 1, 2007 through December 31, 2008.

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 January 1, 2005 through and including December 31, 2008, 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. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

Summit Behavioral Healthcare
Attn: Fiscal Director
1101 Summit Rd
Cincinnati, Ohio 45237

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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, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

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- 6.3 Other Termination Events. Termination may occur upon thirty 30 days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

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.

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