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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE
APPLICATION OF THE UNIVERSITY
OF CINCINNATI FOR APPROVAL OF
A UNIQUE ARRANGEMENT WITH
DUKE ENERGY OHIO, INC.**

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CASE NO. 09-1818-EL-AEC

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APPLICATION

Pursuant to Rule 4901:1-38-05 of the Ohio Administrative Code and Section 4905.31, Revised Code, the University of Cincinnati ("UC") respectfully submits this Application applying to the Public Utilities Commission of Ohio (the Commission) for approval of a unique arrangement with Duke Energy Ohio, Inc (Duke Energy Ohio), the electric distribution utility in whose certified service area the main campus of UC is located. The unique arrangement is required so that UC may fully convert its 48 MW gas generation facility from natural gas to an alternative energy source as defined in Section 4928.64, Revised Code. The unique arrangement would also provide Duke Energy Ohio with 24 MW of an alternative energy source of generation capacity that it could call upon for system supply and pledge to the regional transmission organization as reserve capacity.

If approved the application should not affect the cost, quality or reliability of power service to any other customers save for the cost of the 24 MW of generation capacity UC is pledging to Duke Energy Ohio, which the

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Company would propose to recover through one of Duke Energy Ohio's Commission-approved mechanisms as part of its electric security plan (ESP). The additional generation capacity will enhance the pool of alternative energy resources available for service. The cost of the 24 MW reserve generation capacity from UC's alternative energy source shall be booked as an expense through the Duke Energy Ohio's Save-A-Watt program, (Rider SAW) as previously approved by this Commission in Case No. 08-920-EL-SSO. The capacity payments will remain subject to Commission's ongoing oversight.

Attached to this Application is an executed copy of an Agreement between UC and Duke Energy Ohio which sets out the specific terms of the unique arrangement. In furtherance of the approval of the attached contract for a unique arrangement UC makes the follows statements:

1. UC is a state supported institution of higher learning located in Cincinnati, Ohio. It has approximately 36,000 students, 13,000 employees and is a Mercantile customer pursuant to Section 4928.01(A) (19), Revised Code and Rule 4901:1-38-01 (F) of the Ohio Administrative Code.

2. UC is located within the certified service area of, and obtains electricity from, Duke Energy Ohio, an electric distribution utility as defined by Section 4928.01, Revised Code.

3. Because of the large volume of energy consumed at UC's main campus, plus its ability to generate a substantial amount of its needs via its 54 MW on-site generation facility, it has a special arrangement.

4. UC seeks a unique arrangement with Duke Energy Ohio to assist UC with generating renewable energy. UC has applied for a renewable generation certificate in Case No. 09-739-EL-REN and is awaiting a decision from the Commission on that application. For the year 2009, UC has contracted for landfill gas from the Rumpke landfill located near the main campus. The Rumpke gas is transported via displacement by Duke Energy Ohio to the UC Power Station for use in generating up to 48 MW of renewable energy as defined by Section 4928.01, Revised Code. UC is in the process of contracting for an alternative energy fuel for generation in 2010 and 2011 at this time.

5. UC proposes that the Commission approve a unique arrangement between it and Duke Energy Ohio that would have the following terms:

- a. UC will move to Rate Schedule DP effective as of the June 2009 billing cycle, but in light of the fact that UC will have alternative energy sourced generation that is being made available "on call" for Duke Energy Ohio, the ratchet provision of Rate Schedule DP shall be waived;
- b. The term of this unique arrangement would be for the remaining term of the Duke Energy Ohio ESP (Case No. 08-920-EL-SSO) but in order to avoid the need for renewals, the unique arrangement shall have a month-to-month evergreen provision;

- c. UC owns and operates two 12 MW combustion turbines and a 24 MW steam turbine for a total generation capacity of 48 MW. Under the terms of the attached contract, UC shall use 24 MW of generation capacity for self generation of renewable energy, and pledge 24 MW of generation capacity to Duke Energy Ohio's PowerShare for reserve capacity. Thus, UC shall make 24 MW available to Duke Energy Ohio at all times;
- d. To reduce the number of "on/off cycles" UC would face, Duke Energy Ohio and UC request that the summer and winter "on-peak" hours be the same during the year and there shall be no gap between the "on" and "off-peak" periods during the day. "On-peak" shall be 11:00 a.m. to 8:00 p.m. each business day but may be adjusted if Duke Energy Ohio prefers similar blocking but different commencement and end times for "on-peak" power;
- e. UC proposes a Power Share arrangement with Duke Energy Ohio based on \$30 per kW, on a calendar year basis, for the term of the special contract (See Exhibit A), and ten cents for each kWh produced.¹ Duke Energy Ohio is not required to call upon any minimum amount of energy but if it does, it

¹ The energy price of ten cents is the current rate through May 31, 2010. UC and Duke Energy Ohio have agreed that the price for energy paid to UC under the primary term shall be the greater of the cost of fuel to UC [currently about six cents per kWh] or the amount per kWh which Duke Energy Ohio pays under its PowerShare Program to all other Ohio PowerShare customer generators.

will be required to provide UC with two hours advanced notice and there will be a limit of 50 times that Duke Energy Ohio can make UC's alternative sourced-generation cycle on and off;

- f. UC will sell to Duke Energy Ohio 50,000 Renewable Energy Credits ("RECs") assuming that each REC represents one MWh it creates from its gas turbines for \$10 per REC. UC will complete the process to have the RECs registered and will prepare all necessary attestations, and will maintain all records necessary to facilitate auditing and any registry requirements;
- g. UC will remain in the Save-A-Watt program which will allow Duke Energy Ohio to receive compensation for the MWh conserved in accordance with its approved Save-A-Watt program;
- h. 24 MW of UC's self-generation shall be net metered. The cost of the net metering is to be paid by UC.

6. The proposed unique arrangement does not violate the provisions of Sections 4905.33 and 4905.35, Revised Code.

7. Attached to this Application as Exhibit A is a copy of the special contract which shall implement this unique arrangement upon approval of the Commission. Exhibit A is hereby incorporated as part of this Application.

8. Attached as Exhibit B is an affidavit from (name/title of officer) of UC which demonstrates the veracity of the information provided.

9. UC respectfully requests that the Commission approve this unique arrangement without holding a hearing.

WHEREFORE, the University of Cincinnati respectfully requests that the Commission approve a unique arrangement subject to the terms and conditions specified herein with such approval to be effective and service to commence as soon as possible.

Respectfully submitted

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**ELECTRIC SERVICE CONTRACT BETWEEN
THE UNIVERSITY OF CINCINNATI
AND DUKE ENERGY OHIO**

This Agreement is entered into as of the 19th day of September, 2009, by and between Duke Energy Ohio, Inc. ("Duke Energy Ohio") an electric light company as defined by Section 4905.03 of the Ohio Revised Code with its principal office located at 139 East Fourth Street, Cincinnati, Ohio 45202 and the University of Cincinnati, a state chartered institution of higher learning and an instrumentality of the State of Ohio with facilities located at 3000 Glendora Ave, Cincinnati, Ohio 45219 ("UC").

