

# Confidential Release

**Case Number: 95-1137-EL-AEC**

**Date of Confidential Document:  
December 8, 1995**

**Today's Date:  
August 24, 2009**

**Electric power supply agreement filed on behalf of  
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Courthouse Plaza Southwest  
P.O. Box 1247, Dayton, Ohio 45401

To: Ms. Daisy Crockron  
Chief, Docketing Division  
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180 East Broad Street  
Columbus, OH 43215-3793

CASE NO. 95- 1137 -EL-AEC

CONFIDENTIAL

12/8/95

**THE DAYTON POWER AND LIGHT COMPANY  
ELECTRIC POWER SUPPLY AGREEMENT  
WITH  
GENERAL MOTORS CORPORATION**

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**THE DAYTON POWER AND LIGHT COMPANY  
ELECTRIC POWER SUPPLY AGREEMENT  
WITH  
GENERAL MOTORS CORPORATION**

THIS ELECTRIC POWER SUPPLY AGREEMENT ("Agreement") is hereby made and entered into this 22<sup>ND</sup> day of November, 1995 by and between THE DAYTON POWER AND LIGHT COMPANY ("DP&L"), incorporated in the State of Ohio, and GENERAL MOTORS CORPORATION ("Customer"), incorporated in the State of Michigan.

**WITNESSETH**

WHEREAS, DP&L, a regulated public utility, is engaged in the production, transmission, and distribution of electric power and energy and sale thereof in the State of Ohio; and

WHEREAS, Customer operates Facilities engaged in manufacturing within DP&L's service territory; and

WHEREAS, Customer desires to maintain a long term supply of electric power at competitive and predictable prices; and

WHEREAS, DP&L desires to retain Customer's business and the associated benefits such business provides to the economy of West Central Ohio; and

WHEREAS, Customer desires to continue to receive electric power and energy from DP&L for use in its Facilities under the terms and conditions set forth herein; and

WHEREAS, the State of Ohio has issued the Ohio Energy Strategy which has lead to discussions on "issues concerning competition in the electric industry and promoting increased competitive options for Ohio businesses that do not unduly harm the interests of utility company shareholders or ratepayers"; and

WHEREAS, DP&L desires to offer its customers Non-Firm Electric Power Service as a means of fulfilling its least cost planning obligation while providing customers with additional service options that enhance their ability to make effective production decisions; and

WHEREAS, Customer desires to increase the level of Non-Firm Electric Power Service that it receives from DP&L; and

WHEREAS, Customer, due to the unique size and characteristics of its load, may not always have the ability to manage its load at a single location whenever DP&L would desire that it do so; and

WHEREAS, the Parties recognize that increasing Customer's level of Non-Firm Electric Power Service can best be accomplished under an arrangement that allows Customer to manage its load among all Facilities identified herein and served by DP&L.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties hereto agree as follows:

### **SECTION 1 - DEFINITIONS**

- 1.1 Whenever used herein, the following terms shall have the respective meanings set forth below, unless a different meaning is plainly required by the context.
- 1.2 "Best Efforts" shall mean actions of DP&L that are reasonable, prudent, and consistent with good utility practice.
- 1.3 "Designated Representative" shall mean the individual(s) (primary and/or backup) designated by Customer as the point of communication between DP&L and Customer, as identified under Section 9.2
- 1.4 "Emergency Electrical Procedures" shall mean the approved procedures identified in DP&L's PUCO No. 16 General Service Rate Schedules.
- 1.5 "Facilities" shall mean all of Customer's manufacturing plants, and "Facility" shall mean any individual Customer manufacturing plant, located in DP&L's service territory, identified under Appendix A.
- 1.6 "Firm Billing Demand" shall mean Customer's Firm Demand, identified under Appendix A.
- 1.7 "Firm Demand" shall mean the maximum level of demand that Customer is entitled to receive as Firm Electric Power Service, as identified under Appendix A.
- 1.8 "Firm Electric Power Service" shall mean service under the DP&L PUCO No. 16 General Service Rate Schedules applicable to each Customer Facility.
- 1.9 "Load Management Order" shall mean notice given by DP&L to Customer that it may not exceed its Firm Demand during the clock hours specified by DP&L due to generation-related constraints on the DP&L electric system during which Customer may purchase Replacement Power under Section 8.
- 1.10 "Non-Coincident Demand" shall mean the sum of each Facility's monthly maximum demand.
- 1.11 "Non-Firm Billing Demand" shall mean Total Billing Demand less Firm Billing Demand.
- 1.12 "Non-Firm Demand" shall mean the level of demand that Customer is entitled to receive as Non-Firm Electric Power Service.