WITNESSETH:

WHEREAS, UC is a commercial class customer currently purchasing electricity from Duke Energy Ohio pursuant to a contract utilizing the Real Time Pricing Program ("Rate RTP") with the Load Management Rider, P.U.C.O. Electric No. 19, Sheet 76.3, as modified via a contract dated July 1, 2005 and as extended through multiple addendums; and

WHEREAS, in accordance with the energy policy of the state of Ohio, Section 4928.02 of the Ohio Revised Code, proclamations by the Governor of the state of Ohio, and the resolutions of its Board of Trustees, UC has embarked on a program to generate renewable electricity using landfill and /or renewable forms of gas and UC's on-campus gas turbines, and

WHEREAS, to maximize the operation of UC's gas turbines to generate energy from renewable sources, a special arrangement between UC and Duke Energy Ohio is required that is not now available under either the current contract between UC and Duke Energy Ohio or a Duke Energy Ohio tariff; and

WHEREAS, Section 4928.143 of the Ohio Revised Code provides that to further the

goals of energy conservation and to enhance the use of renewable energy, customers such as UC may petition the Commission for unique arrangements with their franchised electric utility;

NOW, THEREFORE, in consideration of the following mutual promises set forth herein, the Parties agree as follows:

Article One Definitions

1.1 The term "Agreement" shall mean this Electric Service Contract Between UC And Duke Energy Ohio.

1.2 The term "Campus Generators" shall mean the 48 MW of combustion turbine and steam powered electric generation equipment located in UC's power building at 3000 Glendora Ave. Cincinnati, Ohio 45219

1.3 The term "Campus RECs" shall mean renewable energy credits generated by the Campus Generators.

1.4 The term "Commission" shall mean the Public Utilities Commission of Ohio.

1.5 The term "Contract RECs" shall mean RECs representing 50,000 MWh of renewable power per calendar year and may be fulfilled by either or both Campus RECs or Cover RECs.

1.6 The term "Cover RECS" shall mean certified in-state renewable energy credits obtained by UC of a quality and condition acceptable to Duke Energy Ohio, whose approval will not be unreasonably withheld. The Cover RECS shall also be suitable to fulfill Duke Energy Ohio's in-state requirements under the Commission's Ohio Alternative Energy Portfolio Standard and tendered to Duke Energy Ohio in lieu of Campus RECs to cover any shortfall in UCs annual obligation to deliver RECs

representing 50,000 MWh of renewable power.

1.7 The name "Duke Energy Ohio" shall mean Duke Energy Ohio, Inc.

1.8 The term "Environmental Attribute" shall mean all renewable energy resource certificates or credits and any other attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or named, resulting from, attributable to or associated with the generation of energy by the Campus Generators. Environmental Attributes do not include electric energy produced pursuant to any international, federal, state or local legislation or regulation.

1.9 The term GATS shall mean Generation Attributes Tracking System account.

1.10 The term "Holdback" shall mean an amount of money due UC from Duke Energy Ohio for the purchase of Contract RECs which have yet to be paid. The Holdback shall be calculated by taking twenty-five percent (25%) of the amount due and payable for Contract RECs tendered during the preceding quarter up to a maximum of twenty five percent (25%) of the total anticipated annual REC purchase amount over the term of this Agreement.

1.11 The acronym "kWh" shall mean kilowatt hour.

1.12 The term "Material Adverse Change" shall mean, with respect to either Party or either Party's credit support provider if one exists, (i) that there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of such Party or such Party's credit support provider to fulfill its obligations; or (ii) that there is reasonable grounds to believe that the

creditworthiness of such Party has become unsatisfactory or its ability to perform under this Agreement has been materially impaired.

1.13 The term "MISO" shall mean the Midwest Independent System Operator.

1.14 The acronym "MW" shall mean megawatt.

1.15 The acronym "MWh" shall mean megawatt hour

1.16 The term "Monthly Generation Schedule" shall mean a form or chart which UC shall prepare and send to Duke Energy Ohio prior to the first calendar day of each month listing the dates and time of day UC anticipates generating during the calendar month, as well as the dates any major generation unit will be off line due to planned maintenance.

1.17 The term "Ohio Alternative Energy Portfolio standard" or "AEPS" shall mean the renewable energy credits established by Ohio Alternative Energy Portfolio Standard set forth in Ohio Revised Code §§4928.64 and 4928.65 and the regulations promulgated by the Commission related to those statutes.

1.18 The term "Outage" shall mean an event in which UC fails to achieve or maintain the scheduled level of generation for a period of time exceeding a minimum of fifteen (15) minutes but less than a maximum period of twenty-four (24) hours. If generation has been scheduled for consecutive days and generation is not delivered at levels substantially similar to the scheduled MW levels then each twenty-four (24) hour day will constitute a separate Outage. Thus, if UC schedules generation for July 1st, 2nd, and 3rd and UC's gas turbines are down for the whole seventy-two (72) hour period, three Outages would have occurred under this Agreement. If Duke Energy Ohio requests UC to cease or reduce its generation for any reason including natural gas interruptions, the

failure by UC to meet the scheduled level of generation during a time period in which Duke Energy Ohio has requested a reduction shall not be considered an Outage.

1.19 The term "Party" shall mean either Duke Energy Ohio or UC. The term "Parties" shall mean both Duke Energy Ohio and UC.

1.20 The term "Primary Term" shall mean the period of September 1, 2009 through December 31, 2011

1.21 The term "Rate DP" shall mean Duke Energy Ohio's tariff Rate Schedule DP, Service at Primary Distribution Voltage, in accordance with P.U.C.O. Electric No. 19, Sheet No. 44.12.

1.22 The term "Rate RTP" shall mean the real time pricing provision, tariff Rate Schedule RTP as modified by the special agreement between UC and Duke Energy Ohio dated July 1, 2005 and as extended through multiple addendums.

1.23 The term "REC" shall mean renewable energy credit.

1.24 The acronym "UC" shall mean the University of Cincinnati.

Article Two – Rate Schedules

2.1 UC has requested to be transferred to Rate DP and Duke Energy Ohio has agreed to transfer UC to Rate DP commencing with the June 2009 billing cycle, at which time UC's most recent contract addendum featuring the modified use of Rate RTP shall be deemed to have ended, and UC shall be invoiced for power in accordance with Rate DP as modified by this Agreement. Corrective invoices shall be issued if necessary to correct for any service following the final billing cycle invoiced using Rate RTP. UC agrees to remain a customer on Duke Energy Ohio's Rate DP for the entire Primary Term

of this Agreement and for so long as the provisions of this agreement remain in effect following the expiration of the Primary Term.

2.2 If UC experiences an Outage, and the Outage does not exceed the tolerance established in paragraph 2.3 below, the actual demand observed during the Outage will be adjusted down as if the scheduled level of MW had been delivered effectively resulting in the suspension of the Rate DP demand and ratchet provisions which might otherwise have been applicable.

2.3 UC shall be able to suspend the demand and ratchet provisions of Rate DP only twelve (12) times in a year as described below. In the event of a thirteenth Outage during the year, no adjustment shall be made for the scheduled generation, the rate will be based on the actual number of MW for the measurement period, and the ratchet provisions of Rate DP shall apply for the month in which the thirteenth Outage occurred and every month thereafter during the remainder of the term of the year.

2.4 For purposes of calculating how many Outages have occurred in a year, a year shall be the period of twelve (12) consecutive months commencing with the June billing cycle and ending with the May billing cycle of the following calendar year.

2.5 The continued placement of UC on Rate Schedule DP with suspension of the ratchet provision shall be conditioned upon subsequent approval of an application made to the Commission by UC pursuant to Section 4928.143 of the Ohio Revised Code. If the Application is not approved by the Commission, UC may at its election return to Rate RTP upon request subject to the agreement between Duke Energy Ohio and UC of a new Customer Base Line ("CBL") and Billing Demand History ("BDH"). In this event, Duke Energy Ohio will bill UC under Rate RTP retroactive to September 2009.

Article Three – Generation Operation

3.1 UC has fifty-four (54) MW of generation capacity. UC shall maintain its gas turbines and back up diesels in such a fashion that other than during periods of planned maintenance or an Outage, twenty-four (24) MW of generation capacity shall be pledged to and made available for Duke Energy Ohio under its PowerShare program as more fully described in Article Four below. It is anticipated by the Parties that twenty-four (24) MW of UC's generation capacity shall be used for the generation of renewable electricity fueled by landfill gas secured from the Rumpke landfill or other renewable gas resources and delivered by displacement to UC's gas turbines via existing pipelines owned and operated by Duke Energy Ohio.

3.2 UC shall, prior to the start of each calendar month, present to Duke Energy Ohio the Monthly Generation Schedule. UC will use reasonable efforts to schedule to operate its own generation during periods of high electrical demand on Duke Energy Ohio's system. UC shall endeavor to schedule planned generator maintenance during times other than days with high cooling and heating demand. UC shall make a good faith effort to follow the Monthly Generation Schedule and deviate only when generation in accordance with the filed schedule is impractical.

3.3 For purposes of this Agreement the definition of "On-peak" and "Off-peak" power found in Duke Energy Ohio's Load management Rider ("Rate LM") shall be modified. The term "Off-Peak" shall consist of weekdays from 8:00 p.m. of one day to 11:00 a.m. of the following day; and from Friday at 8:00 p.m. to 11:00 a.m. of the following Monday; and from 8:00 p.m. of the day preceding a legal holiday to 11:00 a.m. of the first weekday following that holiday. The legal holidays recognized under the

terms of this Agreement shall be consistent with those identified in Duke Energy Ohio's Rate LM with the exception that if the foregoing holidays occur on a Sunday, the following Monday is considered a holiday. All other hours of the day shall be considered "On-Peak" for purposes of this Agreement.

3.4 UC shall operate its generation facilities in accordance with good industry practice. The choice of which UC generation units to run at any given time shall be made exclusively by UC.

Article Four – PowerShare Capacity Payments

4.1 In accordance with the tariff provisions covering its PowerShare (Rider PLM) program, beginning September 1, 2009, UC shall make available to Duke Energy Ohio up to twenty-four (24) MW of capacity for Duke Energy Ohio. At its option, and on an annual basis, Duke Energy Ohio may call upon and purchase the twenty-four (24) MW of capacity from UC each year for up to a three (3) year period ending December 31, 2011, the period corresponding to Duke Energy Ohio's Electric Security Plan authorized by the Commission in docket 08-920-EL-SSO *et al.* Duke Energy Ohio may call upon this capacity up to twenty-four (24) MW for any clock hour at its sole election. Both Parties acknowledge that Duke Energy Ohio is not obligated to request a minimum number of MWh from the reserved capacity. Duke Energy Ohio does however agree that it will not cause UC to have to cycle its generation units on and off more than fifty (50) times in a year period (June 1st through May 31st).

4.2 Duke Energy Ohio shall pay UC thirty dollars (\$30) per kilowatt on a calendar year basis for the twenty-four (24) MW capacity made available to it by UC during the remainder of calendar year 2009 beginning as of September 1, 2009 for a total

payment of up to \$240,000. Duke Energy Ohio shall pay UC thirty dollars (\$30) per kilowatt on a calendar year basis for the twenty-four (24) MW capacity made available to it by UC for an annual payment of up to seven hundred twenty thousand dollars (\$720,000) for the remainder of the Primary Term. The PowerShare payment shall be made quarterly by check or electronic transfer and shall not be an offset to the power purchased by the University under this Agreement. Duke Energy Ohio will remit payment to UC within sixty (60) days after the close of the quarter in which UC provided the capacity under the PowerShare agreement.

4.3 If Duke Energy Ohio does purchase power from the capacity reserved under PowerShare, it shall pay UC the greater of the cost of fuel to UC [currently about six cent (6¢) per kWh] or the amount per kWh which Duke pays under its PowerShare Program to all other Ohio PowerShare customer generators. The energy credit available to Ohio PowerShare customer generators through May 31, 2010 equals a net of ten cents (10¢) per kWh for each kWh requested. Duke Energy Ohio shall meter and track both the kilowatts available and the kWh generated and the use of those kWh in accordance with the terms and conditions of Duke Energy Ohio's PowerShare Program. Payment for the kWh produced and consumed as part of PowerShare shall be accounted for and made part of the quarterly payment and shall be in addition to the capacity charge described in paragraph 4.2 above.

4.4 Duke Energy Ohio shall calculate the average load over the period of noon to 8:00 p.m., Monday through Friday (holidays excluded) to determine the amount of available capacity for PowerShare. UC shall be credited for the lesser of 24 MW or the difference between their average load and zero MW.

4.5 The PowerShare payments to UC are conditioned upon approval by the Commission to permit recovery for Duke Energy Ohio through an applicable rider mechanism. If the Commission reduces the amount Duke Energy Ohio recovers for the UC capacity below the full recovery amount sought by Duke Energy Ohio, then Duke Energy Ohio may reduce the payments it makes to UC for the PowerShare capacity by a pro rata amount. If the Commission rejects Duke Energy Ohio's contracting for the full 24 MW of capacity or disallows all recovery for Duke Energy Ohio, then Article Four of this Agreement is deemed terminated. If the Commission disallows a portion of the 24 MW for inclusion in PowerShare, then UC shall be free to use or sell the PowerShare rejected capacity as it see fit.

Article Five - Renewable Credits

5.1 During the course of calendar years 2009, 2010, and 2011, UC shall produce no less than fifty-thousand (50,000) MWh of renewable electric generation each year from its Campus Generators. The fifty-thousand (50,000) MWh may be generated in any of the 8,760 clock hours of a particular calendar year ("vintage year"). The selection of which clock hours to run the Campus Generators (other than as required by Duke Energy Ohio under Article 4 for PowerShare) is entirely at the election of UC.

5.2 UC shall deliver Duke Energy Ohio the Contract RECS (pursuant to Section 5.12 below) in the manner set forth in Section 5.4 below. The Contract RECs shall meet the criteria established by the Commission by rule or order for Contract RECs such that the Contract RECs tendered by UC will fulfill Duke Energy Ohio's obligation for in state sited AEPS.

5.3 In the event, UC fails to generate and tender to Duke Energy Ohio the full complement of Contract RECs from Campus RECs as required by this Agreement, UC shall obtain, at its sole expense, certified in-state renewable energy credits of a quality and condition acceptable to the Commission suitable to fulfill Duke Energy Ohio's in-state requirements under the AEPS, set forth in Ohio Revised Code 4928.64 and 4928.65, and to cover any shortfall of its obligation to tender to Duke Energy Ohio the full amount of Contract RECs unless excused as a result of a regulatory cancellation or modification as detailed in Article 11. In the event UC is required to cover its obligation to Duke Energy Ohio under this Section 5.3 with Cover RECs, the Cover RECs shall be of the same vintage year as the Campus RECs that they are replacing.