- 1.13 "Non-Firm Electric Power Service" shall mean service under the terms and conditions set forth herein as they apply to all service other than Firm Electric Power Service.
- 1.14 "Order To Curtail" shall mean notice given by DP&L to Customer that it may not exceed its Firm Demand during the clock hours specified by DP&L due to the system constraints identified under Section 7.1 during which Customer may not purchase Replacement Power under Section 8.
- 1.15 "Party" shall mean Customer or DP&L individually, and "Parties" shall mean Customer and DP&L collectively.
- 1.16 "PUCO" shall mean the Public Utilities Commission of Ohio or its successor.
- 1.17 "PUCO No. 16 General Service Rate Schedules" refers to the DP&L Electric Service Schedule of Rates, Classifications, Rules and Regulations, or successors to said schedules, as approved by and on file with the PUCO, or specific versions of said schedules as set forth herein.
- 1.18 "Replacement Power" shall mean power generated by DP&L or purchased by DP&L from another supplier and delivered to Customer for use at any or all of its Facilities in any period during which a Load Management Order is in effect. It is understood that the definition of Replacement Power may change during the Term of this Agreement as a result of the administration of Appendix B, Section B8.
- 1.19 "Total Billing Demand" shall mean that demand defined under Section 6.1.
- 1.20 "Total Demand" shall mean the maximum level of Non-Coincident Demand, Firm Demand plus Non-Firm Demand, that Customer is entitled to receive as specified under Appendix A.
- 1.21 Terms such as "hereof," "herein," "hereunder," and other similar compounds of the word "here" shall mean and refer to this entire Agreement rather than any particular part.
- 1.22 Certain other definitions, as required, appear in subsequent parts of this Agreement.

## SECTION 2 - APPLICABILITY

- 2.1 Facilities - This Agreement shall apply to the Customer Facilities, located within DP&L's service territory, identified under Appendix A. If, for any reason, this Agreement ceases to apply to any individual Facility, this Agreement shall remain in full force and effect for the remaining Facilities.
- 2.2 Operational Relationships - Customer represents that it owns or operates, under a lease arrangement, the Facilities identified under Appendix A. Customer will notify DP&L of any change in ownership or in the operational relationship that exists between Customer and the Facilities served under this Agreement. Service shall continue under this Agreement subsequent to any change in ownership or operational relationship and Customer may elect

to: a) assign the terms and conditions of this Agreement to the Facility or Facilities subject to said change, b) waive assignment and continue to receive service at the Firm Demand specified under Appendix A prior to said change provided Customer may reallocate this Firm Demand among other Facilities under Section 5.3, or c) reallocate Firm Demand between the remaining Facilities and the Facility or Facilities subject to said change provided that the aggregate Firm Demand for all Facilities referenced in the original Appendix A and the Facility or Facilities subject to said change contract for its portion of the aggregate Firm Demand for at least the remaining Term of this Agreement. Any changes resulting from this Section shall be made in accordance with Section 14.9, as an amendment to and incorporated under Appendix A.

2.3 Added Facilities - Customer may elect to add facilities to be served under this Agreement if:

- a) the facilities are owned or operated by Customer under a lease arrangement;
- b) the facilities are otherwise eligible to take service under one of the DP&L PUCO No. 16 General Service Rate Schedules that apply to the Facilities served under this Agreement; and
- c) Customer, by adding facilities, continues to meet the obligations set forth herein.

Said addition shall be made in accordance with Section 14.9, as an amendment to and incorporated under Appendix A.

2.4 Limitation - This Agreement applies only to the Facilities identified under Appendix A. DP&L represents that this Agreement relates to a unique situation and is not applicable to any other customer that receives or wishes to receive electric service in the DP&L service territory.

### SECTION 3 - TERM

- 3.1 Term - This Agreement shall commence on the first day of the first billing month after January 1, 1996 and shall remain in effect for a period of five (5) years ("Term"). Customer may elect to extend this Term for a period of one (1) year upon six (6) months written notice prior to the expiration date of this Term. Customer may elect to receive Non-Firm Electric Power Service for all Non-Firm Demand served hereunder after the expiration of this Agreement for a period of five (5) years at prices and terms and conditions to be negotiated prior to said expiration.
- 3.2 Consequences of Termination - If, for any reason, Customer terminates this Agreement before its Term is complete, Customer shall, prior to termination, pay to DP&L all customer charges and demand charges for Firm Electric Power Service, as stated under Sections 6.2a and 6.2b, for each month remaining until the Term is complete.



**SECTION 4 - ELECTRIC POWER REQUIREMENTS**

- 4.1 Electric Power Required - Subject to the terms and conditions set forth herein, DP&L agrees to provide to Customer, during the Term of this Agreement, and Customer agrees to accept and pay for, all of the electric power required by the Facilities identified under Appendix A.