5.4. The requisite fifty-thousand (50,000) MWh of in-state renewable energy credits, including Cover RECs if necessary, shall be delivered into the GATS account of Duke Energy Ohio by no later than December 1st of each calendar year for that calendar year. RECs delivered by or on behalf of UC pursuant to this Agreement shall be sold and transferred to Duke Energy Ohio by UC free and clear of any encumbrances. Beneficial and legal title to the Contract RECs, including, but not limited to, any credit, tradable allowance or allocated pollution right issued by a government agency for RECs, will pass to Duke Energy Ohio upon delivery into the GATS account of Duke Energy Ohio. UC is responsible for all costs associated with registering the RECs, opening their own GATS account, and delivering the Contract RECs into Duke Energy Ohio's GATS account, as well as any costs associated therewith. Duke is responsible for all costs associated with opening and maintaining its own GATS account.

5.5 Duke Energy Ohio shall pay UC ten dollars (\$10) for each AEPS-certified Contract REC delivered by or on behalf of UC into Duke Energy Ohio's GATS account. Payment by Duke for the Contract RECs shall be due one week after the delivery by or on behalf of UC and will be made into an escrow account as described in Section 5.14 below (the "Escrow Account"). In order for Contract RECs to be included in the total RECs delivered by UC under this Agreement for any year of the Primary Term, and any extension thereof pursuant to Section 6.1, they must be delivered by UC into the GATS account of Duke Energy Ohio no later than December 1 of the year in which they are to be included. Release of funds by Duke Energy Ohio from the Escrow Account to UC for RECs under this Agreement shall occur no more often than four times per calendar year. The anticipated value of the REC purchase by Duke Energy Ohio from UC is expected to be five-hundred-thousand dollars (\$500,000) per year. The payment for Contract RECs, in accordance with the procedure established in this Section 5.5 shall be by check or electronic transfer and shall not be subject to an offset by other amounts UC may owe to Duke Energy Ohio including but not limited to the purchase of power under this Agreement.

5.6 UC transfers any and all, and the exclusive, right to use the Contract RECs. UC shall not sell or transfer to any third party at any time or claim or report for its own account other than for accounting purposes at GATS any (a) Campus RECs or (b) Cover RECs. The Campus RECS or Cover RECS shall include all Environmental Attributes of the renewable generation. Environmental Attributes do not include production tax credits, investment tax credits, or other direct third-party subsidies for the generation of electricity by UC. Duke Energy Ohio shall have the right, exclusive to the

full extent applicable, to verify, certify, and otherwise take advantage of the rights, claims and ownership in the Contract RECs.

5.7 UC will be responsible for any taxes imposed on the creation of the Campus RECs or Cover RECs under this Agreement and the transfer or ownership of the Contract RECs under this Agreement up to the time and place of delivery into Duke Energy Ohio's GATS account. Duke Energy Ohio will be responsible for any taxes imposed on the receipt or ownership of Contract RECs at or after the time and place of delivery.

5.8 The type and amount of any Contract RECs delivered pursuant to Section 5.2 will be measured, calculated, verified and certified as required pursuant to the AEPS. UC will ensure that the certification authority, verification provider and verification methodologies are selected in compliance with the AEPS. The costs of the verification authority and certification are UC's responsibility.

5.9 UC will use its best efforts to meet all the requirements for the completion of delivery of the Contract RECs under the AEPS. Upon either receipt by either Party of notice from the Commission that the transfer of Contract RECs pursuant to this Agreement will not be recognized or delivery was not made as required, that Party will immediately so notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and allow the Contract RECs to be delivered. Upon Duke Energy Ohio's request from time to time, UC will execute and deliver any instrument of sale, transfer, assignment, or release which Duke Energy Ohio determines is necessary or desirable to complete delivery. Upon delivery of the Contract RECs into

Duke Energy Ohio's GATS Account, all of UC's right, title, and interest in and to the Contract RECs will pass to Duke Energy Ohio.

5.10 UC warrants that the Contract RECs will comply with the requirements of the AEPS. Upon the request of either Party, the other Party will cooperate and provide reasonable assistance, including the provision of information and records, to support the requesting Party's compliance with any informational and reporting requirements under the AEPS.

5.11 It is the express intent of the Parties that the conveyance of the Contract RECs from the UC GATS account to Duke Energy Ohio's GATS account be treated for all purposes as a sale by UC of such RECs. Duke Energy Ohio shall be the legal, equitable and beneficial owner of the Contract RECs in Duke Energy Ohio's GATS Account, with full rights to transfer, alienate and pledge the same, and UC shall use commercially reasonable efforts to cooperate with Duke Energy Ohio by executing documents or agreements to properly reflect Duke Energy Ohio's rights in the Contract RECs intended to be conveyed by this Agreement. Further, it is not the intention of the Parties that such conveyance be deemed a pledge of the Contract RECs by UC to Duke Energy Ohio to secure a debt or other obligation of UC. However, in the event that, notwithstanding the intent of the parties, the Contract RECs are held to continue to be property of UC, then the Parties agree that: (i) this Agreement shall also be deemed to be a security agreement under applicable law; (ii) the transfer of the Contract RECs provided for in this Agreement shall be deemed to be a grant by UC to Duke Energy Ohio of a first priority security interest in all of UC's right, title and interest in and to the Contract RECs; (iii) the possession by Duke Energy Ohio of Contract RECs in Duke Energy

Ohio's GATS Account shall be, subject to clause (iv) below, for purposes of perfecting the security interest pursuant to the UCC; and (iv) acknowledgements from persons holding such property in Duke Energy Ohio's GATS Account shall be deemed acknowledgements from custodians, bailees or agents (as applicable) of Duke Energy Ohio for the purpose of perfecting such security interest under applicable law. The Parties further agree that any assignment of the interest of Duke Energy Ohio pursuant to any provision hereof shall also be deemed to be an assignment of any security interest created pursuant to the terms of this Agreement. Duke Energy Ohio shall, to the extent consistent with this Agreement, take such actions as may be necessary to ensure that, if this Agreement were deemed to create a security interest in the Contract RECs, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the term of this Agreement. It is the intention of each of the Parties that the Contract RECs conveyed by UC to Duke Energy Ohio pursuant to this Agreement shall constitute assets owned by Duke Energy Ohio and shall not be part of UC's estate in the event of the filing of a bankruptcy petition by or against UC under any bankruptcy or similar law. Duke Energy Ohio and UC agree to treat for all purposes (other than accounting purposes), the transactions effected by this Agreement as sales of assets to Duke Energy Ohio.

5.12 UC shall take all steps necessary to be able to issue and then tender certified in-state RECs to Duke Energy Ohio. This includes, without limitation, an application to qualify the Campus Generators as renewable generators with the Commission and registration with GATS. The Parties acknowledge that the renewable electric generation conducted by UC will be at sub-transmission voltages and as such will

not be directly connected to a regional transmission organization system. Duke Energy Ohio agrees that it will assist UC to obtain appropriate regional transmission organization registration or approval if and when necessary,

5.13 UC shall report to Duke Energy Ohio no less than quarterly on its renewable generation, and within thirty days prior to the close of each of the first three quarters of each calendar year during the term of this Agreement, deliver the Contract RECs into Duke Energy Ohio's GATS account. For the fourth quarter of each calendar year during the term of this Agreement, UC will deliver the Contract RECs generated in the fourth quarter, plus any shortfall of in-state RECs to meet the annual level of 50,000 MWh by December 1st into Duke Energy Ohio's GATS account. The Contract RECs generated in the remaining part of the fourth quarter that UC cannot deliver by December 1st can be delivered in the first quarter of the subsequent year and will apply towards the 50,000 MWh level of that year. This will be true for years 2009 and 2010. In 2011, UC shall deliver the 50,000 MWh level of Contract RECs by December 1, 2011.

5.14 Duke Energy Ohio shall pay into the Escrow Account specified in Schedule A attached hereto as incorporated herein the amount due for the Contract RECs delivered into Duke Energy Ohio's GATS Account in the immediately preceding calendar quarter, for the immediately preceding quarter once it receives and accepts the documentation described in Section 5.8 above that evidences certification. Duke Energy Ohio will then authorize the release from the Escrow Account to UC no later than the day following the end of the immediately preceding calendar quarter the amount escrowed in connection with those Contract RECs, less the Holdback. The remainder of all Holdbacks shall be paid out promptly following the first quarter of calendar year 2012.

Article Six - Term

6.1 This Agreement shall become effective on September 1, 2009 and remain in effect until December 31, 2011. Following the expiration of the Primary Term, this Agreement, save for the obligation to produce and sell Contract RECS, shall continue in full force and effect month-to-month thereafter until terminated by either Party upon 60 days advance written notice. Ninety days prior to the expiration of the Primary Term the Parties shall meet and renegotiate the obligation to produce and purchase Contract RECS. If no agreement is reached by the end of the Primary Term, then neither party shall be obligated to deliver or purchase RECs from the other Party except that the Parties shall continue to be responsible for those obligations arising on or before December 31, 2011 and related to the delivery or purchase of RECs.

Article Seven - Payment

7.1 Payment of monies owing by UC hereunder shall be electronically transferred in accordance with the electronic payment agreement by and between Duke Energy Ohio and UC entered into on May 1, 2002.

7.2 UC shall be exempt from paying late fees. However, if a bill remains unpaid for a period of thirty (30) days after receipt of the bill, Duke Energy Ohio may, at its sole option, and without liability therefore, suspend service to UC under this Agreement after giving fifteen (15) days written notice sent by certified mail to the Director, Facilities Management Director, Business Operations, P.O. Box 210080, Cincinnati, OH 45221-0080 of its intention to do so, but such suspension of delivery of electricity shall not discharge UC from its obligation to pay such bills or any obligation under this Agreement, nor shall such suspension preclude Duke Energy Ohio from any

rights or remedies it does or may have at law or in equity to enforce any of the provisions of this Agreement.

Article 8 – Adequate Assurance of Performance

8.1 If a Material Adverse Change has occurred with respect to either Party, the Party seeking assurance (the "Requesting Party") may make a written request of the other Party (the "Providing Party") to provide Adequate Assurance (as defined below) in an amount determined in a commercially reasonable manner, and in a form reasonably acceptable to the Requesting Party. Upon receipt of the request, the Providing Party shall have five (5) business days to provide such Adequate Assurances. If not provided, the Requesting Party will be entitled to the remedies set forth below. If the Providing Party provides Adequate Assurance to the Requesting Party within five (5) business days, it is understood that the Providing Party shall not in fact have defaulted under this Agreement by incurring a Material Adverse Change. "Adequate Assurance" is defined as (i) cash (ii) letters of credit, or (iii) such other form of security acceptable to the Requesting Party. Any cash collateral provided pursuant to this Section shall accrue interest at the Federal Funds Overnight Rate. "Federal Funds Overnight Rate" means the rate for that Day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System. "Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not

both, in a form mutually agreed upon by the Requesting Party and the Providing Party, with such changes to the terms of the form as the issuing bank may require and as may be acceptable to the Requesting Party.

8.2 As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Agreement, each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Adequate Assurance which has been or may in the future be transferred to, or received by, the other Party, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Adequate Assurance.

Article Nine - Force Majeure

9.1 Neither of the Parties shall be liable in damages to the other for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, civil disturbances, electric curtailment, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Party

claiming suspension and which by the exercise of due diligence such Party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the Party claiming suspension.

Such causes or contingencies affecting the performance hereunder by either Party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve either Party from their obligations to make payments of amounts due hereunder. In the event of force majeure eliminating Duke Energy Ohio's ability to satisfy UC's contractual requirements for electric power and energy, Duke Energy Ohio shall not seek to prevent UC from taking such action as UC deems necessary to secure substitute supplies until the force majeure condition is fully rectified.

The force majeure shall commence when the Party declaring a force majeure notifies the other Party of the force majeure conditions. As soon as practicable after the declaration, the Party declaring a force majeure shall provide the other Party with a full written explanation of the conditions and events which led to the declaration of force majeure and a projection of how long the force majeure will last.

Article Ten - Metering

10.1 Duke Energy Ohio shall make periodic tests of meters used in measuring electricity furnished to UC, and shall test meters upon the written request of UC, in accordance with Section V, Metering, P.U.C.O. Electric No. 19, Sheet No. 24 of Duke Energy Ohio's Filed Electric Tariff. UC shall be able to rely on Duke Energy Ohio's

metering for purposes of compliance with the limits on supplemental or maintenance energy and capacity it may take and for the pricing of such energy or capacity. Duke Energy Ohio does not waive any of its rights with respect to metering errors, and UC will notify Duke Energy Ohio of any discrepancies between its metering and Duke Energy Ohio's metering as soon as practicable.

10.2 UC may apply for net metering for up to twenty four MWs of its renewable generation in accordance with the procedure established in Duke Energy Ohio's tariff. If UC generates more power than is needed internally and therefore pushes power onto Duke Energy Ohio's system (outflow kWh), the outflow kWh will be netted against the kWh purchased by UC (inflow kWh) for purposes of calculating UC's retail bill. Billing demands will always be based on the demand associated with inflow kWh. In the event that, on a monthly basis, the outflow kWh exceeds the inflow kWh, UC will receive a credit for the net monthly outflow kWh. The credit will be calculated by applying the net monthly outflow kWh to the kWh charges associated with PTC-BG, PTC-AAC, PTC-FPP, SRA-CD, and SRA-SRT. UC will not receive credits associated with net outflow kW.

10.3 Notwithstanding the foregoing, UC shall make twenty-four (24) MWs available to Duke Energy Ohio at all times under the PowerShare commitment set forth in Article Four above.

10.4 Duke Energy Ohio shall present plans for both the upgrades necessary for net metering and the upgrade of the interconnection between UC and the Duke Energy Ohio at the Rochelle substation to accommodate net metering of up to twenty-four (24) MW of energy.

10.5 UC shall pay for the actual net metering and interconnection upgrades.

Article Eleven – Regulatory Authority

11.1 This Agreement is made in all respects expressly conditioned on the terms and provisions of Title 49 of the Ohio Revised Code and acts amendatory thereto, to the jurisdiction and authority of the Commission and any regulatory approvals required thereby, and any other regulatory body having jurisdiction, and to the general service rules and regulations of Duke Energy Ohio in effect from time to time. Nothing herein contained shall be construed as divesting or attempting to divest any regulatory body of any of its rights, jurisdiction, powers or authority conferred by law.

11.2 Except as specifically provided herein, nothing in this Agreement shall be construed so as to alter, modify or change conditions of normal electric deliveries pursuant to other tariffs, contracts or curtailment priorities as is from time to time imposed upon Duke Energy Ohio's customers pursuant to regulatory orders, laws, requirements or sanctions.

11.3 If a government action that occurs after the date of this Agreement causes Duke Energy Ohio's renewable energy requirements under the AEPS to be delayed, suspended, decreased in quantity, or terminated, then Duke Energy Ohio shall have the right to cancel in full or in part any purchases of Contract REC's in which the Contract REC has not been tendered to Duke Energy Ohio's GATS Account. The cancellation right shall be limited to the extent that Duke Energy Ohio's requirements have been delayed, suspended, decreased in quantity, or terminated, even if Duke Energy Ohio is permitted to carry forward the REC's to comply with Duke Energy Ohio's requirements in a later year. Duke Energy Ohio shall exercise such cancellation rights by giving notice to

UC within ten business days after the delay, suspension, decrease, or termination is ordered or enacted. This section shall not relieve Duke Energy Ohio from any other obligation under this Agreement save for the ongoing purchase of Contract RECs.