**SECTION 5 - POWER SERVICES**

- 5.1 Total Demand - DP&L shall provide Customer with the Non-Coincident Demand specified under Appendix A.
- 5.2 Firm Demand and Firm Electric Power Service - DP&L shall provide Customer with Firm Electric Power Service based on the Firm Demand stated in kilowatts specified under Appendix A. Firm Electric Power Service entitles Customer to the same rights and service priority as other DP&L customers that receive firm service under any of DP&L's PUCO No. 16 General Service Rate Schedules. For billing purposes, Customer's Firm Demand shall be distributed among each Facility as provided under Appendix A.
- 5.3 Reallocation of Firm Demand - Customer may, no more than once annually, request to reallocate its Firm Demand among Facilities for billing and operational purposes. Requests to reallocate Firm Demand must be received from Customer thirty (30) days prior to first day of any billing month in which said request will take effect. Requests to reallocate Firm Demand among Facilities served at the same voltage level shall not require DP&L's consent. Requests to reallocate Firm Demand among Facilities served at different voltage levels shall be implemented upon DP&L's consent, which consent shall not be unreasonably withheld. Under no circumstances will such reallocation result in a reduction in the aggregate Firm Demand identified herein. Reallocation of Firm Demand shall be accomplished in accordance with Section 14.9, as an amendment to and incorporated under Appendix A.
- 5.4 Non-Firm Demand and Non-Firm Electric Power Service - DP&L shall provide Customer with Non-Firm Electric Power Service for all load in excess of the Firm Demand identified herein, up to Customer's Total Demand. Non-Firm Electric Power Service entitles Customer to service on DP&L's electric system in all periods other than those periods during which load curtailment or management is required under Section 7.
- 5.5 Additional Demand - DP&L shall increase Customer's Total Demand under the following circumstances:
- a) If, based upon a review on each anniversary of this Agreement's signing, Customer's Non-Coincident Demand during the prior twelve (12) months exceeds Customer's Total Demand, DP&L shall increase said Total Demand for the remaining Term of this Agreement. Such increase shall be equal to the difference between Customer's highest Non-Coincident Demand and the Total Demand in effect during the twelve (12) month period under review and shall be allocated between Firm Demand and Non-Firm Demand on a pro-rata basis. Firm Demand shall be allocated to each Facility based on the existing

ratio of each Facility's firm demand to aggregate Firm Demand. Said addition shall be made in accordance with Section 14.9, as an amendment to and incorporated under Appendix A.

- b) If Customer seeks, under Section 2.3, to add Facilities to be served under this Agreement, the amount of Firm Demand and Non-Firm Demand to be served by DP&L shall be negotiated by the Parties. Said addition shall be made in accordance with Section 14.9, as an amendment to and incorporated under Appendix A.

- 5.6 Return to Firm Service - DP&L shall accommodate a return to Firm Electric Power Service for all or a portion of Customer's demand previously supplied as Non-Firm Electric Power Service at the rates, terms and conditions set forth in its then-effective PUCO No. 16 General Service Rate Schedules upon three (3) years' written notice of Customer's intent to return. DP&L shall accommodate a return to Firm Electric Power Service at said rates with less than three (3) years' notice provided the cycle time for meeting Customer's requirement facilitates such shorter notice. In cases where Customer provides less than three (3) years' notice of its intent to return to Firm Electric Power Service and DP&L must incur costs higher than system average, DP&L shall endeavor to use its Best Efforts to accommodate the return provided that Customer agrees to pay for all incremental costs incurred by DP&L. A return to Firm Electric Power Service prior to the end of the Term of this Agreement shall not be considered a termination hereunder and Section 3.2 shall not apply.

## SECTION 6 - BILLING DETERMINANTS, RATES & CHARGES

- 6.1 Total Billing Demand - Each Facility's "Monthly Billing Demand" shall be the greatest thirty (30) minute integrated demand, ascertained in kilowatts by instruments suitable for the purpose. Such Monthly Billing Demand, absent a Force Majeure condition, shall be the greatest of the following:
  - a) Seventy-five percent (75%) of the greatest off-peak demand occurring during the billing month, either within the period between 8:00 p.m. of one day and 8:00 a.m. of the following day, or on any Saturday or Sunday, or on the following observed legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day; or
  - b) One hundred percent (100%) of the greatest on-peak demand occurring during the billing month at any time not within the period and not on the legal holidays indicated in Section 6.1a above; or
  - c) Seventy-five percent (75%) of the greatest of such off-peak or on-peak demand as used for billing in the months of June, July, August, December, January, and February during the past eleven month period prior to the current billing month.

Total Billing Demand for the month shall be the sum of each individual Facility's Monthly Billing Demand.

6.2 Rates and Charges - Customer shall pay DP&L the following rates and charges for all service provided hereunder:

- a) Customer Charges - Customer shall pay \$95 each month for each Facility served at primary-level voltage and \$170 each month for each Facility served at primary-substation-level voltage.
- b) Demand Charges for Firm Electric Power Service - Customer shall pay monthly demand charges for Firm Electric Power Service as follows: \$13.8623 per kilowatt for each Facility served at primary-level voltage and \$13.1100 per kilowatt for each Facility served at primary-substation-level voltage. Monthly demand charges for Firm Electric Power Service shall be applied to Customer's Firm Billing Demand.
- c) Demand Charges for Non-Firm Electric Power Service - Customer shall pay monthly demand charges for Non-Firm Electric Power Service as follows: \$9.0105 for each Facility served at primary-level voltage and \$8.5215 for each Facility served at primary-substation-level voltage. Monthly demand charges for Non-Firm Electric Power Service shall be applied to Customer's Non-Firm Billing Demand.
- d) Reactive Demand Charges - Customer shall pay monthly reactive demand charges on all kilovars registered during the billing month at a rate of \$0.30 per kilovar.
- e) Energy Charges - Customer shall pay monthly energy charges on all kilowatt-hours consumed during the billing month at rates of \$0.00824 per kilowatt-hour and \$0.00727 per kilowatt-hour for primary-level voltage service and primary-substation-level voltage service, respectively.
- f) Electric Fuel Component ("EFC") - Customer shall pay DP&L's prevailing EFC rate on all kilowatt-hours consumed during the billing month except on those kilowatt-hours consumed as Replacement Power during a Load Management Order.
- g) Percentage of Income Payment Plan ("PIPP") - Customer shall pay DP&L's prevailing PIPP rate on all kilowatt-hours consumed during the billing month.
- h) "Emissions Fee Recovery Rider" - Customer shall pay DP&L's prevailing Emissions Fee Recovery Rider on file with the PUCO as such rider may exist within the Term of this Agreement.
- i) Energy Credit - Customer shall receive a credit of \$0.002 per kilowatt-hour for all Replacement Power purchased hereunder.

6.3 Price Guarantee - The rates and charges identified in Section 6.2a, b, c, d, and e shall remain fixed throughout the entire Term of this Agreement. However, said rates and charges, excluding those identified in Section 6.2c, shall be adjusted to reflect any PUCO-approved rate changes, if said changes affect the applicable rates and charges identified above, provided that such new rates result in an overall net benefit to Customer. Said changes shall be made in accordance with Section 14.9.

**SECTION 7 - LOAD CURTAILMENT & MANAGEMENT**

- 7.1 **Order To Curtail** - Upon issuance of an Order To Curtail, Customer will curtail its electric demand to the Firm Demand set forth in Appendix A consistent with DP&L's existing order of curtailment. An Order To Curtail may be issued when:
- a) DP&L's transmission system reaches the limit of its import capability; or
  - b) DP&L's transmission system reaches the limit of its transfer capability; or
  - c) Replacement Power is unavailable; or
  - d) In DP&L's reasonable discretion, system reliability is threatened; or
  - e) DP&L's Emergency Electrical Procedures are in effect.
- 7.2 **Failure to Comply** - Failure to comply with an Order To Curtail may result in the following actions by DP&L:
- a) DP&L may, for the billing month in which said failure occurs, bill Customer for unauthorized service by applying the demand charges for Firm Electric Power Service set forth in Section 6.2b to Customer's Non-Firm Billing Demand.
  - b) DP&L may require Customer to refund the amount of savings earned during the prior eleven (11) billing months that this Agreement was in effect on only the portion of load that exceeds Firm Demand during the Order To Curtail. Customer shall remit payment on the due date of the current bill.
  - c) DP&L may require Customer to pay, on all kilowatt-hours consumed during the Order To Curtail above Customer's Firm Demand, charges at a rate equal to the highest incremental cost of power generated or purchased by DP&L during the Order To Curtail, plus twenty-five percent (25%) of this highest incremental cost.
  - d) DP&L may, at its sole discretion, choose to terminate this Agreement if Customer fails to comply with DP&L's Order To Curtail more than two (2) times.
  - e) In addition to these remedies, DP&L shall be entitled to any appropriate remedy for adverse impacts caused to its system as a result of Customer's failure to comply with an Order To Curtail.

At such time that DP&L notifies Customer of an Order To Curtail, DP&L shall specify the above action(s) that it may elect to take in the event Customer fails to comply. In no event shall DP&L implement or seek to implement any action hereunder that was not disclosed upon notification of an Order To Curtail.

- 7.3 **Load Management Order** - A Load Management Order may be issued for the clock hours during which DP&L's scheduled coal-fired steam generating capacity available is not

sufficient to meet the total power requirements on said generating units, including necessary operating reserve margins. Upon issuance of a Load Management Order, Customer must curtail its electric demand to the Firm Demand set forth under Appendix A or purchase Replacement Power under Section 8.