11.4 The Parties acknowledge that in order for UC to fulfill its obligation to deliver Campus RECs that the Campus Generators must be certified as renewable generators and that such certification must remain intact for the full Term of the Agreement. The Parties also acknowledge that while UC has made an application to certificate the Campus Generators [See In Re UC case no. 09-739-EL-REN], as of this date no rules governing the certification process for renewable generation facilities have been finalized by the Commission. If the Commission fails to certificate UC's generation facilities or subsequently revokes the certification for UC's Campus Generators, or any change in law or regulation prevents the Campus Generators from earning Contract RECs by generation of electricity from natural gas obtained from statutorily recognized renewable energy sources, UC shall, upon ten days advance written notice to Duke Energy Ohio, have the right to cancel in full or in part any sale of RECs which have not already been tendered. UC shall exercise such cancellation rights by giving notice to Duke Energy Ohio within ten business days after the suspension or rejection of UC's renewable generation certificate or the implementation of a statute or regulation that prohibits, materially decreases, or terminates the ability of the Campus Generators to produce renewable energy credits. After the ten-day notice described above and the expiration of such ten days, UC shall have no further liability to provide Contract RECs or Cover RECs under this Agreement and Duke Energy Ohio shall be obligated to purchase only the Contract RECs to the extent delivered by UC as of the date of the

cancellation. This section shall not relieve UC from any other obligation under this Agreement save for the production and tendering of Contract RECs.

11.5 If the Commission does not enact final rules by January 1, 2010 which confirm that Duke Energy Ohio will have a firm obligation to meet REC requirements for 2009, then Duke Energy Ohio will have the right to cancel in full or in part any purchases of RECs hereunder by giving notice to UC within ten business days after January 1, 2010. This section shall not relieve Duke Energy Ohio from any other obligation under this Agreement save for the purchase of RECs..

Article Twelve- Events of Default; Remedies.

12.1 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) The failure to make, when due, any payment required pursuant hereto if such failure is not remedied within five (5) business days after written notice;

(b) The unexcused failure to Deliver or accept Delivery of Contract RECs as required by this Agreement;

(c) Any representation or warranty made herein that is shown to be false or misleading in any material respect when made;

(d) a Party becomes Bankrupt;

(e) a Party's failure to perform any other material covenant or obligation set forth herein if such failure is not remedied within twenty (20) business days after written notice.

12.2 If an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (the "Non-Defaulting Party") will have the right to terminate

this Agreement by giving notice of termination to the Defaulting Party and specifying an effective early termination date of this Agreement ("Early Termination Date") and/or to recover all damages under Section 12.3 as a result of the Event of Default and resulting termination of this Agreement, except as set forth in Section 12.4.

12.3 Damages Upon Early Termination

(a) Damages Owed to Duke Energy Ohio. If Duke Energy Ohio is the Non-Defaulting Party and an Early Termination Date is established, then UC shall pay to Duke Energy Ohio for Contract RECs which Seller would have been obligated to deliver hereunder after the Early Termination Date but for the early termination in an amount calculated as follows. If Duke Energy Ohio, in its sole discretion, elects to purchase replacement RECs, then the damages amount shall be equal to the positive difference, if any, obtained by subtracting the Contract Price for such Contract RECs from the replacement price for such RECs determined in a commercially reasonable manner plus all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Duke Energy Ohio's counsel) incurred by Duke Energy Ohio in connection with the Event of Default and replacement. If Duke Energy Ohio, in its sole discretion, elects to not purchase replacement RECs, then the damages amount shall be equal to (A) the lesser of (i) the positive difference, if any, obtained by subtracting the Contract Price for such Contract RECs from the market price for such replacement RECs as of the Early Termination Date, which price shall be determined in a commercially reasonable manner, or (ii) the amount of any penalty or compliance payment liability incurred by Duke Energy Ohio under the AEPS due to UC's failure to

Deliver the RECs, plus (B) all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Duke Energy Ohio's counsel) incurred by Duke Energy Ohio in connection with the Event of Default.

(b) Damages Owed to UC. If UC is the Non-Defaulting Party and an Early Termination Date has been established, then Duke Energy Ohio shall pay to UC for Contract RECs which Duke Energy Ohio would have been obligated to purchase hereunder after the Early Termination Date but for the early termination the following damages amount. If UC, in its sole discretion, elects to resell the Contract RECs, then the damages amount shall be equal to the positive difference, if any, obtained by subtracting the resale price for such Contract RECs determined in a commercially reasonable manner from the Contract Price for such Contract RECs plus all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the UC's counsel) incurred by UC in connection with the Event of Default and resale. If UC, in its sole discretion, elects to not resell the Contract RECs, then the damages amount shall be equal to the positive difference, if any, obtained by subtracting the market price for such RECs as of the Early Termination Date, which price shall be determined in a commercially reasonable manner, from the Contract Price for such RECs plus all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the UC's counsel) incurred by UC in connection with the Event of Default.

(c) Payment of Early Termination Damages. Payment of amounts, if any, determined under this Section 12.3 shall be made within ten (10) days following receipt of an invoice with supporting calculations from the Party owed.

(d) **Damages Cumulative.** Damages recoverable under this Section 12.3 are for Contract RECs which would have been delivered or purchased after an Early Termination Date and are recoverable in addition to any damages which are recoverable for shortfalls in deliveries of Contract RECs or failure to purchase Contract RECs prior to or in the absence of an Early Termination Date. Damages for shortfalls in deliveries of Contract RECs or failure to purchase Contract RECs prior to or in the absence of an Early Termination Date shall be determined and paid in a manner similar to damages recoverable after an Early Termination Date as set forth in this Section 12.3.

12.4 Limitation of Liabilities

EXCEPT AS SET FORTH IN SECTION 12.3 (a) and (d), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE, AND NO PARTY WILL BE REQUIRED TO PAY OR BE LIABLE FOR CONSEQUENTIAL DAMAGES.

Article Thirteen – Successors And Assigns

13.1 This Agreement shall be binding on, and inures to, the successors and assigns of Duke Energy Ohio and UC, and shall supersede and cancel all previous electric service agreements, except for obligations incurred by UC to pay amounts due in respect to electricity delivered prior to execution of but pursuant to the terms embodied in this Agreement.

Article Fourteen – Obligation For Taxes

14.1 UC may seek authority from the state of Ohio to self assess the kWh excise tax. UC shall provide Duke Energy Ohio with documentation that it has received a waiver from the state of Ohio. UC and Duke Energy Ohio shall each be obligated to pay to the appropriate taxing authority all taxes of every kind as respectively assessed to or levied on each, without right of contribution by the other. The price to be paid or any provision of this Agreement shall not be affected by an increase or decrease in the tax rate or amount or the repeal of an existing tax imposed on either Party hereto, by the enactment of a new tax, or by the subsequent application of any existing tax.

Article Fifteen - Applicable Law

15.1 This Agreement shall be governed by the laws of the state of Ohio regardless of choice of law principles in Ohio or any other state.