- 7.4 Notice - DP&L shall notify Customer's Designated Representative prior to an Order To Curtail as specified herein. Except during periods of system emergency, DP&L shall endeavor to provide up to two (2) hours notice prior to an Order To Curtail, but not less than ten (10) minutes. Notice shall be made verbally, with written confirmation to follow via facsimile or other mutually acceptable means. Notice as it relates to a Load Management Order shall be handled in accordance with Appendix B. DP&L shall not be held liable for any loss or damage caused by or resulting from its inability to provide the amount of notice set forth herein.
- 7.5 Conditions for Load Management and Curtailment - Orders To Curtail and Load Management Orders shall not exceed one thousand (1,000) hours per year.
- 7.6 Interruption of Service - In the event that an interruption of service occurs as a result of a system emergency, DP&L will return service as soon as system integrity is restored. Interruptions caused by system emergencies shall not be bound by limits on duration or the maximum hours of interruption set forth in Section 7.5. DP&L shall not be held liable for any loss or damage resulting from any interruption of service that may occur during the Term of this Agreement.
- 7.7 Verification Requests - Upon reasonable request, DP&L shall provide Customer with access to information, records, and other data related to the administration of Orders To Curtail and Load Management Orders.

## SECTION 8 - REPLACEMENT POWER

- 8.1 Availability - Customer may purchase Replacement Power during any period in which a Load Management Order is in effect.
- 8.2 Service Option - Replacement Power shall be administered hereunder in accordance with the service options identified under Appendix B.
- 8.3 Service Obligation - If, during such period when Customer is purchasing Replacement Power, for any reason expressed herein, DP&L notifies Customer that Replacement Power is no longer available, the terms of Section 8 and Appendix B shall cease to apply and Customer must reduce its load to the Firm Demand specified under this Agreement. DP&L shall not be held liable for any loss or damage caused by its inability to provide Replacement Power service hereunder.

- 8.4 Verification - Upon reasonable request, DP&L shall provide Customer with access to information, records, and other data including, but not limited to, an itemization of individual rates and charges related to the administration of Replacement Power hereunder.

### SECTION 9 - NOTICES

- 9.1 Notices - Unless otherwise provided under this Agreement, all notices and communication shall be deemed given to a Party if made by registered or certified mail.
- 9.2 Designated Representative - For purposes of administering this Agreement, Customer's Designated Representatives shall be:

<u>Primary</u>	<u>Backup</u>
<i>Donald S. Poole</i>	<i>Vincent J. Festa</i>
<i>General Motors Corporation</i>	<i>Powertrain-Moraine Engine Plant</i>
<i>Technical Center - MS-E515</i>	<i>4100 Springboro Pike</i>
<i>1435 Cincinnati Street</i>	<i>Moraine, OH, 45439</i>
<i>P.O. Box 1245</i>	
<i>Dayton, OH 45401-1245</i>	
<i>Telephone: 513-455-6471</i>	<i>Telephone: 513-455-2229</i>
<i>Facsimile: 513-455-6048</i>	<i>Facsimile: 513-455-2517</i>

- 9.3 Billing - Billing under this Agreement shall be forwarded to:

*North American Operations*  
*Utility Payment Processing*  
*P.O. Box 2006*  
*Flint, MI 48501-2006*

- 9.4 DP&L - All correspondence from Customer to DP&L shall be made to:

*Account Manager For General Motors Corporation*  
*P.O. Box 8825*  
*Dayton, Ohio 45401*  
*Telephone: 513-643-5029*  
*Facsimile: 513-643-5080*

- 9.5 Changes - Either Party may change the persons to receive notice under Sections 9.2, 9.3, and 9.4 by providing thirty (30) days written notice to the other Party.

### **SECTION 10 - RULES & REGULATIONS**

- 10.1 Unless otherwise provided herein, Customer agrees to abide by the rules and regulations and all terms and conditions of the applicable tariff under which it receives or would receive service and all provisions approved by the PUCO and set forth in DP&L's PUCO No. 16 General Service Rate Schedules.

### **SECTION 11 - BILLING & PAYMENT**

- 11.1 Billing - DP&L shall render one (1) bill each month for the Customer Facilities served under this Agreement. The bill shall distinguish the charges for service provided to Customer at different voltage levels. DP&L shall provide sufficient data to Customer that it may verify the accuracy of charges contained on the bill and allocate said charges to each of its Facilities.
- 11.2 Payment - Payment of the total amount due to DP&L must be received by DP&L or an authorized agent by the date shown on Customer's bill.
- 11.3 Delayed Payment Charge - Failure by Customer to remit payment by the due date will result in an additional charge calculated in accordance with the Delayed Payment Charge specified in DP&L's then-effective PUCO No. 16 General Service Rate Schedules.
- 11.4 Returned Check Charge - A charge shall be added to Customer's bill each time a check is returned by a financial institution. The charge shall be equal to the Returned Check Charge specified in DP&L's then-effective PUCO No. 16 General Service Rate Schedules.
- 11.5 Termination of Billing Rights and Obligations - All rights and obligations accruing to either Party as a result of a dispute or adjustment to a bill calculated under this Agreement shall be terminated one (1) year from the issue date of said bill, provided that the circumstances giving rise to the dispute or adjustment could have reasonably been discovered in sufficient time to seek the adjustment. This termination, however, shall not extinguish a right to an adjustment if such dispute or requested adjustment was initiated within this one (1) year period. In no event shall any rights and obligations accruing to either Party as a result of a dispute or adjustment to a bill calculated under this Agreement extend beyond two (2) years from the issue date of said bill.

## SECTION 12 - METERING

- 12.1 Voltage Level - DP&L will meter Customer's load at the various voltage levels at which Customer receives service for purposes of administering and billing this Agreement. The terms and conditions contained herein are premised upon Customer receiving service at the voltage levels at which it currently receives service. Any changes in service type or voltage level at the Facilities served shall be handled in accordance with Section 14.9.
- 12.2 Metering and Accuracy - DP&L shall be responsible for all metering of electricity supplied to Customer at the points of delivery to Customer's Facilities. Metering and metering accuracy shall be in accordance with DP&L's then-effective PUCO No. 16 General Service Rate Schedules.
- 12.3 Metering Changes - If special metering equipment is required under this Agreement, and the cost of that equipment is not included in the rates and charges set forth in Section 6, Customer shall pay DP&L for the cost of purchasing and installing any special equipment so required. DP&L will provide sufficient documentation to support the cost of such equipment. Nothing provided herein shall preclude the Parties from making separate arrangements for special metering equipment.
- 12.4 Metering Information - DP&L shall provide Customer's Designated Representative with such metering information and data, including real-time information and data pursuant to the services provided under Appendix C, needed to determine electricity operating conditions, demand, and other factors affecting the electricity cost, usage, and requirements of Customer's Facilities. All costs of providing information and data not provided through the services defined under Appendix C shall be borne by Customer.

## SECTION 13 - FORCE MAJEURE

- 13.1 Definition - The term "Force Majeure" shall mean the occurrence or non-occurrence of any act or event that is not reasonably within the control of the claiming Party and which, by the exercise of due diligence, such Party could not have prevented or overcome. Nothing herein shall be construed to require a Party to settle a lockout, work stoppage, or other industrial disturbance in which it may be involved.
- 13.2 Action Required - The Party experiencing a Force Majeure event shall: a) promptly notify the other in writing as to the nature of the Force Majeure situation, and b) use all reasonable diligence, dispatch, and expense to remedy such situation.
- 13.3 Suspension of Obligations - All rights and obligations of the Parties shall be suspended during the term of the Force Majeure event.



**SECTION 14 - MISCELLANEOUS**

- 14.1 **Laws and Regulations** - This Agreement is made and subject to all present and future local, state and federal laws and to the regulations or orders of any state or federal authority having jurisdiction over the matters set forth herein. Performance under this Agreement is conditioned upon its approval by the PUCO and any other such authority that may have jurisdiction over this Agreement. The Parties shall strive to secure and retain such approval. In the event that regulatory approvals are denied or approvals are conditioned in a way that is unacceptable to either Party, the Parties shall determine the extent to which additional action is necessary, provided that either Party may, within ten (10) days of the initial or subsequent order issued by said regulatory authority, void this Agreement. DP&L shall, at Customer's request, take any action necessary to perfect and prosecute an appeal of any decision of any regulatory authority having jurisdiction over this Agreement, provided that Customer agrees to pay the full cost of such appeal.
- 14.2 **Indemnity** - Each Party shall indemnify, hold harmless, and defend the other Party against all claims, liability, costs, or expense for loss, damage, or injury to persons or property in any manner directly or indirectly connected with or growing out of the generation, transmission, or distribution of Firm or Non-Firm Electric Power Service on each Party's side of the point of delivery hereunder.
- 14.3 **Binding Nature** - The terms, conditions, and covenants of this Agreement shall be binding upon and shall inure to the benefit of each of the Parties hereto, their successors, and assigns.
- 14.4 **Assignment** - Either Party may assign this Agreement upon written consent of the other Party, of which consent shall not be unreasonably withheld. Assignment will in no way operate to enlarge, alter, or change the obligations of either Party hereto, their successors, or assigns.
- 14.5 **Waiver** - Failure of either Party to enforce, at any time or for any period of time, any provision of this Agreement shall not be construed as a waiver of any provision or the right of either Party to enforce each and every provision of this Agreement.
- 14.6 **Resignation** - Customer agrees to waive its rights to initiate a decrease in, or change in the design of, DP&L's rates through an application under Section 4905.26 of the Ohio Revised Code or any successor provision during the entire Term of this Agreement.
- 14.7 **Severability** - The Parties understand and agree that the terms and conditions set forth herein constitute an overall rate and service package that may not be acceptable if any individual term or condition of this Agreement is eliminated or modified. In the event that any term or condition of this Agreement is deemed to be illegal, void, unreasonable, or unenforceable, either Party may choose to terminate this Agreement without further obligation hereunder, provided that the Parties agree to work in good faith to first amend this Agreement to the extent necessary to accommodate its continued effectiveness. Where conflicting provisions of any applicable law or regulation may be waived, they are hereby waived by the Parties hereto to the fullest extent permitted such that this Agreement shall be enforced as written.