Article Sixteen – Notice

16.1 Any notice required by the Agreement shall be deemed to have been given when provided to and received by the Party to whom it is directed as designated below:

Notice sent to DUKE ENERGY OHIO:

President
Duke Energy Ohio, Inc
139 East Fourth Street
Cincinnati, OH 45202
Telephone (513) 287-2844
Fax: (513) 287-1592

Notice sent to UC:

Director of Utilities
University of Cincinnati
3000 Glendora Ave
Cincinnati, OH 45219
Phone: (513) 558-4635
Fax: (513) 558-1739

With a copy to

General Counsel
University of Cincinnati
650 University Pavilion
Cincinnati, Ohio 45203-0623

Article Seventeen - Miscellaneous

17.1 The terms of this Agreement, along with other materials specifically incorporated by reference, constitute the entire agreement between the Parties with respect to the matters contained within the Agreement. All prior oral or written agreements with respect to the same subject matter are superseded by this Agreement and the Parties represent that they are not relying on any oral or written representations or warranties except as specifically set forth within this Agreement.

17.2 In accordance with Section 9.24 of the Ohio Revised Code, Duke Energy Ohio warrants that at the time it executes this Agreement it is not subject to an unresolved finding for recovery issued by the Auditor of State.

17.3 This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and not be construed against one party or the other as a result of the preparation, substitution, organizational membership, submission or other event of negotiation, drafting or execution hereof.

17.4 Nothing herein constitutes any Party a partner, agent or legal representative of the other party or creates any fiduciary relationship between them.

17.5 The waiver by either Party of a default or a breach by the other party will not operate or be construed to operate as a waiver of any subsequent default or breach. If any provision hereof is, for any reason, determined to be invalid, illegal, or unenforceable in any respect, the Parties will negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions that will, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions

hereof will, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

17.6 Nothing in this Agreement is intended to confer benefits, rights, or remedies to any person or entity other than the Parties and their permitted successors and assigns.

17.7 This Agreement is solely for the benefit of the Parties , and shall not be deemed to confer upon or give to any other person any remedy, claim of liability or reimbursement, cause of action or other right. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns. Any assignment of this Agreement, in whole or in part, by either Party without the other party's prior written consent (in its sole discretion) shall be null and void.


17.8 Each Party represents and warrants to the other Party that (a) the execution, delivery and performance of this Agreement has been validly authorized by such party, and no other corporate, limited partnership or limited liability company action, as applicable, of such party is necessary to authorize the execution, delivery and performance of this Agreement; (b) this Agreement has been duly and validly executed and delivered by such party; (c) this Agreement constitutes such party's legal, valid and binding obligation, enforceable against it in accordance with its terms; and (d) neither the execution and delivery by such party of, nor its performance under, this Agreement will conflict with, result in a breach of any provision of, constitute a default (with or without notice or lapse of time or both) under, or require a consent or waiver under, any agreement, instrument, lease, license, evidence of indebtedness, mortgage, indenture, security agreement or other contract, arrangement, understanding, or commitment,

whether written or oral, to which such party is a party or by which it or its assets are bound.

17.9 This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf), and the parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

IN WITNESS WHEREOF, the Parties agree and accept each and every Term and Condition set forth in this Agreement and acknowledge their understanding and agreement by signing and dating this Agreement below:

WITNESS


SENIOR PARALEGAL

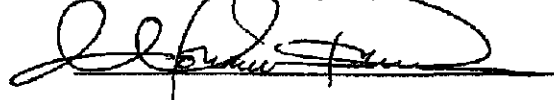
DUKE ENERGY OHIO, INC.


By: Julie S. Janson

Its: President

WITNESS

UNIVERSITY OF CINCINNATI



By: Monica Rinal
Interim President

Its: _____

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is made as of the 1st day of September, 2009 by and among **Duke Energy Ohio, Inc.** ("Duke"), the **University of Cincinnati** ("UC"), and **National City Bank** (the "Escrow Agent.")

WITNESSETH:

WHEREAS, pursuant to that certain Electric Service Contract Between the University of Cincinnati and Duke Energy Ohio dated as of September 1, 2009, (the "Service Agreement"), by and between Duke and UC, UC has agreed to sell and convey and Duke has agreed to purchase and acquire certain Renewable Energy Credits ("RECs") at the rate of 50,000 RECs per year during calendar years 2009, 2010, and 2011, as more fully described in the Service Agreement; and

WHEREAS, Duke has further agreed in the Service Agreement to pay to UC on a quarterly basis ten dollars (\$10) for each of the qualified RECs delivered by UC to Duke's Generation Attributes Tracking System ("GATS") account during the previous quarter to a maximum amount of \$500,000 per year;

WHEREAS, pursuant to the terms of the Service Agreement, Duke's payments as described above are to be deposited by Duke into an escrow account to be established by Duke and UC pursuant to a separate agreement entered into among Duke, UC, and an escrow agent, the terms of which are generally described in the Service Agreement;

WHEREAS, the Escrow Agent has agreed to serve as escrow agent for Duke and UC subject to certain terms and conditions;

WHEREAS, Duke, UC and the Escrow Agent, now desire to set forth their agreement with respect to the escrow of Duke's payments in this Escrow Agreement which shall be attached to the Service Agreement and referred to therein as Exhibit A; and

NOW, THEREFORE, in consideration of the premises and mutual promises and covenants contained herein, the parties hereto, intending to be legally bound hereby agree as follows:

1. Deposit of Funds. Duke shall deposit with the Escrow Agent the amount of ten dollars (\$10) for each of the qualified RECs delivered by UC and credited to Duke's GATS Account, such deposits to be made within seven (7) days of the date of delivery of each such REC.

2. Escrow Agent's Duties. The Escrow Agent shall receive and hold the amounts deposited by Duke, including any interest thereon (the "Escrowed Funds") in an interest-bearing account (the "Escrow Account"), make periodic reports to Duke and UC of the funds on account, and only disburse the Escrowed Funds in accordance with the terms this Escrow Agreement.

3. Disbursement of Escrow Funds. No later than one day after the end of the preceding

calendar quarter, the Escrow Agent shall disburse from the Escrow Account to UC the funds so deposited by Duke with respect to such previous quarter plus interest, if any, less an amount equal to 25% of the deposit (referred to hereinafter and in the Service Agreement as the "Holdback.") The Holdback shall be retained by the Escrow Agent and shall accrue in the Escrow Account to be disbursed only as provided below.

4. Disbursement of the Holdback. The Escrow Agent shall pay to UC 100% of any Holdback retained in the Escrow Account plus interest, if any, as soon as reasonably practicable following the close of the first quarter of calendar year 2012.

5. Disputes. If a dispute arises between Duke and UC regarding the Escrowed Funds or Escrow Agent's obligations hereunder that cannot be amicably resolved, then the Escrow Agent may either interplead the Escrowed Funds pursuant to paragraph 10 below, or Escrow Agent may continue to hold the Escrowed Funds and wait for joint written instructions from Duke and UC, which election is at Escrow Agent's sole and absolute discretion.