- 14.8 Headings - The headings and subheadings used in this Agreement are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.
- 14.9 Amendments - Nothing contained herein shall preclude the Parties from amending the terms and conditions of this Agreement. Amendments shall be made in writing and signed by both Parties to this Agreement. Amendments shall be subject to all appropriate regulatory approvals under Section 14.1.
- 14.10 Confidentiality - DP&L believes that portions of this Agreement are proprietary and include confidential information and trade secrets. DP&L shall make the appropriate filings with the PUCO to assert the confidential nature of portions of this Agreement. The Parties shall protect the confidentiality of such portions of this Agreement to the extent that the PUCO orders nondisclosure. When required, the Parties may submit this Agreement, including any information deemed to be confidential, to consultants and contractors performing work on or related to the subject matter of this Agreement, who must agree in writing to protect the confidentiality of such information in the same manner provided herein.
- 14.11 Entire Agreement - This Agreement constitutes the entire Agreement between the Parties with respect to the matters set forth herein. This Agreement supersedes any previous agreement between the Parties, whether written or oral.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers, duly authorized on that behalf, as of the date and year first written above.

WITNESS:

For: THE DAYTON POWER AND LIGHT COMPANY

Richard D. Reid  
RICHARD D. REID (name)

By: Judy W. Lansaw  
JUDY W. LANSAW (name)

Its: GROUP VICE PRESIDENT (title)

WITNESS:

For: GENERAL MOTORS CORPORATION

DARRELL L. ANDERSON  
Darrell L. Anderson (name)

By: John C. Anderson  
John C. Anderson (name)

Its: DIRECTOR-ENERGY OPERATIONS (title)

## APPENDIX A

Facility Name and Address	Account Number	Voltage Level	Allocation of Firm Demand (kW)
a) Delphi Chassis Systems (Dayton) Abbey Avenue Dayton, OH 45417	0000391000	Substation	4,260
b) Delphi Chassis/Interior & Lighting Systems (Vandalia) North Dixie Drive Vandalia, OH 45377	0000392000	Substation	6,550
c) Delphi Harrison Thermal (Springboro) Springboro Pike Dayton, OH 45439	0000395000	Substation	29,920
d) Delphi Chassis Systems (Needmore) Needmore Road Dayton, OH 45424	0000397000	Substation	6,230
e) Delphi Chassis Systems (Wisconsin) Wisconsin Boulevard Dayton, OH 45408	0000398000	Primary	6,370
f) Delphi Chassis Systems (Woodman) Forrer Boulevard Dayton, OH 45420	0000400000	Substation	13,270
Firm Demand	Aggregate	--	66,600
Total Demand			148,000

## APPENDIX B

## REPLACEMENT POWER

- B1. Upon signing this Agreement, Customer shall designate the option under which it shall purchase Replacement Power. Customer's Designated Representative may change the option under which it purchases Replacement Power in any calendar quarter by providing DP&L with written confirmation thirty (30) days prior to the beginning of that quarter. If Customer does not notify DP&L within the time frame stated hereunder, DP&L shall continue to provide Customer with Replacement Power under the previously established option.

Option 1

- B2. Strike Price - To facilitate the scheduling and delivery of Replacement Power during a Load Management Order, Customer shall establish a "Strike Price." Said Strike Price shall be equal to the maximum price at which Customer agrees to purchase Replacement Power during a Load Management Order without notice prior to said Load Management Order. Upon signing this Agreement, Customer shall notify DP&L of its Strike Price. Changes to the Strike Price may be made verbally by Customer's Designated Representative with written confirmation to follow via facsimile or other mutually acceptable means.
- B3. Service Above Strike Price - If, during a Load Management Order, the cost of Replacement Power is expected to exceed Customer's Strike Price, DP&L shall verbally notify Customer's Designated Representative. To help mitigate Customer's risk, DP&L shall endeavor to provide up to two (2) hours' notice prior to any hour during which the price is expected to exceed Customer's Strike Price, but not less than ten (10) minutes. Customer must request Replacement Power no later than one (1) hour after DP&L provides notice, or such shorter time agreed to by both Parties as conditions warrant. Customer may choose to manage its load requirements or pay the price stated under Section B4 during the period in which the need for Replacement Power hereunder is being evaluated by Customer. Requests for Replacement Power shall be made verbally by Customer's Designated Representative, with written confirmation to follow via facsimile or other mutually acceptable means.
- B4. Price - The price per kWh of Replacement Power shall be the average hourly highest incremental cost of all power purchased or generated by DP&L during each hour a Load Management Order is in effect, plus \$0.002 per kWh, plus applicable excise taxes.
- B5. Best Efforts - DP&L shall use its Best Efforts to obtain the lowest cost Replacement Power to meet Customer's Non-Firm Electric Power Service requirements but does not guarantee the availability or delivery of Replacement Power nor the price at which such service is provided.

Option 2

- B6. Prior to the beginning of each calendar quarter, DP&L shall quote a price for Replacement Power to Customer based on anticipated market conditions. Customer may, by written correspondence, choose to pre-schedule Replacement Power at this quoted price for all

periods during which a Load Management Order is in effect for the coming quarter without notice prior to said Load Management Order.

- B7. Price - The price of Replacement Power shall be the quarterly price quoted by DP&L on a per kWh basis, which shall include a fee for administrative purposes and applicable excise taxes.

Option 3

- B8. If and when circumstances arise that cause DP&L to make additional Replacement Power options available to customers, whether under individual service arrangements or DP&L's PUCO No. 16 General Service Rate Schedules, DP&L shall make such options available to Customer. The Parties shall specify the terms and conditions of Replacement Power service by amending this Appendix B in accordance with Section 14.9 of this Agreement. Customer's decision to receive service utilizing any Replacement Power option not available upon signing this Agreement shall not affect Customer's rates and charges under Section 6.

## APPENDIX C

## VALUE-ADDED ENERGY SERVICES

DP&L's Energy Resource Center

- C1. Customer shall receive the benefit of DP&L's Energy Resource Center, currently one of the most advanced energy facilities in the United States. The Energy Resource Center makes available the latest in energy and related technological information. It houses DP&L's Energy Link engineering group, Key Account Management team, Technical Solution Center, and demand side management programs. The facility provides a convenient link between Customer Facilities and DP&L.
- C2. The Energy Resource Center serves as an outstanding conference facility for consulting on energy management opportunities. The facility team offers a variety of standard programs and can tailor programs to meet the specific needs of Customer. Programs may be designed for Customer to cover a broad range of employee education or more focused, engineering-based solutions to energy management concerns. Programs of specific interest to Customer may cover such topics as advanced lighting and/or power quality.

Metering Information and Data Services

- C3. To accommodate service hereunder, DP&L agrees to install Energy Link, a state-of-the-art electric power monitoring system designed specifically for the multi-plant organization of Customer's local Facilities. Installation will be complete within thirty (30) days of the signing of this Agreement.
- C4. The Energy Link system designed for Customer shall include twelve (12) computer-based power monitors (one (1) located at each Customer Facility), eighteen (18) modems, seven (7) touch-screen personal computers, seven (7) specially designed communications gateways, and proprietary, DP&L-designed software necessary to operate the system.
- C5. Upon installation of the Energy Link system, metering information and data will be immediately accessible to local Facility personnel through touch screen monitors. Each local Facility shall receive Energy Link support services from a DP&L engineer qualified to assist Customer in analyzing and interpreting critical aspects of their electric service as it relates to manufacturing operations. The engineer will work extensively with each plant to assess the metering information and data provided by the power monitoring system, assist in identifying opportunities to improve operations, and address specific information requests.

Key Account Management Program

- C6. Customer Facilities will benefit from DP&L's Key Account Management Program, which provides personalized attention and expertise on DP&L's products and services. DP&L's Key Account Management Program will make a dedicated account representative available to Customer. This representative will be supported by other DP&L team members, as identified

herein. Through this program, a DP&L representative will be available to respond to Customer's electric service needs twenty-four (24) hours a day, seven (7) days a week.

DP&L's Technical Solutions Team

- C6. The role of DP&L's Energy Resources Center will continue to grow and expand to meet the needs of Customer. The Energy Resource Center will house a highly specialized staff of electrical and industrial engineers and architects referred to as DP&L's "Technical Solutions Team". This team will support the Key Account Manager and the Energy Link engineer assigned to Customer with technical assistance on Customer-specific energy management initiatives, whether related to operations improvement, energy utilization, or equipment decisions.

Demand Side Management Programs

- C7. DP&L will continue to offer demand side management programs to Customer. These offerings shall include energy audits of Facilities, high efficiency lighting rebates, energy workshops, and energy management services stemming from the Energy Link system. Energy efficiency improvements will seek to produce incremental production cost savings for Customer.