6. Escrow Fee. WAIVED.

7. Liability of Escrow Agent. The parties agree that Escrow Agent shall have no liability under this Escrow Agreement except to deposit Escrowed Funds received from Duke into the Escrow Account, periodically account for the Escrowed Funds on deposit, and make disbursements of Escrowed Funds as specified herein. Without limiting the generality of the foregoing, Escrow Agent shall not be liable for any loss or damage, except if caused by Escrow Agent's gross negligence or willful misconduct, resulting from any of the following:

- a. Any defects in the RECs of any kind and nature, including but not limited to defects of title, qualification, or certification.
- b. Legal effect of any instrument exchanged by the parties hereto.
- c. Any default, error, action or omission of any other party.
- d. The expiration of any time limit or other delay, unless such time limit was known to Escrow Agent, Escrow Agent was obligated to comply therewith, and such loss is solely caused by failure of Escrow Agent to proceed in its ordinary course of business.
- e. Any good faith act or forbearance by Escrow Agent.
- f. To the extent not reimbursed to Escrow Agent by any insurance, any loss or impairment of the Escrowed Funds in the course of collection or while on deposit with a trust company, bank, savings bank or savings association resulting from failure, insolvency or suspension of such institution (other than Escrow Agent) or while in transit by wire transfer or otherwise.
- g. Escrow Agent complying with any and all legal process, writs, orders, judgments and decrees of any court, whether issued with or without jurisdiction, and whether

or not subsequently vacated, modified, set aside or reversed.

- h. Escrow Agent asserting or failing to assert any cause of action or defense in any judicial, administrative, or other proceeding in the interest of either itself or any other party or parties.
- i. Any failure to ascertain or to comply with the terms of any document delivered to Escrow Agent, except this Escrow Agreement, or forgeries or false impersonations, unless the false nature thereof was known to Escrow Agent.

8. Termination of Escrow Agreement. This Escrow Agreement shall terminate effective on the date all Escrowed Funds on deposit in the Escrow Account, including the Holdback, have been disbursed by Escrow Agent. Notwithstanding the foregoing, the provisions of Section 4, 9, and 10 hereof shall survive the termination of this Escrow Agreement.

9. Methods of Transfer of Escrowed Funds. Escrow Agent may make authorized disbursements of Escrowed Funds by corporate check, by wire transfer, by certified or cashier's check, or by such other means as may be agreed upon in writing between the Escrow Agent and UC.

10. Limitation of Liability. UC and Duke consent and agree that Escrow Agent shall have no liability under this Escrow Agreement in the absence of willful misconduct or gross negligence. In furtherance, and not in limitation of the foregoing, Duke and UC agree that they shall not hold or seek to hold Escrow Agent responsible in any manner for any loss or liability arising out of Escrow Agent's performance of its duties hereunder and shall not hold Escrow Agent liable for any error in judgment or for any act done or omitted by Escrow Agent in good faith or for any mistake in fact or law, or for anything which Escrow Agent does or refrains from doing in connection with this Escrow Agreement, in the absence of gross negligence or willful misconduct of Escrow Agent.

11. Payment of Escrow Agent's Costs and Expenses. Duke and UC agree that each shall be severally liable for and pay one half of Escrow Agent's costs and expenses including without limitation, reasonable attorney fees and court costs, incurred by Escrow Agent in connection with any arbitration, court action or interpleader, or any act taken within the scope of this Escrow Agreement, or any failure to act, unless due to the gross negligence or willful misconduct of the Escrow Agent, or its failure to comply with the terms of this Escrow Agreement.

12. Termination of Liability. Upon disbursement of the Holdback from the Escrowed Funds in accordance with the terms of this Escrow Agreement, Escrow Agent shall be relieved of all further liability and responsibility in connection with the Escrow Agreement and the Escrowed Funds.

13. Claims/Interpleader. In the event of any disagreement between the other parties hereto resulting in adverse claims or demands being made in connection with the Escrow Fund or in the event that Escrow Agent is in doubt as to what action it should take hereunder, Escrow Agent shall be entitled to retain the Escrow Fund until Escrow Agent shall have received (i) a final, non-appealable order of a court of competent jurisdiction directing delivery of the Escrow Fund or (ii) a written agreement executed by the other parties hereto directing delivery of the

Escrow Fund, in which event Escrow Agent shall disburse the Escrow Fund in accordance with such order or agreement. Any court order shall be accompanied by a legal opinion by counsel for the presenting party satisfactory to Escrow Agent to the effect that the order is final and non-appealable. Escrow Agent shall act on such court order and legal opinion without further question. In the event any demand is made upon Escrow Agent concerning this Escrow Agreement or the Escrowed Funds, or at any time, for any cause, or for no cause, Escrow Agent, at its election and in its sole and absolute discretion, may cause the Escrowed Funds to be delivered to a court of competent jurisdiction to determine the rights of Duke and UC, or to interplead Duke and UC by an action brought in any such court. Deposit by Escrow Agent into such court of the Escrowed Funds shall relieve Escrow Agent of all further liability and responsibility in connection with this Escrow Agreement and the Escrowed Funds.

14. Ownership for Tax Purposes. UC agrees that, solely for purposes of federal and other taxes based on income, UC will be treated as the owner of the Escrow Funds and that UC will fulfill all reporting obligations with respect to such income, if any, that is earned on, or derived from, the Escrow Funds as its income in the taxable year or years in which such income is properly includible and, if any, pay any taxes attributable thereto.

15. Notices. Any notice to Duke shall be deemed given if sent by certified mail, return receipt requested to Jennifer Pope, 139 East Fourth Street, EA602 ATII, Cincinnati OH 45202. Any notice to UC shall be sent by certified mail, return receipt requested to University of Cincinnati, Office of General Counsel 650 University Pavilion, P.O. Box 210623, Cincinnati, OH 45221-0623. Any notice to Escrow Agent shall be deemed given if sent by certified mail, return receipt requested to _____. Any party may change the address to which notices are to be addressed by sending written notice to the other respective parties pursuant to this paragraph.

16. Governing Law. This Escrow Agreement shall be construed in accordance with and governed by the laws of the State of Ohio.

17. Counterparts and Faxes. This Escrow Agreement may be executed in any number of counterparts and shall be binding on the parties notwithstanding that not all parties have signed the same counterpart. A faxed copy of an executed counterpart (with originals to be sent to the Escrow Agent by ordinary mail) shall be binding on all parties.


18. Waiver. The rights and remedies of the parties to this Escrow Agreement are cumulative and not alternative. Neither the failure nor any delay by any party hereto in exercising any right, power or privilege under this Escrow Agreement or the documents referred to in this Escrow Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Escrow Agreement or the documents referred to in this Escrow Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such

notice or demand to take further action without notice or demand as provided in this Escrow Agreement or the documents referred to in this Escrow Agreement.

19. Amendment and Modification. This Escrow Agreement contains the entire agreement of the parties with respect to the Escrowed Funds, and all prior agreements, understandings and undertakings have been merged herein. This Agreement may only be amended or modified by an a writing signed by each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed as of the date first above written.

For Duke Energy Ohio, Inc.


By: Julie S. Jaason
Title: President, Duke Energy Ohio, Inc.

For University of Cincinnati

By: _____
Title: _____

For National City Bank:

By: _____
Title: _____

EXHIBIT B

AFFIDAVIT

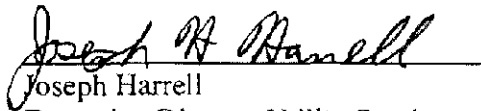
State of Ohio:

Cincinnati:

ss:

County of Hamilton:

I, Joseph Harrell, Executive Director Utility Services, University of Cincinnati, am the duly authorized representative of the University of Cincinnati in this matter. I declare under oath that the foregoing information contained in this application and the attached exhibits are true and accurate to the best of my knowledge and belief.


Joseph Harrell
Executive Director Utility Services
University of Cincinnati

Sworn and subscribed before me in my presence this 17th day of November, 2009.


Notary Public



GREGORY MOHAR
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 O.R.C.